RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

AGENDA

18th Meeting, 2015 (Session 4)

Wednesday 27 May 2015

The Committee will meet at 10.00 am in the David Livingstone Room (CR6).

1. **Crown Estate - witness expenses:** The Committee will be invited to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses.

2. **Subordinate legislation:** The Committee will consider the following negative instruments—

   - Outer Hebrides (Landing of Crabs and Lobsters) Order 2015 (SSI 2015/183)
   - Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2015 (SSI 2015/185)
   - Waste (Meaning of Hazardous Waste and European Waste Catalogue) (Miscellaneous Amendments) (Scotland) Regulations 2015 (SSI 2015/188)
   - Carbon Accounting Scheme (Scotland) Amendment Regulations 2015 (SSI 2015/189)

3. **Crown Estate:** The Committee will take evidence on the proposed devolution of Crown Estate assets to Scotland from—

   - Lindsay Leask, Senior Policy Manager - Offshore Renewables, Scottish Renewables;
   - Alastair Nairn, Farmer, Glenlivet Estate;
   - Brian Swinbanks, Chair, Tobermory Harbour Association;
   - James Allan, Chief Executive, Royal Yachting Association Scotland;
   - John McArthur, Treasurer, West Highland Anchorages and Moorings Association;
Scott Landsburgh, Chief Executive, Scottish Salmon Producers Organisation;

Elgar Finlay, Local Development Officer, Glendale Trust;

and then from—

Fergus Murray, Head of Economic Development and Strategic Transportation, Argyll and Bute Council;

George Hamilton, Head of Environment and Development, Development and Infrastructure, Highland Council;

Roddy Burns, Chief Executive, Moray Council;

Paul Maxton, Solicitor, Orkney Islands Council;

A representative, Comhairle nan Eilean Sior.

4. **Annual report:** The Committee will consider a draft annual report for the parliamentary year from 11 May 2014 to 10 May 2015.

The papers for this meeting are as follows—

**Agenda item 2**

SSI cover note RACCE/S4/15/18/1

**Agenda item 3**

Crown Estate cover paper RACCE/S4/15/18/2

PRIVATE PAPER RACCE/S4/15/18/3 (P)

**Agenda item 4**

Draft Annual report 2014-2015 (draft) RACCE/S4/15/18/4
SSI cover note for: Outer Hebrides (Landing of Crabs and Lobsters) Order 2015 (SSI 2015/183); Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2015 (SSI 2015/185); Waste (Meaning of Hazardous Waste and European Waste Catalogue) (Miscellaneous Amendments) (Scotland) Regulations 2015 (SSI 2015/188); Carbon Accounting Scheme (Scotland) Amendment Regulations 2015 (SSI 2015/189)

Procedure for Negative Instruments

1. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

2. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

Recommendation

3. The Committee is invited to consider any issues which it wishes to raise on these instruments.

SSI 2015/183

Title of Instrument: Outer Hebrides (Landing of Crabs and Lobsters) Order 2015 (SSI 2015/183)

Type of Instrument: Negative

Laid Date: 30 April 2015

Circulated to Members: 21 May 2015

Meeting Date: 3 June 2015

Minister to attend meeting: No

Motion for annulment lodged: No
Drawn to the Parliament’s attention by the Delegated Powers and Law Reform Committee? No

Reporting deadline: 1 June 2015

Delegated Powers and Law Reform Committee

4. At its meeting on 12 May 2015, the Committee considered the following instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

5. A copy of the Explanatory Notes and the Policy Notes are included with the papers.

Purpose

This Order amends the Undersized Velvet Crabs Order 1989, the Undersized Edible Crabs (Scotland) Order 2000 and the Undersized Lobsters (Scotland) Order 2000 so as to prescribe minimum sizes for the landing of velvet crabs, edible crabs and lobsters in the Outer Hebrides (articles 3, 4 and 5).

The Order also prescribes a maximum landing size for female lobsters in the Outer Hebrides (article 6).

The Order also prohibits the landing in Scotland of female lobsters with missing claws, caught in Scottish inshore waters surrounding the Outer Hebrides (article 7). These waters are shown on the illustrative map appended to this note.

The prescribed minimum and maximum landing sizes and the prohibition set out in article 7 apply only to landings from British fishing boats.

EXPLANATORY NOTE

As per purpose above and including:

This Order is made in accordance with the procedure set out in Article 46 of Council Regulation (EC) No. 850/98 (OJ L 125, 27.4.1998, p.1) for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms (“the Council Regulation”).

Article 46 of the Council Regulation authorises Member States to take certain national measures for the conservation and management of local stocks.
POLICY NOTE

The Outer Hebrides (Landing of Crabs and Lobsters) Order 2015

SSI 2015/183

The above instrument was made in exercise of the powers conferred by sections 1(1), (4) and (6), 6(1) and (3) and 20(1) of the Sea Fish (Conservation) Act 1967. The instrument is subject to negative procedure.

Policy Objectives

The purpose of the instrument is to help improve the sustainability of crab and lobster fisheries in, and in the inshore waters surrounding, the Outer Hebrides.

The instrument amends the Undersized Velvet Crabs Order 1989, the Undersized Edible Crabs (Scotland) Order 2000 and the Undersized Lobsters (Scotland) Order 2000 so as to prescribe the following measures to restrict the landing of edible crab, velvet crab and lobster in the Outer Hebrides.

- The minimum landing size (MLS) of edible crab will be increased from 140 mm to 150 mm
- The MLS of velvet crab will be increased from 65 mm to 70 mm
- The MLS of lobster will be increased from 87 mm to 88 mm for one year and then 90 mm thereafter

The instrument will also prescribe a maximum size of 145 mm for the landing of female lobster in the Outer Hebrides, and prohibit the landing in Scotland of “crippled” female lobster caught in those parts of Scottish inshore waters which surround the islands of the Outer Hebrides (from 0-6 nautical miles from the coast).

These measures will apply only to landings from Scottish or other British fishing boats.

Since these are technical conservation measures, Article 46 of Council Regulation (EC) No 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms applies. The European Commission has been informed timeously in accordance with this article and no objections have been raised.

Stock Assessment

Marine Scotland Science assesses Scotland’s fish stocks using $F_{MSY}$. $F_{MSY}$ is the fishing mortality consistent with the largest average yield that can continuously be taken from a stock under prevailing environmental conditions.

$F_{MSY}$ can be difficult to estimate, and proxies to it are often used. As it is not possible to directly estimate the maximum sustainable yield ($MSY$) for these stocks, $F_{MAX}$ (the fishing mortality rate that maximizes yield per recruit) is used as a proxy to $F_{MSY}$ for these stocks.
The edible crab, velvet crab and lobster stocks in the Outer Hebrides are currently assessed to be fished at levels close to or above the $F_{MSY}$ proxy. When a stock is fished above $F_{MSY}$, the scientific advice is that a higher yield and biomass in the long term could potentially be obtained from the stock by introducing measures to reduce the level of fishing mortality (effort).

**Inshore Fisheries Groups**

These measures were developed and proposed by the Outer Hebrides Inshore Fisheries Group (IFG), with the intention of helping to improve the sustainability of these fisheries through the regulation of harvesting controls.

Six IFGs have been established around the Scottish coast. They are non-statutory bodies that aim to improve the management of Scotland’s inshore fisheries through putting commercial fishermen at the heart of local fisheries management, and providing fishermen with a strong voice in marine management and regional marine planning matters.

The Outer Hebrides IFG has a Management Plan which contains initiatives on how local fisheries management can be developed in their respective area. This was written with assistance by an advisory group of stakeholders, including Government Agencies and other organisations with an interest in the marine environment.

As part of Marine Scotland’s Inshore Fisheries Strategy, the Scottish Government seeks to support the Outer Hebrides IFG through assisting in the implementation of the measures contained within its Management Plan.

**Consultation**

The Outer Hebrides IFG membership has discussed and agreed the broad basis of these measures for inclusion in its Management Plan over a period of several years. The IFG approached Marine Scotland in early 2014 to request a formal consultation take place.

A consultation on the proposed measures was held from 4 July 2014 to 29 August 2014. Responses to the consultation were received from the following organisations:

- Comhairle nan Eilean Siar (Western Isles Council)
- Mallaig and North-West Fishermen’s Association
- Outer Hebrides Inshore Fisheries Group
- Shetland Shellfish Management Organisation
- Western Isles Fishermen’s Association

All five respondents were in favour of the consultation’s proposals.

**Impact Assessments**

This instrument – which prescribes measures to restrict the landing sizes of edible crab, velvet crab and lobster in the Outer Hebrides, and the landing in Scotland of
“crippled” female lobsters caught in inshore waters surrounding the Outer Hebrides – has no effect on any equality issues.

The Cabinet Secretary for Rural Affairs, Food and the Environment confirms that no Business and Regulatory Impact Assessment is necessary due to the extensive consultation that has already taken place on the measures.

Scottish Government
Marine Scotland
April 2015

ssi 2015/185

Title of Instrument: Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2015 (SSI 2015/185)

Type of Instrument: Negative

Laid Date: 1 May 2015

Circulated to Members: 21 May 2015

Meeting Date: 27 May 2015

Minister to attend meeting: No

Motion for annulment lodged: No

Drawn to the Parliament’s attention by the Delegated Powers and Law Reform Committee? Yes

Reporting deadline: 1 June 2015

Delegated Powers and Law Reform Committee

6. At its meeting on 20 May 2015, the Committee agreed to draw the attention of Parliament to the instrument under reporting ground (h). The extract from the report can be found in Annexe A and correspondence relating to the instrument can be found at Annexe B.

7. A copy of the Explanatory Notes and the Policy Notes are included with the papers.

Purpose

These Regulations amend the Less Favoured Area Support Scheme (Scotland) Regulations 2010 (“the principal Regulations”). As amended by these Regulations, the principal Regulations make provision for the purposes of the implementation of Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural
Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 ("the Rural Development Regulation" - OJ L 347, 20.12.2013 p.487), in particular Articles 31 and 32, and make provision for less favoured area support ("LFAS") payments for the period 2015 to 2017 under the Scottish Rural Development Programme (SRDP) (see http://www.gov.scot/Topics/farmingrural/SRDP). By 2018, the LFAS Scheme will be replaced by a new scheme for payments in respect of areas facing natural or other specific constraints in accordance with the Rural Development Regulation.

EXPLANATORY NOTE

As per purpose above and including:

Regulation 3 amends regulation 2(1) of the principal Regulation to insert new definitions and amend existing definitions, in particular, to reflect the EU instruments under the Common Agricultural Policy which now apply to the LFAS Scheme and to insert definitions for Scheme payments in respect of Scheme Years 2015 to 2017.

