



The Scottish Parliament
Pàrlamaid na h-Alba

RURAL ECONOMY AND CONNECTIVITY COMMITTEE

AGENDA

8th Meeting, 2018 (Session 5)

Wednesday 14 March 2018

The Committee will meet at 10.00 am in the Mary Fairfax Somerville Room (CR2).

1. **Salmon Farming in Scotland:** The Committee will take evidence from—

Jon Gibb, Clerk, Lochaber District Salmon Fishery Board;

Dr Alan Wells, Chief Executive, Fisheries Management Scotland;

Dr Richard Luxmoore, Senior Nature Conservation Adviser at the National Trust for Scotland, on behalf of Scottish Environment LINK;

Guy Linley-Adams, Solicitor, on behalf of Salmon & Trout Conservation Scotland.

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

The Road Traffic (Permitted Parking Area and Special Parking Area) (Midlothian Council) Designation Order 2018 (SSI 2018/60)

The Parking Attendants (Wearing of Uniforms) (Midlothian Council Parking Area) Regulations 2018 (SSI 2018/61)

The Road Traffic (Parking Adjudicators) (Midlothian Council) Regulations 2018 (SSI 2018/62).

Steve Farrell
Clerk to the Rural Economy and Connectivity Committee
Room T3.40
The Scottish Parliament
Edinburgh
Tel: 0131 348 5211
Email: steve.farrell@parliament.scot

The papers for this meeting are as follows—

Agenda Item 1

Cover note

REC/S5/18/8/1

PRIVATE PAPER

REC/S5/18/8/2 (P)

Agenda Item 2

SSI cover note

REC/S5/18/8/3

Rural Economy and Connectivity Committee

8th Meeting, 2018 (Session 5), Wednesday, 14 March 2018

Salmon farming in Scotland inquiry

Background

1. The Rural Economy and Connectivity (REC) Committee has agreed to conduct an inquiry into salmon farming in Scotland. The inquiry aims to consider the current state of salmon industry in Scotland, identify opportunities for its future development and explore how the various fish health and environmental challenges it currently faces can be addressed.
2. On 14 March, the Committee will take evidence from the following environmental organisations: Scottish Environment LINK, Salmon & Trout Conservation Scotland, Fisheries Management Scotland and Lochaber District Salmon Fishery Board.
3. Annex A includes written submissions from the organisations who are giving evidence today. It also includes a submission from Professor James Bron from the University of Stirling's Institute of Aquaculture who appeared at the Committee last week providing supplementary information.
4. A SPICe briefing on Salmon Farming in Scotland was published on 13 February 2018 and is available [here](#).
5. The Environment, Climate Change and Land Reform Committee on 5 March 2018 wrote to the Committee detailing their conclusions on the environmental impacts of salmon farming in Scotland. The letter, which contains the report can be accessed [here](#).
6. Further information on the inquiry can be found on the Scottish Parliament website: <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/107585.aspx>

Rural Economy and Connectivity Committee clerks
March 2018

RURAL ECONOMY AND CONNECTIVITY COMMITTEE**SALMON FARMING IN SCOTLAND**

SUBMISSION FROM JON GIBB (Fishery Manager River Lochy, Fort William – Clerk/Director of the Lochaber District Salmon Fishery Board – freelance writer who has written extensively on the wild/farmed debate over the last 30 years in many leading national publications.)

By way of introduction, I manage one of the most famous and productive salmon rod fisheries on the West Coast of Scotland on the River Lochy, from where salmon smolts must pass an unprecedented 12 fish farms on their way to sea. I also manage the Lochaber DSFB, the statutory body for the protection and enhancement of salmon and sea trout in one of the most densely farmed regions in Scotland. Perhaps unusually, I have for many years also led partnership projects with leading aquaculture partners aimed at protecting and enhancing local salmon populations in an attempt to reach a place where both wild and farmed sectors can coexist and thrive in this region. I also run a registered fish farm near Glenfinnan for the purpose of growing indigenous salmon for restocking local Lochaber rivers.

Do you have any general views on the current state of the farmed salmon industry in Scotland?

The Scottish farmed salmon sector has been an undoubtable commercial success story in the Western Highlands and is now seen as the economic lifeblood of many communities up and down the West Coast. I live and work within these communities. Less successful though has been its success in tackling issues of parasites, pollution, disease and escapes. There is a mounting body of evidence that suggests that the decline in local wild salmon and sea trout populations (central to the cultural and economic heart of these same communities) have suffered as a result of these ongoing environmental problems.