Regulation 4 amends regulation 3 of the principal Regulations in its application to Scheme Years on or after 1st January 2014.

Regulation 5 substitutes regulation 4 of the principal Regulations, which requires that LFAS payments can only be made to active farmers within the meaning of Article 9 of the Direct Payments Regulation (see the definition inserted by regulation 3), as required by Article 31(2) of the Rural Development Regulation. Regulations 15 (which amends regulation 15 of the principal Regulations) and 19 (which amends Schedule 7 to the principal Regulations) also make further provision to take account of the active farmers provisions in the Direct Payments Regulation.

Regulation 6 amends regulation 5 of the principal Regulations to make provision for the determination of ineligible land attributable to dairy activity in the applicable year (as construed in accordance with regulation 9(8) of the principal Regulations, as amended by regulation 9 of these Regulations).

Regulation 7 substitutes regulation 6 of the principal Regulations to make provision for the transfer of holdings in light of the applicable EU instruments (including those applying as from 1st January 2015).

Regulation 9 amends regulation 9 of the principal Regulations—

- to make provision for the calculation of stocking density by reference to livestock maintained or land declared in applicable years, which now includes 2013 where the circumstances in the new regulation 9(9) of the principal Regulations apply to an applicant for LFAS support; and
- to make provision for the possible application of an alternative calculation as a result of force majeure or exceptional circumstances (see the definition inserted by regulation 3).

Regulation 10 amends regulation 10 of the principal Regulations to deal with its application to Scheme Years commencing on or after 1st January 2015 as well as to make provision for alternative calculations of the adjustment of payable areas as a
result of force majeure or exceptional circumstances (see the definition inserted by regulation 3).

Regulations 12 and 14 amend regulations 12 and 13 respectively of the principal Regulations, to reflect newly applicable EU instruments (and see the definitions inserted by regulation 3).

Regulation 13 inserts a new regulation 12A into the principal Regulations, to make provision, following the publication of a statement by the Scottish Ministers, for the reduction of LFAS payments as appropriate in any Scheme Year where the financial resources available are insufficient to make payments at the rates otherwise applicable under the principal Regulations.

Regulation 8 makes a consequential amendment to regulation 7 of the principal Regulations.

Regulation 11 makes a consequential amendment to regulation 11 of the principal Regulations.

Regulation 16 substitutes regulation 17 of the principal Regulations to amend the provision for interest to be payable when recovering irregular payments of LFAS.

Regulation 17 substitutes Schedule 2 to the principal Regulations, which makes provision for the applicable land use codes for the LFAS scheme.

Regulation 18 amends Schedule 5 to the principal Regulations to deal with its application to Scheme Years commencing on or after 1st January 2015.

A business and regulatory impact assessment is being prepared for these Regulations and will be placed in the Scottish Parliament Information Centre. Copies may be obtained from the Scottish Government Directorate for Agriculture, Food and Rural Communities, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD.

POLICY NOTE

This note explains the purpose of the above SSI which is made in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972. The instrument is subject to negative resolution procedure. The SSI amends the Less Favoured Area Support Scheme (Scotland) Regulations 2010 No. 273 (‘the principal Regulations’) which came into force on 2 July 2010.

Policy Objectives

The purpose of the SSI is to amend the principal Regulations to extend the Less Favoured Areas Support Scheme (LFASS) to 2017 as permitted by Regulation (EU) No 1305/2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (“the Rural Development Regulation”). It also gives provision for farmers and crofters to access LFASS payments, where they could not do so previously in
certain circumstances. Finally, it introduces financial discipline to allow LFASS payments to remain within budget.

**Background**

The Rural Development Regulation provides for an area based support scheme for Areas facing Natural Constraint (ANC) in recognition of the permanent natural disadvantage they face due to a range of biophysical criteria. Payments are to compensate farmers for income foregone and additional costs linked to the disadvantage in order to encourage the use of agricultural land, contribute to maintaining the countryside as well as to maintaining and promoting sustainable farming systems.

The current classification in Scotland is Less Favoured Areas (LFA), and 85% of agricultural land is classified as being within an LFA. LFASS has a high profile and is worth in the region of £65.5 million per year to around 11,300 farmers and crofters. The Rural Development Regulation permits Scotland to continue with the LFA designation, and the LFASS eligibility criteria and payment calculations until 2018, when the scheme and designation must meet the new framework as set out in the Rural Development Regulation.

The terms of LFASS are reflected in the new Scotland Rural Development Programme for 2014-2020 (“the SRDP”, available at http://www.gov.scot/Topics/farmingrural/SRDP) which must be approved by the European Commission. Final, formal approval is expected by the end of May 2015. The Commission have indicated that our proposal to continue with LFASS until 2018 is in line with the regulations.

**Description of LFASS 2010 – 2014**

Key features of the 2010 – 2014 scheme implemented in the principal Regulations are that:

- an applicant must actively farm eligible land for the majority of the qualifying year;
- it is historically based using values, including stocking densities, derived from area and livestock data declared by farmers in 2009;
- payments are made per hectare of eligible land, adjusted for LFASS grazing category and any minimum or maximum stocking density restrictions;
- payment rates are varied according to LFASS Fragility area, i.e., Very Fragile, Fragile or Standard, according to the location of the applicant's main farm.

**Main changes made by these Regulations**

The SSI amends the principal Regulations to make provision for payments for the period 2015-2017. This has included an updating of relevant regulatory references (in light of the new EU CAP rules), revision of the land use codes and an updating of the interest payable when recovering irregular LFASS payments. It has also included a provision to meet the requirements of Article 31(2) of the Rural Development Regulation, which states that payments for LFASS from 2015 onwards
can only be made to active farmers, within the meaning of CAP Pillar 1 and Regulation (EU) No 1307/2013.

As with previous scheme years, recipients of LFASS will be obliged to meet the requirements of cross-compliance on their holding throughout the scheme year. The previous obligation to continue using the eligible land for at least five years was removed as from for LFASS 2014 in line with the requirements of Regulation (EU) No 1310/2013, and in light of the Rural Development Regulation there is no such obligation either for 2015-2017.

The amendment SSI also introduces an increase in flexibility to bring in active farmers in an LFA area who were unable to access LFASS payments as they did not meet the conditions of the 2009 historic base year. This means farmers who did not have the right kind of land or stock in 2009, will now be able to base historic values on eligible land and eligible livestock they maintained in 2013. They will still be required to meet all other applicable scheme eligibility criteria and conditions.

Finally, the amendment provides for a process to enable the reduction of the maximum payment rates set out in the principal Regulations where the financial resources available are insufficient to make LFASS payments, to ensure that the annual budget (which is co-financed with EU monies as set out in the SRDP) of £65.5m is respected.

**Timing of the 2015 SSI**

LFASS claims will be submitted by farmers and crofters as part of the Single Application Form (SAF) by 15 June 2015. The amendments made by the SSI are required to be in force to provide a legal basis for forthcoming verifications and inspections for applications received through the 2015 SAF. Payments in respect of claims received in 2015 will be made in 2016.

**Financial Effects**

The change affected by the amendment SSI has no impact on the existing budget.

**Consultation**

LFASS from 2015 is a measure of the SRDP. The SRDP has been in development, in conjunction with stakeholders, over the last 3 years. This process has included a stakeholder ANC Working Group feeding into the SRDP design, two public consultations, both of which included consideration of the future design of LFA support and regular bi-laterals with key stakeholders.

Stakeholders have supported the continuation of the current LFA scheme in the short term, and appreciate that the scheme and designation must be amended by 2018. Stakeholders have also welcomed the new flexibility for farmers and crofters that previously could not access LFASS, who may qualify for a payment from 2015. Finally, stakeholders accept the need to introduce financial discipline to stay within the annual budget.
The Scottish Government will review LFASS in line with the Rural Development Regulation and will issue a separate consultation once the details and options for Scotland are clear.

Scottish Government Agriculture, Food and Rural Communities Directorate

Annexe A

EXTRACT FROM THE DELEGATED POWERS AND LAW REFORM COMMITTEE’S 30th REPORT OF 2015

48. The Committee therefore draws the Regulations to the attention of the Parliament under reporting ground (h) as they could be clearer in the following respect. Regulation 6 of the principal regulations as substituted by regulation 7 of these Regulations could make clearer to applicants that the EU requirements specified in regulation 6(2)(b) and (3)(b) are to be read as if references to transferor were references to transferee and vice versa – as required by other EU requirements not specifically referred to in that regulation.

Annexe B

Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2015 (SSI 2015/185)

On 7 May 2015, the Scottish Government was asked:
The instrument is made under the powers conferred by section 2(2) of the European Communities Act 1972. Paragraph 1(c) of Schedule 2 to the 1972 Act provides that the power may not be exercised so as to confer a power to legislate by means of subordinate instrument. Paragraph 1(2) provides that a power to give directions as to matters of administration is not to be regarded as a power to legislate in this context. Accordingly delegating administrative functions is permitted. Delegating substantive powers would appear to be prohibited.

Regulation 13 inserts new regulation 12A into the principal regulations – SSI 2010/273. Regulation 12A confers a power on the Scottish Ministers to determine that payments are not to be made in accordance with the Scheme established by the principal regulations where they are of the opinion that the financial resources available are insufficient to do so. In exercise of the power the Ministers must determine the amount by which payments are to be reduced and apply the appropriate reduction to applications under the Scheme. Before doing so the Ministers must publish a statement containing their determination and how it will be applied.

The power conferred allows the Scottish Ministers considerable discretion to amend the Scheme established by the principal regulations. No thresholds are specified in the regulations as to when the power conferred arises nor is the reduction to be applied tied to any amount or requirement beyond taking into account “the financial resources available”. The exercise of the discretionary power has a material impact on the entitlement of applicants under the Scheme.
The Scottish Government is asked to explain why it considers that the power established in regulation 12A relates to matters of administration for the purposes of paragraph 1(2) of Schedule 2 of the European Communities Act 1972.

2. Regulation 7 substitutes a new regulation 6 in the principal regulations. Regulation 6(2) and (3) provides for circumstances in which it is permissible to pay grant to the transferor of a holding which has been transferred in the Scheme year instead of to the transferee. This is permitted under the EU law referred to in paragraphs (2)(b) and (3)(b). However, paragraphs (2)(b) and (3)(b) require specified provisions of the relevant EU law to have been complied with as a precondition for payment of grant to the transferor. Those provisions specify requirements which must be met by transferees and a prohibition on payment to the transferor. We presume that it is intended that those provisions are instead to be read as if they applied reversing references to transferor/transferee. Does the Scottish Government agree that this is what is intended? If so does the Scottish Government consider that regulation 6(2) and (3) are sufficiently clear in implementing what is intended?

The Scottish Government responded as follows:

The Scottish Government considers that the power established in regulation 12A relates to matters of administration for the purposes of paragraph 1(2) of Schedule 2 of the European Communities Act 1972.

As set out in the explanatory note to this instrument, from 2015, the less favoured area support scheme (LFASS) falls within Articles 31 and 32 of Regulation (EU) No 1305/2013 which, along with other Schemes under that Regulation, is implemented through the Scottish Rural Development Programme (SRDP) and, as set out in the SRDP and as with other Schemes under the SRDP, LFASS is co-funded from domestic and EU funds (the latter being under the European Agricultural Fund for Rural Development or EAFRD). Article 8(1)(h) of Regulation (EU) No 1305/2013 requires the SRDP to set out a financing plan for measures eligible for funding under it and Article 59 of that Regulation makes provision for the EAFRD contribution.

The purpose of the scheme is to compensate farmers for all or part of the additional costs and income foregone reflecting the constraints for agricultural production in less favoured areas. The current LFASS is, in substance, a continuation of the Scheme under the previous SRDP though, as required by Article 31(5) of Regulation (EU) No 1305/2013, it will be replaced by 2018 by a similar Scheme (in respect of areas facing natural or other specific constraints to be designated in due course by the Scottish Government and incorporated by an amendment into the SRDP). LFASS reflects a key policy objective of the Scottish Government, which is why provision has been made under the SRDP for an annual budget of £65.6 million to be made available for the Scheme. Nevertheless, as with all schemes funded under the SRDP, the applicable budget ceiling must be respected when administering the Scheme.

Regulation 11 of, and Schedule 5 to, the principal Regulations, reflect the rates of payments of LFASS as provided for under the SRDP. Moreover, as also provided for in the SRDP, these are maximum rates of payment in light of the applicable budget for the Scheme as reflected in the SRDP which, in turn (as already noted above), impacts on the amount of EU funding which can be drawn down under the EAFRD.
In addition, in respect of any given Scheme Year, the number of farmers applying for LFASS support and assessed as eligible for a payment, and the amount of land claimed to which the payment relates, may also vary. This too could potentially impact on the available budget for that Scheme Year.

Thus, in the context of LFASS from 2015, as reflected in regulation 11 of the principal Regulations as amended by regulation 11 of this instrument, it is necessary to make provision reflecting the fact that the payment rates specified in Schedule 5 of the principal Regulations, as amended by regulation 18 of this instrument, are maximum rates of payment only. Moreover, as provided for in the new Regulation 12A (as inserted by regulation 13 of this instrument), it is also necessary to provide an administrative mechanism to ensure that those rates of payment are reduced to the extent necessary to ensure that the applicable budget for LFASS under the SRDP is respected in any given Scheme Year.

The Scottish Government is therefore satisfied that, the power established in regulation 12A for the purposes of ensuring properly relates to matters of administration for the purposes of paragraph 1(2) of Schedule 2 of the European Communities Act 1972.

However, in order to provide for an additional degree of transparency as regards the exercise of the administrative power, regulation 12A also requires the Scottish Ministers to publish a statement setting out how they have determined and will apply the appropriate reduction to LFASS payments in a given Scheme Year before any payments are made.

Regulation 6(2) (as indeed its predecessor in regulation 6(2) of the principal Regulations, prior to its substitution by regulation 7 of this instrument) and regulation 6(3) make provision respectively for the purposes of Article 82(6) of Commission Regulation 1122/2009 and Article 8(5) of the Horizontal Implementing Regulation (809/2014) in relation to grants of less favoured area support to the transferor of a holding. In turn, those provisions require the application mutatis mutandis of the requirements as respectively set out in Articles 82(2) to (5) of Commission Regulation 1122/2009 and Articles 8(2) to (4) of the Horizontal Implementing Regulation.

Those provisions are directly applicable, in consequence of the application of the provision concerning (in the case of this instrument) grants of less favoured area support to a transferor. The Scottish Government therefore considers that, in context, the applicable EU requirements in so far as expressed by reference to the transferee, can therefore be read as applicable to the transferor as required.

SSI 2015/188


Type of Instrument: Negative
At its meeting on 12 May 2015, the Committee considered the following instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

9. A copy of the Explanatory Notes and the Policy Notes are included with the papers.

Purpose


The Regulation amends the Directive by replacing Annex III (properties of waste which render it hazardous) to the Directive.

EXPLANATORY NOTE

As per purpose above and including:

The Regulation amends the Directive by replacing Annex III (properties of waste which render it hazardous) to the Directive.

The 2000 Decision sets out a list of wastes known as the European Waste Catalogue. The 2014 Decision amends that list.
No business and regulatory impact assessment has been prepared for these Regulations as no significant change is foreseen to the existing impacts upon business, charities or voluntary bodies.

**POLICY NOTE**

The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to negative procedure.

The European Commission has introduced two pieces of legislation relating to hazardous waste.

- EU Decision 2014/955/EU which amends Decision 2000/532/EC on the list of wastes.

The new Regulation and Decision require amendments to the definitions of “European Waste Catalogue” and “Waste Framework Directive” within the following Scottish Regulations and Orders.

- The Environment Protection Act 1990
- The Special Waste Regulations 1996
- The Landfill (Scotland) Regulations 2003
- The Landfill Allowances Scheme (Scotland) Regulations 2005
- The Renewables Obligation (Scotland) Order 2009
- The Management of Extractive Waste (Scotland) Regulations 2010
- The Town and Country Planning (Environmental impact Assessment) (Scotland) Regulations 2011
- The Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011
- The Waste Management Licensing (Scotland) Regulations 2011
- The Pollution Prevention and Control Regulations 2012

These Regulations entitled “The Waste (Meaning of Hazardous Waste and European Waste Catalogue) (Miscellaneous Amendments) (Scotland) Regulations 2015” will amend the relevant definitions.

This instrument will fully transpose the requirements of the Regulation and the Decision.

The Regulation will have no significant impact on existing waste management procedures in Scotland.

The other UK Administrations are making similar amendments to their own legislation.
Consultation
The Instrument is being made under section 2(2) of the European Communities Act 1972 (ECA) and using negative procedure. This enables the Regulation to be made without the requirement to consult.

In light of the minimal impact this will have on the waste management procedures in Scotland, this approach is considered as the most appropriate use of resources, both in terms of the Minister's and Parliament's time and SEPA and other potential consultees.

IMPACT ASSESSMENTS

The amendments are to being made to ensure compliance with terminology used by the European Commission and will have little or no effect on the waste management industry in Scotland.

Therefore no impact assessments were considered necessary.

FINANCIAL EFFECTS

Aileen McLeod MSP, Minister for Environment and Climate Change confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Directorate for Environment and Forestry
7 May 2015

SSI 2015/189

Title of Instrument: Carbon Accounting Scheme (Scotland) Amendment Regulations 2015 (SSI 2015/189)

Type of Instrument: Negative

Laid Date: 8 May 2015

Circulated to Members: 21 May 2015

Meeting Date: 27 May 2015

Minister to attend meeting: No

Motion for annulment lodged: No

Drawn to the Parliament’s attention by the Delegated Powers and Law Reform Committee? No

Reporting deadline: 15 June 2015
Delegated Powers and Law Reform Committee

10. At its meeting on 20 May 2015, the Committee considered the following instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

11. A copy of the Explanatory Notes and the Policy Notes are included with the papers.

Purpose

These Regulations amend the Carbon Accounting Scheme (Scotland) Regulations 2010 ("the 2010 Regulations"), which make provision about carbon units and carbon accounting in the years 2010 to 2012 for the purposes of Part 1 of the Climate Change (Scotland) Act 2009 (the "2009 Act").

EXPLANATORY NOTE

As per purpose above and including:


The amendment to the definition of “cancellation” in regulation 2 is required to reflect the change of name of the relevant account in the UK Registry referred to in the Carbon Accounting Regulations 2009 (S.I. 2009/1257) which was made by the Carbon Accounting (2013-2017 Budgetary Period) Regulations 2015 (S.I. 2015/775). The definition of “Registries Regulation” is also updated.

Regulation 8A is inserted into the 2010 Regulations so as to provide for 2013 a method for determining whether a carbon unit is to be credited to or debited from the net Scottish emissions account (see section 13 of the 2009 Act) in respect of the relevant period for that year. The relevant period for 2013 is the 16 months preceding 1st May 2014. The calculation for 2013 differs from calculations for previous years in that aviation emissions have been included for 2013.

Regulation 9(4) is inserted into the 2010 Regulations so as to provide what information is to be included in the register for 2013.

No business and regulatory impact assessment has been prepared for these Regulations as no impact upon business, charities or voluntary bodies is foreseen.

POLICY NOTE

The above instrument is made in exercise of the powers conferred on the Scottish Ministers by sections 13(5), 20(1) and 96(2)(a) of the Climate Change (Scotland) Act
2009\(^1\) and paragraph 1A of Schedule 2 to the European Communities Act 1972\(^2\) all other powers enabling them to do so. The instrument is subject to negative procedure.

**Policy Objectives**

This Order amends The Carbon Accounting Scheme (Scotland) Regulations 2010 to include a scheme for carbon accounting to monitor compliance in 2013 with the annual targets for greenhouse gas emissions set in secondary legislation under the Climate Change (Scotland) Act 2009.

As part of the accounting scheme, a methodology for handling the operation of the EU Emissions Trading System (EU ETS) was established. The intention of this regulations is to replace “actual” emissions resulting from EU ETS operations with Scotland’s share of the EU ETS cap so that such emissions reduce over time in line with reductions in the cap.

**Background**

This Regulation specifies the relevant amounts to be debited or credited to the 2013 net Scottish emissions account (NSEA) in relation to the operation of the EU ETS.

Achievement of Scotland’s statutory annual climate change targets is measured against the net Scottish emissions account. Section 13 of the Climate Change (Scotland) Act 2009 establishes the net Scottish emissions account as the aggregate amount of “net Scottish emissions” (emissions minus “removals” such as carbon sequestration by woodland), reduced or increased by “carbon units” credited or debited in accordance with regulations made under section 13(5). Carbon units are defined in section 20(4) of the Act.

Participants in the EU ETS are required to “surrender” carbon units (which they have been allocated for free or have purchased) to cover their emissions for each calendar year.

Since January 2012, aviation emissions have been included in the EU ETS. This covers the vast majority of emissions from aviation (both domestic and international) arriving at and departing from EU airports.

**Consultation**

There is no statutory obligation to consult on this Order. However, Scottish Ministers sought advice on the methodological approach to accounting for the operation of the EU ETS from the UK Committee on Climate Change (CCC) and the UK Department of Energy and Climate Change.

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\(^1\) 2009 asp 12.
\(^2\) 1972 c.68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51) and relevantly amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”).
Impact Assessments

No equality impact assessment has been prepared for this instrument as there are no equalities impact issues.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) is not required as the instrument will not, in itself, impose new regulatory burdens on businesses, charities or the voluntary sector.

Scottish Government
Energy and Climate Change Directorate
May 2015
Crown Estate

Introduction

1. The Devolution (Further Powers) Committee has taken evidence on the devolution of further powers to Scotland and has scrutinised the UK Government draft legislative clauses\(^1\) including the clauses related to the Crown Estate. The Committee reported on this on 14 May 2015.\(^2\)

2. The RACCE Committee agreed, in its consideration of its work programme on 8 May 2015, to undertake pre-legislative work on the issue of further devolution of the Crown Estate, prior to the summer recess. This extends the work of the Devolution (Further Powers) Committee in scrutinising the draft clauses as they currently stand.

3. The Committee will take evidence from local authorities, and from stakeholders who will be impacted, on 27 May. On 17 June the Committee will take evidence from the Crown Estate on plans for handover arrangements and from the Cabinet Secretary for Rural Affairs, Food and the Environment on the plans, on-going discussion, and process of further devolution to local authorities.

4. Written evidence received to date is attached at Annexe A.

Background

5. The Smith Commission recommended that the management of Crown Estate assets in Scotland be transferred to the Scottish Parliament. In January 2015 the UK Government published draft clauses and a consultation document for proposed UK legislation to implement further devolution of powers and responsibilities from the UK to the Scottish Parliament. This included a section, and draft clauses, relating to the devolution of the Crown Estate. Annexe B provides background to the Crown Estate and a list of its assets in Scotland, and Annexe C contains a table setting out the Smith Commission text, and the related clauses and discussion in Scotland in the UK. The Smith Commission agreements and the draft clauses relate not to ownership, but to the management functions of the Crown Estate Commissioners in Scotland.

6. On 5 March 2015 the Devolution (Further Powers) Committee took evidence\(^3\) on the Crown Estate provisions from a panel of stakeholders (Andy Wightman, Moray Offshore Renewables, Muckairn Mussels Ltd, Comhairle nan Eilean Siar and Highland Council) and the Crown Estate’s Scottish


Commissioner and team in Scotland. Written evidence\(^4\) was also submitted to inform the session.

7. Following this, on 12 March 2015, the Devolution (Further Powers) Committee took evidence\(^5\) from the Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy on the Devolution of Further Powers and Scrutiny of Draft Legislative Clauses. This session included questioning on the draft clauses relating to the Crown Estate. On 26 March the DFP Committee took evidence from the Secretary of State for Scotland on the same issue and, again, Crown Estate issues were discussed.


Annexe A

Written submission from Royal Yachting Association Scotland

Submission to the Secretary of Scotland’s stakeholder event in Inverness on 18th February

Smith Commission

The Royal Yachting Association (RYA) and RYA Scotland (RYAS) has already responded to the Secretary of Scotland’s statement to the House of Commons on 27\(^{th}\) November 2014 regarding the further devolution process in Scotland and the publication of the heads of agreement resulting from Lord Smith’s five-party talks. One of our particular interests in the Smith Commission’s recommendations relates to the proposal (in paragraph 32 of the Report) that- "Responsibility for the management of the Crown Estate’s economic assets in Scotland, and the revenue generated from these assets, will be transferred to the Scottish Parliament. This will include the Crown Estate’s seabed, urban assets, rural estates, mineral and fishing rights, and the Scottish foreshore for which it is responsible."

Recreational boating and marine tourism in Scotland is recognised as a significant contributor to the leisure economy of Scotland. We have worked with the Crown Estate in Scotland over many years to ensure that the interest of recreational users of the Scottish coast and the seabed belonging to the Crown is understood and taken into account when possible developments have been under consideration. In particular we have interacted with the Crown Estate’s Marine Officers, whose expertise and knowledge, backed up


by the Crown Estate's cartography systems, has been critical to the efficient management of the seabed.

It is a fundamental legal principle that the patrimonial rights of the Crown in the seabed are subject to the limitation or burden placed on the Crown by the public rights of navigation (including anchoring) and fishing - indeed the obligation of the Crown is to vindicate these public rights.

Paragraphs 32 to 35 of the Smith Commission's Report relate to the future management of the Crown Estate's economic assets, including the seabed owned by the Crown Estate. It is envisaged that there will be a transfer of this management then further devolution to local authority areas. We have no particular view on this proposed devolution of powers if, and provided that, any agency or body controlling the seabed continues to uphold and vindicate the public right of navigation (including anchoring).

We consider that, before any formal devolution takes place, a full public consultation process should take place to ensure that, in the process of devolving powers, the public's rights are fully protected and any management structure which is put in place is such that the public right of navigation (including anchoring) currently exercised by recreational boaters remains in place without cost or challenge.

We take the view that the public consultation should seek to establish a consistent national approach to the leasing of the seabed (inter alia for moorings for recreational craft) and the relevant licensing which will follow from such leasing. The current model for seabed management in Scotland has, we believe, been efficient and cost effective and it would be damaging for this to be abandoned in favour of a fragmented structure resulting in inconsistencies and confusion which could be detrimental to the marine estate, to the public rights of navigation, to the interests we represent and to the affected coastal communities.

As part of the stakeholder engagement taking place on the 18th February we would reiterate this position and identify our concerns around:

- The capacity within local authorities to handle marine seabed and foreshore licensing given current and continuing pressures on local government finance as well as their competence to do so in relation to the existing expertise attributed through the Crown Estate Officers.

- The retention of the legal obligation to maintain and 'vindicate' the public right of navigation (including anchoring) within whatever future arrangements are made for the management of existing Crown Estate Assets.

- The need to maintain a national overview and consistency in application of the management of Crown Estate Assets in future management arrangements, particularly around application of charges for moorings, launching and berthing of recreational craft and the
impact of these on the wider economic contribution of the recreational marine sector.

James Allan
Chief Executive Officer
18 February 2015

DEVOLUTION (FURTHER POWERS) COMMITTEE INQUIRY – IMPLEMENTING THE SMITH AGREEMENT AND THE UK GOVERNMENT’S DRAFT LEGISLATIVE CLAUSES

Response from the Royal Yachting Association Scotland - March 2015

INTRODUCTION

The Royal Yachting Association (RYA) Scotland welcomes this opportunity to respond to the Devolution (Further Powers) Committee inquiry.

RYA Scotland is established to promote the sport of sailing, windsurfing and powerboating in Scotland. RYA Scotland is consulted by a range of public bodies including the Scottish Government, the Crown Estate, Scotland’s 32 local authorities and other non-governmental bodies on a range of issues affecting recreational boating. There are approximately 150 RYA affiliated sailing clubs, 120 RYA recognised training centres and over 6,000 individual RYA members in Scotland.

RYA Scotland operates as an integral part of RYA, the national governing body for all forms of recreational and competitive boating in the UK. The RYA currently has over 100,000 personal members, the majority of whom choose to go afloat for purely recreational non-competitive pleasure on coastal and inland waters.

In responding to this consultation RYA Scotland has limited its response to proposals included in the Smith Commission report and the UK government’s Command Paper which have the potential to directly impact on our members’ interests, namely the devolution of responsibility for the Crown Estate to Scottish Ministers and changes in the administration of maritime bodies.

BACKGROUND

Recreational boating and marine tourism in Scotland is recognised as a significant contributor to the leisure economy of Scotland. RYA Scotland has a very constructive working relationship with the Crown Estate in Scotland. We have worked with the Crown Estate over many years to ensure that the interest of recreational users of the Scottish coast and the seabed belonging to the Crown is understood and taken into account when possible developments have been under consideration. In particular we have developed excellent relationships with the Crown Estate’s Marine Officers whose expertise and knowledge, backed up by the Crown Estate's
cartography systems, have been critical to the efficient management of the seabed.

DEVOLUTION AND DECENTRALISATION OF THE CROWN ESTATE

Paragraphs 32 to 35 of the Smith Commission report and section 5.5 of the Command Paper make recommendations on the future management of the Crown Estate’s economic assets, including the seabed owned by the Crown Estate north of the border. Both the Smith Commission and the Command Paper agree on the policy intention to devolve responsibility for the Crown Estate’s work in Scotland to Scottish Ministers. The Smith Commission goes further; arguing that:

“Following this transfer, responsibility for the management of those assets will be further devolved to local authority areas such as Orkney, Shetland, Na h-Eilean Siar or other areas who seek such responsibilities.”

RYA Scotland has no particular view on this proposed devolution of powers if, and provided that, any agency or body controlling the seabed continues to uphold and vindicate the public right of navigation (including anchoring). However, we do have concerns about the proposed further devolution or decentralisation of the exercise of these powers to local authority level.

RYA Scotland believes that the current model for seabed management in Scotland has been efficient and cost effective and that current proposals to decentralise the work of the Crown Estate could lead to a fragmented, inefficient and inconsistent approach to seabed management which may be detrimental to maritime users, public rights of navigation and to the affected coastal communities.

We believe that the Crown Estate’s economic assets would best be managed by a single organisation with the expectation that a national, consistent approach would continue. This is particularly important in terms of the application of charges for moorings, launching and berthing of recreational craft and the potential impact of changes to these on the wider economic contribution of the recreational marine sector.

Issues which need further consideration are:

- The patrimonial rights of the Crown in the seabed are subject to the limitation or burden placed on the Crown by the public rights of navigation (including anchoring) and fishing. We believe there needs to be a mechanism to ensure that – if the functions and responsibilities of the Crown Estate are decentralised to local authorities – the responsible organisation(s) are aware of these obligations, including the impact of Udal Law on the foreshore in the Northern Isles. Further information is set out in the Scottish Law Commission Discussion Paper on the Law of the Foreshore and Seabed (Discussion Paper No 113) and the Report (Scot. Law Comm. No 190) on that Paper.
- There is a need to maintain a national coherence and overview on seabed activity with a consistent set of rules, conditions and processes. Charges and conditions for moorings are an example of this. The obligation to maintain the seabed and remove derelict equipment needs to be seen as the corollary of obtaining income from it. The proposals outlined in the Smith Commission create uncertainty for maritime users and it is possible that the decentralisation of powers to local authorities will lead to significant divergence in the management of the seabed and foreshore.

- There is a need to engage in a detailed and comprehensive consultation with marine industry and recreational stakeholders before making any substantive changes to the powers, functions and duties of the Crown Estate. The Scottish Government needs to provide confidence that changes to the Crown Estate (including the decentralisation of its responsibilities to local bodies) will not affect maintenance currently undertaken by the Crown Estate, and provide safeguards to ensure local bodies make the proper level of investment in maintaining and improving maritime assets under their control.

- RYA Scotland is a non-statutory consultee of Marine Scotland. We have a long-standing and positive relationship with the Crown Estate in relation to marine developments. The Crown Estate acting as a single point of contact has enabled both organisations to address issues in advance of leasing rounds before they become contentious. We are concerned that future arrangements risk becoming unwieldy, requiring multiple approaches to a number of bodies which would be beyond our capacity to support.

- The decentralisation of powers from a single expert body to multiple local bodies is likely to result in a loss of institutional knowledge and expertise. Further we are concerned that the bodies receiving these new powers may not have the financial or staff resource to properly discharge their duties in respect to marine seabed and foreshore management.

- The Command Paper makes no comment about the further devolution of powers over the Crown Estate to local authorities or other bodies, which would be a matter for Scottish Ministers. However at this stage there is a lack of clarity about what model of decentralisation is likely to be pursued by Scottish Ministers and what this would mean for maritime users.

- There is a need for clarity on transition and grandfathering arrangements. Agreements reached between the Crown Estate and its existing customers, such as moorings holders, should be honoured for a reasonable period, of at least five years, post-transition to minimise detriment to marine users.
• RYA Scotland is acutely aware that, with the possible exception of the island councils, bodies of water are unlikely to be coterminous with local authority boundaries. With interest and responsibility vested in multiple local authorities there is an obvious potential for disagreement delaying or preventing necessary works to the seabed or foreshore.

• In addition, some key maritime users may fall outwith the responsible or lead local authority and we would seek assurances that key stakeholders are not excluded from consultation mechanisms.

• If management responsibilities are further devolved from the Crown Estate to multiple local bodies, the relationship between the resultant responsible bodies and the relevant Marine Planning Partnership will need to be clarified.

RELATIONSHIP BETWEEN THE CROWN ESTATE AND THE RECREATIONAL BOATING SECTOR

Moorings and anchorages

The Crown Estate currently leases areas of the seabed for laying recreational vessel moorings at an affordable rent. This encourages the formation of mooring associations, which reduces the administrative cost, protects the rights of mooring holders and removes unlicensed moorings. It also removes derelict equipment which might compromise safe anchoring. For example, the Crown Estate facilitated and financially supported the re-organisation of moorings in Tobermory Harbour which has led to the impressive development of Tobermory Harbour Association and its facilities. Old ground chains which sterilised a useful safe anchorage in Loch Shieldaig, Gareloch were removed as was fish farm debris and an abandoned raft which were a hazard to navigation in the approach to North Loch Moidart. Abandoned equipment, chain, and general debris were removed from the very popular anchorage at Puilladobhrain.

Planning and licensing

Many stakeholders, including RYA Scotland, have entered into a non-disclosure agreement with the Crown Estate that allows them to comment on a range of marine developments so that key issues can be identified in advance of a leasing round. These issues tend to be those that are not well captured in the Marine Resource System Geographical Information System. As a result several sites have been removed from leasing rounds and clearer information has been made available to developers for others. The Crown Estate has also encouraged the formation of developers groups, such as the Forth and Tay Developers Group, which has minimised duplication of effort. There may be opportunities under the new arrangements to simplify the consenting process without compromising the ability of stakeholders to identify problems at an early stage, with a saving of time and cost for all involved.
Coastal management

The Crown Estate has entered into Local Management Agreements (LMAs) with several coastal communities to allow them to manage areas of foreshore and seabed while benefiting from wider Crown Estate support including training in project management and business planning. Most of these LMAs are focussed on marine leisure facilities. In addition the Crown Estate has commissioned research to help manage the marine environment better. The Crown Estate facilitated discussions between Dunstaffnage Marina, Dunstaffnage Moorings Association and the Scottish Association for Marine Science which opened the way to the expansion of the marina. Support was also provided for the new community run marina at Lochaline and the reorganisation and expansion of the Gigha moorings and jetty.

Funding

The value of the Coastal Communities Fund is linked to the income from the Crown Estate while the Crown Estate in Scotland provides funding for local community projects from the Marine Stewardship Fund. The Crown Estate also makes direct investments into projects such as Rhu Marina with a long pay-back time. The Crown Estate provided financial support from the Marine Stewardship Fund that permitted Craignish Sailing Club to relocate and construct new, improved facilities after the landowner withdrew access to their old facility. The Green Blue, an initiative of the Royal Yachting Association and the British Marine Federation aimed at reducing the environmental impact of recreational boating, has also benefited from Crown Estate funding.

MARITIME BODIES

Paragraphs 39 to 40 of the Smith Commission report and section 5.3 of the Command Paper deal with maritime bodies which are not currently the responsibility of Scottish Ministers: namely the Maritime and Coastguard Agency (part of the Department for Transport) and the Northern Lighthouse Board. Both organisations play a crucial role in maintaining the safety of recreational boaters in Scottish and UK waters.

RYA Scotland welcomes the recommendation in the Smith Report that Scottish Ministers should play a more active role in setting the strategic priorities of both the MCA and the NLB’s activities in Scotland, and for these organisations to have greater accountability to the Scottish Parliament. We support the proposal outlined in the Command Paper which provides a legal footing for the current practice of Scottish Ministers and the Secretary of State for Scotland nominating a commissioner each to the NLB.

CONCLUSION

RYA Scotland has no particular view on the Smith Commission proposal to devolve legislative responsibility for the Crown Estate to the Scottish Government, if, and provided that, any agency or body controlling the seabed continues to uphold and vindicate the public right of navigation (including anchoring).
Although local involvement with developments is essential and there is a case for more benefits to accrue to local communities, we have concerns regarding the suggestion of devolving powers beyond the level of a single national body. With a few specific exceptions of island authorities, we believe the case for decentralising the powers and functions of the Crown Estate to local authorities has yet to be soundly made.

We believe the Crown Estate is an effective and efficient partner and we are concerned that the changes suggested by the Smith Commission would make it more difficult for key stakeholders to identify and engage with multiple local bodies and vice versa. We would be concerned that the devolution of power to local authorities would lead to inconsistencies in the stewardship of the marine seabed and associated infrastructure which would prove detrimental to the interests of our members and the wider boating community.

We support proposals for Scottish Ministers to have greater strategic oversight over the MCA and NLB and believe that this will lead to an increased awareness of Scottish-specific issues.

RYA Scotland is grateful for the opportunity to respond to this inquiry and we would welcome the opportunity to discuss these issues in more detail.

Written submission from Tobermory Harbour Association

DEVOLUTION OF THE CROWN ESTATE FROM A COMMUNITY PERSPECTIVE

For many years I have been Chair of the Tobermory Harbour Association. A community company whose ethos is to provide ‘Facilities for All’. We have achieved considerable and recognised success through various partnerships. We work with all the relevant authorities including The Crown Estate (CE). We welcome the devolution of the assets currently managed by the CE to SCOTLAND. Conversely I and some of my Directors share concerns about the proposed full transfer of the management of these assets and full revenue raising powers to the Local Authorities.

THE PRESENT POSITION

We acknowledge and recognise the huge body of work undertaken over many years and delivered by the Crown Estate Staff to Scottish Coast Communities.

RECOGNISED MILESTONES

- In the 1980’s and 1990’s the CE working with WHAM and other community groups halted the unregulated mooring mess that was spreading amorphously around the Scottish Coast and over our inshore seabed. Outcome: Moorings today are, registered, regulated and affordable to all.

- The CE working with others including the Enterprise agencies and the EU have driven a policy to create hub ports and stepping stone harbours to
kick start the growth of Marine Tourism from the Clyde to the Western Isles and now along the east Coast. Outcome: This investment over the past 15 years has delivered excellent infrastructure which has trebled the numbers of visitors afloat and delivered much needed income to coastal communities.

- The CE have directly grant aided millions of pounds to small and much needed harbour developments and facilities via the Coastal Communities Programme. Multiple Outcomes in local communities.

- The CE have purchased and leased back to Communities and Harbour Authorities asset infrastructure. The Banks would not lend on Pontoon Infrastructure. Outcome: Investment in infrastructure and job creation.

- The CE has driven and invested in research to deliver inshore and offshore renewable energy. The CE has invested over £100m in offshore renewable energy.

- At Tobermory the CE are about to trial full devolution of the CE assets to the local Harbour Association. This is a first, and is subject to the Association becoming a Harbour Authority. Future outcome: community gain and control

- The Crown Estate is single entity manager of the seabed. Outcome: This made the installation of the new High Speed Broad Band cables over and under the seabed ‘easy’ where the contractors imagined huge difficulties.

- The CE revenue in Scotland is £19.5m, The Office is managed by a staff of 38. The income raised has a proportional return to the communities, through grants and through direct investments. Under the present governance and directive this appears to be an efficient ‘staff to income’ return and a productive use and reinvestment of funds and revenues. Directive: “to maintain and enhance the value of the Crown Estate and the return obtained from it, but with due regard to the requirements of good management”

**UK MANAGEMENT FAILURE IN RELATION TO SCOTLAND**

- The Governance is not accountable to the Scottish Parliament or the Scottish People.

- The Governance of the Crown Estate is under the management of the Crown Estate Commissioners in London with surplus revenue paid to HM Treasury.

- The revenues generated in Scotland flow south. This is, and would be a problem irrespective of the amount that returns north.

- Lease incomes do not ‘appear’ to benefit the local communities, districts or regions. Examples: moorings, fish farms, renewables.
The devolution of the management of the seabed to communities was proceeding, a trail is proposed to start with Tobermory Harbour Association in 2015, but has not yet been implemented.

The CE seabed asset is perceived as a ‘Revenue Generator” and not as a complex eco system requiring a duty of care.

**A NEW FUTURE**

I hold reasoned views that the Seabed is not a map pasted with pound notes. The seabed is the interface between resources above and resources below. This is a Scottish resource that transcends local boundaries and should be managed for the ‘common good’.

The seabed bears no relationship to the flat open sea surface with mooring buoys bobbing up and down and ships sailing by. The seabed is a complex geological formation of cliffs, peaks, ridges, muddy planes and sandy gullies, boulders and corals. Creatures and fish live above, on, and under the surface of the seabed. Laying moorings or oil rigs or pipelines has an effect on the seabed from tidal scouring to creating protected habitats for fish, shellfish and plants. Drilling through the seabed delivers energy from oil and gas and conversely well heads deliver warm and provide secure oases were fish and sea-life flourishes.

**THE SOLUTION**

- The devolution of the Crown Estate Marine Assets to Scotland is an opportunity to recognise the need for a more holistic approach to the management of the Scottish seabed. Outcome: sustainable assets and joined up thinking

- The management of our national asset, the Scottish Seabed, should be supervised by an overarching authority unconstrained by regional or local boundaries. The new authority would set the policy, deliver energy leases and connectivity leases and leases to harvest subsea resources under agreed, transparent and sustainable national rules. Examples: pipe lines and inter-connectors, sub sea cables, horizontal drilling for resources.

- Where applicable the management and the authority to grant local licenses and local leases could be further devolved to local communities, Harbour Authorities and/or local District or Regional Authorities. Resources associated with the seabed that are incapable of recognising regional, district or local boundaries would require an agreed national policy. Examples: flora and fauna and tidal streams.

- A policy to devolve the management of the seabed within local Trust Ports and Harbour Authorities and Marine Parks should be implemented as soon as National Policies are agreed. Revenues raised by local management should be used locally to enhance locally devolved assets to further deliver growth in the local community. Gain: Income from all
moorings, and moorings for pontoons and local aquaculture and seabed leases for piers and reclaimed foreshore stays in the community.

- After cost incurred for administration of the Scottish National Assets are deducted any profit and surplus could be divided as follows:

An agreed proportion of profits should benefit local coastal communities or local maritime regions and/or the marine environment.

An agreed proportion of revenue and rental should be invested in new infrastructure and future grant funding. *Examples: Coastal Communities Grants, A new Marine Fund, similar to the Land Fund to help coastal communities acquire and manage marine assets.*

An agreed proportion should be re-invested in research. Research could be shared with the UK and the EU.

**BRIDGING THE GAP**

- Agreements with organisations at present managing, leasing or purchasing assets and infrastructure from the CE should be honored and where necessary re-negotiated with the Scottish Government to secure further advantages to remote and rural coastal communities

- The policy of investing in a necklace of ports and harbours to encourage the growth in Marine Tourism is continued to create new jobs and a secure future for the next generation in remote Islands and peninsulas.

- Offering positions to experienced Crown Estate Personnel within the new Scottish organisation would ensure a seamless transition and would give comfort to all major sectors, stakeholders and users.

**Tobermory Harbour Association**

**Written submission from Scottish Renewables**

**Introduction**

Scottish Renewables is the voice of the renewable energy industry in Scotland and is an organisation dedicated to securing the best possible environment for the growth of renewable energy in our country. We are working to deliver on the ambition of harnessing Scotland’s abundant natural resources to secure a future that will deliver on jobs, investment and energy security, while helping mitigate the effects of climate change.

Offshore renewable energy holds huge potential for sustainable development in Scotland – our country is home to 25% of Europe’s offshore wind resource, 25% of its tidal and 10% of wave potential. There is now over 4GW of offshore wind capacity with consent planned for Scottish waters. While the wave and tidal sectors have faced challenges in recent months, Scotland is still home to some of the most advanced wave technologies in the world; the world’s first
community owned tidal turbine; and the first tidal array in the world to reach Final Investment Decision (FID).

Scottish Renewables has consistently argued that while we understand the case for greater local ownership and sharing of revenues from existing Crown Estate (TCE) assets, we believe that strategic oversight of our offshore assets is required by a Scottish or UK-wide body. Such an approach is necessary to ensure continued investment in the growth of offshore renewables, and a consistent leasing process for developments.

**Delivering a Smooth Transition**

There are a number of offshore renewable energy sites (10 offshore wind and 24 wave or tidal) with lease arrangements currently under development in Scottish waters. While these sites are at varying stages of development, it is important for all of them that the process of transferring powers is as transparent and smooth as possible. Existing lease arrangements must not be adversely impacted by the transfer process.

We understand TCE are undertaking a significant amount of work in-house to prepare themselves for the transfer and we welcome the way in which they have sought to engage with us on this matter. However, it remains unclear how Scottish Government intends to fund the responsibilities transferred to it; whether all existing Scottish functions of TCE Commissioners will be transferred out to 200nm; when the transfer will take place; exactly to whom the various existing functions of TCE will be transferred; and how any potential conflicts of interest with other responsibilities of government, such as consenting, will be managed. These are key pieces of information on which clarity must be provided as quickly as possible in order to ensure as smooth a transition as possible for industry.

**Protection of Critical National Infrastructure and Strategic Oversight**

Dividing the administrative control of Scotland’s seabed by Local Authority area for large-scale infrastructure projects, like an offshore wind farm, would lead to additional administrative burden. We believe this would put Scotland at considerable competitive disadvantage to other parts of the UK. In contrast, leasing the seabed through a single body with strategic oversight ensures we maximise our offshore renewable energy resources by reducing the risk of resource sterilisation through a less coordinated approach.

We therefore welcome the proposal in the Command Paper that the Scottish and UK Governments prepare an MoU to ensure that the transfer is not detrimental to UK-wide critical national infrastructure. We strongly believe commercial scale offshore wind developments must be considered critical national infrastructure in this context.

We note the provision in the draft clauses that enables the transfer scheme to provide safeguards ensuring consumers across GB are protected from any excessive rents for energy infrastructure, as well as the provision enabling the scheme to contain such provision as the Treasury deem necessary to secure
consistency and protect the interests of consumers, so far as it affects the transmission or distribution of electricity or the provision or use of electricity interconnectors. However, the process for the preparation of the MoU and the detail of what restrictions will be placed on the new manager/transferee to ensure no detrimental impact to critical national infrastructure, and protect consumer is unclear.

**Securing Continued Investment and Support**

TCE currently provides a significant amount of support to the offshore renewable energy industry. The Crown Estate has invested around £100m in a variety of projects to support the development of the UK’s offshore wind industry, while the wave and tidal industry has been supported through a number of studies and initiatives designed to accelerate and de-risk wave and tidal projects. TCE has also committed to invest nearly £10 million into the MeyGen development in the Inner Sound of the Pentland Firth, the first tidal project in the world to reach financial close.

In addition to providing individual projects with specialist legal, GIS, consenting and commercial support, in order to ensure the responsible stewardship of its assets, TCE plays a key role in many strategic, industry wide initiatives, helping to coordinate work programmes and develop best practice guidance. Programmes such as the Marine Data Exchange and SPARTA (System performance, Availability and Reliability Trend Analysis) in which TCE are a key partner, have been invaluable to the offshore renewables industry.

The transfer must ensure that the industry continues to be supported in a similar fashion by the new manager/transferee. It is essential that the new manager/transferee is adequately resourced and skilled in order to carry out the many varied roles and responsibilities previously held in Scotland by TCE.

**Written submission from the Scottish Salmon Producers’ Organisation**


**INTRODUCTION**

SSPO has considered the findings and recommendations of the Devolution (Further Powers) Committee in regard to the Crown Estate which were published on the 14 May in ‘New Powers for Scotland: An Interim Report on the Smith Commission and the UK Governments Proposals’. The comments below are therefore based on that report, although in key parts they are similar to those which we made to the RACCE Committee during its consideration of the National Marine Plan at its meeting of the 7 January.
MAIN POINTS

Legal and Structural Models

The Devolution (Further Powers) Committee undertook a detailed consideration of the legal and structural model that is currently proposed in draft legislation for the devolution of the Crown Estate. The Committee concluded (p.104 of the report) that the proposed model has some shortcomings and they favoured an alternative approach, as suggested by Aileen McHarg, Professor of Public Law at the University of Strathclyde.

The SSPO, representing the Scottish salmon farming industry, has a substantial amount of interaction and a long standing working relationship with the Crown Estate. We are relatively agnostic about the devolution model that is adopted to achieve the transfer of their responsibility for the management of the Crown Estate’s economic assets to the Scottish Parliament. However, we are concerned that the appropriate broad vision, strategic view and specialist resources are transferred to Scotland so that the ‘Scottish Crown Estate’ can to fulfil its functions in regard to aquaculture and other marine industries.

Two Crown Estates

The Devolution (Further Powers) Committee was also concerned that the devolution model proposed could create the perception (or reality) of ‘two Crown Estates’ (p.105 of the report). This is not a matter of great concern to the aquaculture industry since we believe it would be clear which of these organisations the industry was dealing with on marine matters north and south of the border. The governmental responsibilities for marine areas are already divided between the different UK administrations so the creation of ‘two Crown Estates’ is not seen as a challenge.

Further Devolution

The Devolution (Further Powers) Committee has recommended as follows:

Once the powers over the Crown Estate have been transferred, the Committee recommends the early implementation of the Smith Commission recommendation that ‘responsibility of the management of the Crown Estate assets in Scotland should be devolved further to local authorities such as Orkney, Shetland, Na h-Eilean Sar or other areas who seek such responsibilities’. These are matters where discussions should, in our view, continue to progress as a matter of urgency and we endorse the work of the Scottish Government and the ‘Our Islands, Our Future initiative’ to reach an amicable agreement that suits local circumstances' (p.105 of the report).

Our views on this are in line with the evidence given by: Scottish Renewables, representing the energy sector (p.102 of the report); The Royal Yachting Association Scotland (p.102 of the report); and Walter Speirs, Director of Muckairn Mussels Ltd (p.103 of the report). We believe that a case can be made for the revenue streams from the Crown Estate to be transferred in any way that the Scottish Government decides, either to Local Authorities or to
Local Coastal Communities or otherwise, provided the process is transparent, equitable and has broad public support. However, the Crown Estate also has a significant national management and specialist role in regard to the sea bed and this should be maintained and safeguarded.

Without this we have the following concerns.

1. It will be extremely difficult for Scotland, as a Nation to develop a national strategic approach to the development of its marine resources (as outlined in the National Marine Plan); and this will have a negative impact on industry investment and the growth of local economies and jobs.

2. Wide differences between Local Authorities in their policies and specialist capabilities and resources will act as a substantial impediment to the development of strategic Scottish industries such as aquaculture and renewable energy with loss of the major opportunities these industries offer.

3. Special measures will be needed to determine leasing policies and rents on sea bed utilisation to avoid a complex and destabilising lack of national systems and policies.

4. There are substantial governance and public accountability concerns associated with the proposed arrangement where the Local Authorities may be the ‘proprietors’ of the sea bed as well as the Planning Authorities. Should the proposal to transfer ‘proprietorship’ of the sea bed to Local Authorities proceed, the concept of Marine Scotland taking a national role as the marine planning development authority should be given fresh consideration.

Written submission from Highland Council

Introduction

The Highland Council welcomes the opportunity to contribute to the Committee’s consideration of the UK Government’s Draft Legislative Clauses in response to the Smith Commission as it relates to the Crown Estate in Scotland

The Committee may be aware that the Highland Council has campaigned for major reform of the Crown Estate in Scotland for many years and has sought a strategic shift in the ownership of marine resources by working with the Scottish Government and pressing the UK Government to conduct a full review of the Crown Estates.

In February 2007 Highland Council (with its Highland and Island local authority partners and Highlands and Islands Enterprise published the report titled “The Crown Estate in Scotland – New Opportunities for Public Benefits”. The report did much to clarify the position of the Crown Estate in Scotland and
to identify alternative management options that would deliver additional public benefit. The report recommended that:

‘the secretary of state for Scotland and Scottish Ministers should, given the changed circumstances of devolution, implement an appropriately constituted review to ensure that the property, rights and assets which make up the Crown Estate in Scotland contribute more fully to the delivery of Scottish Executive policies and well-being of the people of Scotland’

Since the publication of that report the Highland Council has contributed to a number of consultations and parliamentary evidence gathering opportunities at both a Scottish and UK level.

**Background to the Crown Estate**

The Crown Estate consists of the Crown property, rights and interests managed by the Crown Estate Commission. The Crown Estate Commission manages the Crown Estate on behalf of the nation and all net surplus revenue from the Estate goes to the Treasury for general government expenditure.

The Crown Estate in Scotland consists of ancient possessions of the Crown in Scotland and some properties bought on its behalf during the 20th century:

1. main ancient ownership of Scotland's seabed out to the 12 nautical mile limit, property rights over the continental seabed out to the 200 mile limit (excluding oil, gas and coal) and ownership of around half the length of Scotland's foreshore.

2. Other ancient rights to salmon fishing, natural occurring oysters and mussels and to mine gold and silver and ownership of two small areas of urban land.

3. Modern: ownership of four rural estates and three urban commercial properties.

The most significant ancient possession of the Crown in Scotland is its ownership of Scotland's territorial seabed, as extended from 3 to 12 nautical miles by legislation in 1987. Scotland's seabed accounts for just over half of its total territorial area.

**Smith Commission**

Lord Smith published his report on further devolution of powers to the Scottish Parliament on 27 November, 2014, with one of the recommendations being the devolution of the Crown Estate in Scotland.

The Smith Commission agreement on the Crown Estate states that:

‘Responsibility for the management of the Crown Estate’s economic assets in Scotland, and the revenue generated from these assets, will be transferred to the Scottish Parliament. This will include the Crown Estate’s seabed, urban
assets, rural estates, mineral and fishing rights, and the Scottish foreshore for which it is responsible.

Following this transfer, responsibility for the management of those assets will be further devolved to local authority areas such as Orkney, Shetland, Na h-Eilean Siar or other areas who seek such responsibilities. It is recommended that the definition of economic assets in coastal waters recognises the foreshore and economic activity such as aquaculture.

The Scottish and UK Governments will draw up and agree a Memorandum of Understanding to ensure that such devolution is not detrimental to UK-wide critical national infrastructure in relation to matters such as defence & security, oil & gas and energy, thereby safeguarding the defence and security importance of the Crown Estate’s foreshore and seabed assets to the UK as a whole.

Responsibility for financing the Sovereign Grant will need to reflect this revised settlement for the Crown Estate.

On 22 January, 2015 the UK Government published draft legislative clauses which would give effect to the recommendation to devolve the Crown Estate.

Issues to Consider

There are a number of areas that the Council would wish to have clarification over, these include

1. What assets and revenues will be devolved and who will have responsibility for those assets and revenues

2. Clarification over para 5.5.9 of the draft legislative clauses

“The Scottish and UK Governments will draw up a MoU. The MoU will include further detail on the legal protections for defence or national security as well as providing that the transfer of management responsibility for the Crown Estate is not detrimental to UK-wide critical national infrastructure in relation to matters such as oil and gas, telecommunications and energy, thereby safeguarding the importance of the Crown Estate’s foreshore and seabed assets to the UK as a whole. The MoU will establish a framework of cooperation between its signatories, delivering the Smith Commission Agreement’s recommendations whilst securing UK-wide provisions”.

3. What will this legal protection for defence or national security entail

4. How will the protection of critical national infrastructure in relation to matters such as oil and gas, telecommunications and energy be delivered and how will that impact on a devolved Crown Estate

5. Clarify the meaning of the statement “…thereby safeguarding the importance of the Crown Estate’s foreshore and seabed assets to the UK as a whole”.
6. Clarification from the Scottish Government as to how they will further devolve the Crown Estate to local authorities and how the assets and revenues will be devolved.

Highland Council’s Position

The Highland Council has long pressed for the devolution of the Crown Estate in Scotland and this is one of the commitments within the current Administration’s Programme for the Council which states that “the Council wishes to see Crown Estate revenues directed to local coastal communities and management of the Crown Estate transferred from Crown Estate Commissioners to the Scottish Parliament and local communities as appropriate.”

The Highland Council is keen to engage with the Crown Estate and the Scottish Government to develop a new framework for managing the assets and revenue of the Crown Estate in a way that benefits the community in Highland.

Conclusion

The Council welcomes the proposal contained in the Smith Commission for the devolution of the Crown Estate and hopes that the Rural Affairs, Climate Change and Environment Committee will be able to obtain clarification on the points that are raised in this submission.

Annexe B

Crown Estate

The Crown Estate is the Crown property, rights and interests that are managed, but not owned, by the Crown Estate Commissioners in England, Wales, Northern Ireland and Scotland. The Crown Estate is not the personal property of HM the Queen. It is owned by the Sovereign in right of the Crown as an institution, though the Sovereign has no powers of management or control. “The Crown Estate” as a brand, is a term often used to describe the Commissioners together with the Crown property, rights and interests. The Crown Estate Commissioners is a statutory corporation constituted by the Crown Estate Act 1956. Under the Crown Estate Act 1961, Commissioners must follow directions from the Chancellor of the Exchequer and the Secretary of State for Scotland. Scotland is represented by a Scottish Commissioner, currently Gareth Baird.

Crown Estate profits flow direct to HM Treasury. In 2013/14 Crown Estate profits from activities in Scotland were £13.6 million, 3.9% of the UK total. In Scotland, the Crown Estate Commissioners manage four rural estates, including Glenlivet Estate, mineral rights and salmon fishing rights, about half of the coastal foreshore and almost all seabed to 12 nautical miles. These rights allow the Commissioners to require leases for moorings, aquaculture, some cables and pipelines, and for renewable energy projects. The latter are
primarily in the far more extensive Exclusive Economic Zone which extends to 200 nautical miles at its furthest point (though draft clause 23 refers to the “Scottish zone” rather than the Exclusive Economic Zone). Such leases are commercial agreements.

The urban estate comprises 39-41 George Street, Edinburgh, and a 50% interest in an English Limited Partnership which owns Fort Kinnaird Retail Park in Edinburgh – the other half is owned by a Jersey based unit trust. Fort Kinnaird is not considered an “economic asset” in Scotland and the draft clause envisages that management of it would not be transferred. On 29 November 2014, rights to naturally occurring oysters and mussels transferred to Scotland from the Crown Estate (Scottish Government 2014). The total property value of the Crown Estate in Scotland was £267 million. The Smith Commission agreements and the draft clauses relate not to ownership, but to the management functions of the Crown Estate Commissioners in Scotland.

**Crown Estate Assets in Scotland**
Prepared January 2015 by the Crown Estate, following a request from SPICe:

<table>
<thead>
<tr>
<th>Asset</th>
<th>Definition</th>
</tr>
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<tbody>
<tr>
<td>George Street</td>
<td>the land owned by Her Majesty known as 39 to 41 George Street, Edinburgh</td>
</tr>
<tr>
<td>Seabed</td>
<td>the land owned by Her Majesty forming the seabed of Scottish Territorial Waters</td>
</tr>
<tr>
<td>Storage Rights (Seabed)</td>
<td>the rights of: (1) Unloading gas to installations and pipelines; (2) Storing gas for any purpose and recovering stored gas; and (3) Exploration with a view to use for (1) and (2)</td>
</tr>
<tr>
<td>Energy Rights (Seabed)</td>
<td>the rights of exploitation, exploration and connected purposes for the production of energy from wind or water</td>
</tr>
<tr>
<td>Mineral Rights (Seabed)</td>
<td>the right to exploit the Seabed and its subsoil other than for hydrocarbons</td>
</tr>
<tr>
<td>Cables (including interconnectors)</td>
<td>the right to install all or part of a distribution or transmission system on or under the Seabed</td>
</tr>
<tr>
<td>Pipelines</td>
<td>the right to install pipelines</td>
</tr>
<tr>
<td>Whitehill</td>
<td>the Whitehill estate in the County of Midlothian owned by Her Majesty;</td>
</tr>
<tr>
<td>Glenlivet</td>
<td>the Glenlivet estate in the County of Moray owned by Her Majesty</td>
</tr>
<tr>
<td>Applegirth</td>
<td>the Applegirth estate in the County of Dumfries and Galloway owned by Her Majesty</td>
</tr>
<tr>
<td>Fochabers</td>
<td>the Fochabers estate in the County of Moray owned by Her Majesty</td>
</tr>
<tr>
<td>Aquaculture Rights (Seabed)</td>
<td>the right to farm aquatic organisms;</td>
</tr>
<tr>
<td>Mooring Rights (Seabed)</td>
<td>the right to lay and use permanent moorings</td>
</tr>
<tr>
<td>Foreshore</td>
<td>the land that is owned by Her Majesty:</td>
</tr>
<tr>
<td><strong>Internal Waters</strong></td>
<td>the land owned by Her Majesty forming the internal waters of Scotland</td>
</tr>
<tr>
<td>--------------------</td>
<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Salmon Fishing</strong></td>
<td>the right to fish for salmon in rivers and coastal waters where the right belongs to Her Majesty</td>
</tr>
<tr>
<td><strong>Gold and Silver (onshore minerals)</strong></td>
<td>the right to all naturally occurring gold and silver except where the right is vested in some person other than Her Majesty</td>
</tr>
<tr>
<td><strong>Reserved Minerals</strong></td>
<td>all the reserved mineral rights owned by Her Majesty in Scotland other than on the Seabed</td>
</tr>
</tbody>
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**Annexe C**

The Smith Commission text, and the related clauses and discussion in Scotland in the UK can be found in the table below—

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<th><strong>The Smith Commission</strong></th>
<th><strong>Scotland in the UK</strong></th>
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<tr>
<td>Responsibility for the management of the Crown Estate’s economic assets in Scotland, and the revenue generated from these assets, will be transferred to the Scottish Parliament. This will include the Crown Estate’s seabed, urban assets, rural estates, mineral and fishing rights, and the Scottish foreshore for which it is responsible.</td>
<td>Clause 23 would allow, but not require, the UK Treasury to make a scheme, through a statutory instrument, transferring all Scottish functions of the Crown Estate Commissioners to Scottish Ministers. This scheme can only be made with agreement of Scottish Ministers and may be modified “by agreement” (with modifications to be retrospective). The scheme will also transfer responsibility for liabilities e.g. to ensure renewables are decommissioned. “Rights and liabilities” are expected to be identified in detail in the scheme.</td>
</tr>
<tr>
<td>The scheme will not include “property, rights or interests held by a limited partnership registered under the Limited Partnerships Act 1907”. Fort Kinnaird Retail Park in Edinburgh falls into this category, and management and revenues associated with this site would remain reserved.</td>
<td>Clause 23 includes provision as the “Treasury considers necessary or expedient” relating to interests of defence, national security,</td>
</tr>
</tbody>
</table>
telecommunications, oil & gas, and electricity. There is reference to an intention to transfer to the Scottish Parliament competence to legislate on the management of Scottish assets before the transfer scheme.

Revenues would transfer to the Scottish Consolidated Fund, however the Command Paper refers to safeguards that taxation of oil and gas receipts will remain reserved.

After the transfer, the Crown Estate will still be able to invest in Scotland with the management of any such investment, and revenues flowing from it, remaining reserved matters.

Following this transfer, responsibility for the management of those assets will be further devolved to local authority areas such as Orkney, Shetland, Na h-Eilean Siar or other areas who seek such responsibilities. It is recommended that the definition of economic assets in coastal waters recognises the foreshore and economic activity such as aquaculture.

Clause 23 makes no explicit reference to further devolution to local authority level, though does state that functions could be transferred to “a person nominated by the Scottish Ministers” at the point of transfer. It is expected any further devolution from Scottish Ministers would take place through Scottish Parliament legislation.

The Scottish and UK Governments will draw up and agree a Memorandum of Understanding to ensure that such devolution is not detrimental to UK-wide critical national infrastructure in relation to matters such as defence & security, oil & gas and energy, thereby safeguarding the defence and security importance of the Crown Estate’s foreshore and seabed assets to the UK as a whole.

The Command Paper, but not clause 23, states that a Memorandum of Understanding will be drawn up between the Scottish and UK Governments.

Responsibility for financing the Sovereign Grant will need to reflect this revised settlement for the Crown Estate.

The Sovereign Grant is not mentioned in the Command Paper – the link between Crown Estate profit and the Sovereign Grant is a proxy, rather than relating to direct funding.

SPICe
May 2015
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Introduction

1. This report covers the work of the Rural Affairs, Climate Change and Environment (RACCE) Committee during the parliamentary year from 11 May 2014 to 10 May 2015.

Inquiries and reports


3. The Committee took evidence from the police3 and the previous Minister for Environment and Climate Change4. Following its deliberations, the Committee wrote5 to the Scottish Government, highlighting issues such as: data presentation; levels of reported crime; evidence; police resources; criminal proceedings; vicarious liability; raptor crimes; and future measures to tackle wildlife crime.

Scotland’s climate change targets

4. The Committee took evidence on the implementation of the Second Report on Proposals and Policies (RPP2) and the delivery of Scotland’s climate change targets, hearing from both stakeholders6 and the previous Minister7.

5. The Committee wrote8 to the new Minister for Environment, Climate Change and Land Reform setting out its views on progress towards meeting climate change targets.

Dairy industry inquiry

6. In January 2015, the Committee responded to news that producer cooperative First Milk was delaying payment to dairy farmers by initiating an urgent inquiry into the dairy industry.

7. The Committee took evidence from a variety of stakeholders, including major retailers, the Grocery Code Adjudicator, processors, dairy farmers and the Cabinet Secretary for Rural Affairs, Food and Environment.

8. The Committee wrote to the Cabinet Secretary making recommendations for the future of the dairy industry9. Many of these recommendations were adopted in the Scottish Government Dairy Action Plan, published in March 201510.

9. The Committee secured a debate in the Chamber on the subject which took place on 31 March 201511.
National Marine Plan

10. The Committee took evidence on the draft National Marine Plan from Scottish Government officials\(^\text{12}\), stakeholders\(^\text{13}\), and the Cabinet Secretary\(^\text{14}\).

11. The Committee published its report\(^\text{15}\) on 30 January 2015, highlighting concerns on whether the draft National Marine Plan was “fit for purpose”\(^\text{16}\).

Scottish Government reviews

12. The Committee continued its scrutiny of issues relating to wild fisheries, land reform and agricultural tenancies as Scottish Government reviews of the subjects reached their conclusion.

13. The Wild Fisheries review panel published its final report on the 8 October 2014\(^\text{17}\). The Committee took evidence on its proposals and wrote to the Scottish Government with its views\(^\text{18}\).

14. Having taken evidence on the Land Reform Review Group final report, the Committee wrote to the previous Minister outlining its views on the 27 June 2014\(^\text{19}\). On the 5 August 2014, the previous Minister responded, highlighting progress made on the land reform agenda, both through the Community Empowerment (Scotland) Bill and proposals for a land reform bill.

15. The Committee wrote to the Scottish Government outlining its views on the Agricultural Holdings Legislation Review final report in May 2015. The Committee took evidence on both the interim and final report of the group throughout the year.

Evidence sessions

16. The Committee also took evidence on the following issues—

- Resource use and the circular economy;
- Marine and fisheries issues with George Eustice MP Parliamentary Under Secretary of State for Farming, Food and Marine Environment\(^\text{20}\);
- Marine protected Areas;
- Mandatory public sector climate reporting;
- The publication of the Crown Estate’s Scotland Report\(^\text{21}\); and
- The Scottish Government’s Biodiversity Strategy.
Bills

Community Empowerment (Scotland) Bill

17. The Community Empowerment (Scotland) Bill was introduced in Parliament on the 11 June 2014. The Bill was referred to the Local Government and Regeneration Committee for scrutiny as the lead Committee. However, following a request from the Scottish Government, the RACCE Committee agreed to scrutinise Part 4 of the Bill, on the community right-to-buy land.

18. The Committee published its report on Part 4 of the Bill as part of the Local Government and Regeneration Committee’s Stage 1 Report.

19. At stage 2, the Committee took further evidence from stakeholders and the Minister on amendments relating to the crofting community right-to-buy. Additional written evidence was received ahead of these meetings. The Committee’s consideration of stage 2 of the Bill marked the first time two Committees have concurrently considered a Bill at stage 2 and one Member of the RACCE Committee spoke on amendments in both Committees on the same morning.

Draft Budget 2015-16

20. The Scottish Government’s Draft Budget 2015-16 was laid in the Parliament on 9 October 2014. The Committee issued a call for views which focussed on three areas of the budget: forestry, Scottish Rural Development Programme climate measures, and equalities.

21. The Committee took evidence from stakeholders, the Minister; and the Cabinet Secretary.

22. The Committee reported to the Finance Committee on Monday 12 January 2015.

Public Body Consent Memoranda

23. The Committee considered and reported on the following Public Body Consent Memoranda during the course of the year—

- Public Bodies (Abolition of Food from Britain) Order 2014 [draft];
- Abolition of the Home Grown Timber Advisory Committee Order 2014 [draft]; and the
- Public Bodies (Abolition of the Advisory Committee on Pesticides) Order 2015 [draft].
Subordinate legislation

24. Over the course of the year, the Committee scrutinised—
   - 8 Scottish Statutory Instruments (SSIs) subject to the affirmative procedure, and;
   - 33 SSIs subject to the negative procedure.

Petitions

25. The Committee considered three petitions throughout the year.

26. It continued its consideration of PE01490 by the Patrick Krause, on behalf of the Scottish Crofting Federation, on the control of wild geese numbers. The Committee has written to the Scottish Government requesting further details for a second time, following the petitioner’s dissatisfaction with the original response.

27. PE01547 by Ian Gordon and the Salmon and Trout Association (Scotland) on the conservation of wild salmon was also considered. The Committee agreed to review the petition as part of consideration of the Wild Fisheries Review Panel final report and wrote to the Scottish Government on the 27 March 2015.

28. The Committee also considered PE01519 by John F. Robins on behalf of Save Our Seals Fund regarding seal welfare, and agreed to close the petition on 10 December 2014.

Engagement and innovation

29. Over the period, Members of the Committee have welcomed several visitors to the Scottish Parliament. In June 2014, the Committee met with Tassos Haniotis, Director in the Directorate General for Agriculture of the European Commission. In January 2015, the Committee welcomed Members of the Canada/UK Interparliamentary Association, including Canadian Parliamentarians, to the Scottish Parliament to discuss issues of mutual interest relating to climate change.

30. The Committee hosted an event with the Committee on Climate Change in January 2015, led by its Chairman, Lord Deben, to which all MSPs were invited.

31. Other events hosted by the Committee include—
   - a meeting with the Scottish Rural Parliament;
   - a visit from Anne McIntosh MP, Chair of the Environment Food and Rural Affairs Committee in the House of Commons; and
32. The Committee visited Laggan Farm and Peel Farm in August 2014 to learn more about agri-tourism.

33. The Committee has actively promoted its work via its Twitter feed and gained 461 new followers over the period covered by this report, representing an increase of over 50%. The RACCE Twitter feed received a great deal of interaction and was praised by many stakeholders for improving the openness, transparency and accountability of the Committee’s work.

34. As part of coordinated media activity regarding the Committee’s work on wildlife crime in the autumn of 2014, the Committee made a video publicising its work which has received over 170 hits on YouTube and also received significant interest on Twitter.

Equalities

35. During its consideration of the Scottish Government’s Draft Budget 2015-16, the Committee identified equalities as one of the three main themes for scrutiny. The impact of proposals on people depending on their age, location, employment status, gender, as well as a variety of other factors, was considered.

36. In March 2015, the Convener of the RACCE Committee participated in a Health and Sport Committee debate on health inequalities.

37. The Committee has made a dedicated effort to diversify the witnesses presenting evidence to the Committee via oral evidence, and has particularly sought to hear from women.

Meetings

38. The Committee met 36 times during the Parliamentary year. One meeting was held entirely in private and 19 other meetings included items in private.

39. The majority of items taken in private were draft reports, consideration of evidence and the Committee’s work programme. All meetings were held in Edinburgh.

18 Local Government and Regeneration Committee, 2nd Report, 2015 (Session 4): Stage 1 Report on the Community Empowerment (Scotland) Bill:
19 You can access the written evidence received here: http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/82153.aspx

30 Letter to Minister for Environment, Climate Change and Land Reform, 20 April 2015, [http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/20150420_Convener_to_Minister_re_PE01490.pdf](http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/20150420_Convener_to_Minister_re_PE01490.pdf)

31 Letter to Minister for Environment, Climate Change and Land Reform, 27 March 2015, [http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/20150327_Letter_to_Minister_on_Wild_Fish_Review.pdf](http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/20150327_Letter_to_Minister_on_Wild_Fish_Review.pdf)

32 RACCE video to publicise activity on wildlife crime work: [https://www.youtube.com/watch?v=pACBZbR_M3g](https://www.youtube.com/watch?v=pACBZbR_M3g)