The issue of aquaculture and its impacts has become highly polarised over the years, but any rational assessment of these impacts must attempt to position the *relative* importance of them amongst all of the other factors that have negatively affected migratory salmonids on the West Coast of Scotland since the birth of the industry in the 1980's. These other impacts include –

1. The signing of the Inshore Fishery Act in 1984 which removed the three-mile zone for trawler fishing, which will inevitably have had an impact on sea trout habitat and food supply – ditto the practice of scallop dredging.
2. The well-documented expansion of salmon predator populations such as grey and common seals, and piscivorous birds such as goosanders and mergansers
3. Increasing evidence that oceanic warming in the NE Atlantic is having a detrimental affect on the food supply for salmon resulting in the sharp decline of the formerly abundant 1 sea-winter fish (grilse) numbers for which the West Coast rod fisheries were famed. A shift towards less abundant but larger early-running multi sea-winter salmon appears to be taking place. (It should be noted that some major western rivers like the Awe and the Lochy have

recently seen excellent spring salmon numbers in some recent fishing seasons, and this in spite of their proximity to many fish farms).

4. The populations of other pelagic fish (such as mackerel and blue whiting) which feed on the same prey species, in the same areas of the ocean, and in the same surface layers as salmon have expanded alarmingly in recent years. International fishing quotas for these pelagic fish in the N Atlantic remain stubbornly low due to the use of poor stock estimation models.

Any assessment of the industry that does not recognise these additional impacts on wild salmon and sea trout is not complete. Nevertheless, as witnessed by the recent ECCLR Committee investigation, the many known impacts of fish farming must clearly be added to the list. Few serious practitioners on either side of this debate would now disagree that the stubborn problems of open cage fish farming are adding an extra burden on already highly threatened salmonid stocks; and one that some West Coast river populations are now showing signs of not being able to withstand (for the first time ever some formerly prolific rivers in Lochaber such as the River Leven and River Coe did not record a single rod caught fish in 2017, while others have collapsed to new lows). The reason behind this widespread collapse, which it must be noted is not reflected in rivers outside the Scottish aquaculture zone, needs to be addressed immediately if there is a sincere desire by the Scottish Government to enable both sectors to thrive in a sustainable fashion in the future.

There have been several recent reports which suggest how the farmed salmon industry might be developed. Do you have any views on action that might be taken to help the sector grow in the future?

Bearing in mind the above synopsis on the current state of the industry, it is hard to see how the industry can meet its ambitious expansion targets until a radical new direction is sought. The Highlands have seen other industries (particularly hydropower and forestry) bring economic prosperity to the region over the decades but most of them started out in ignorance of many of the environmental impacts that would ensue. In the case of hydro and forestry new regulations came into force to limit environmental damage for any new developments once these impacts were known (adaptive management). This should be the case for aquaculture. But in the case of this industry, unlike dams or forestry plantations, fish farms can be moved to more suitable locations.

In spite of some nascent and fairly small-scale operations, we recognise that land-based RAS or sea-based closed-containment systems are not yet fully economically viable if the industry is to continue to thrive. Nevertheless, bearing in mind what we now know about the potential environmental impacts of open cage salmon farms near to the mouths of wild salmonid rivers or in freshwater lochs, these technologies must surely be the future for the Scottish farmed salmon industry.

Due to the important economic contribution that both the farmed and wild salmon sector brings to the western highlands, the Scottish Government should be looking at ways immediately to incentivise fish farm companies to invest in these technologies further with a view to large scale commercial trials being set up in the very near

future. The reason that much of such forward-thinking work is taking place in Norway is that the industry is incentivised to do so in that country.

In the meantime it must be recognised that any further expansion of open cage fish farms in freshwater lochs or inland marine bays or estuaries will bring increased problems to threatened wild fish stocks that many individual populations may not be able to withstand. But that is not to say that the industry should not be encouraged to expand further and increase prosperity to the communities of the western seaboard. But the only way this can take place in a sustainable fashion (based on recent sea lice research) is if there is a moratorium on placing any new or expanded fish farms within 30kms of the mouth of migratory salmonid rivers.

Furthermore, it has been demonstrated that by far the highest risk period for wild salmon from sea lice is when the smolts leave the estuaries when the farms are in their second year of production (due to the high numbers of lice likely to be present on the farmed fish at this stage). In spite of new 'tools in the box' such as cleaner fish, thermolicers, hydrolicers etc. it would now seem that changes in the near-shore environment due to global warming are making the fight against sea lice increasingly difficult for farmers.

If so-called 'adaptive management' is being genuinely adopted, the wild fish need an immediate reprieve from this known added impact within their migration corridor. One quick way of achieving this, while also allowing the industry to achieve its ambition targets, would be to encourage expansion of new and large sites in off-shore and deep-water locations (some of these are beginning to be developed in the Inner Isles and other locations further offshore). Permissions and licences for these new sites could be issued on the understanding that the most sensitive inshore sites (those in thin fjord-like estuaries near the mouths of salmon rivers) would be fallowed during the wild smolt migration period, at least during the second year of farmed production.

The eventual goal (which will inevitably take time) is the relocation of all salmon farming away from these sensitive inshore sites, if both salmon *and* coastal-living sea trout are to be protected.

Questions 3 to 6.

I do not believe that the solution to the wild/farmed problem necessarily lies in stricter regulation or enforcement of data transparency etc. These are partly knee-jerk reactions that have been largely borne out of the frustration and polarity of the wild/farmed debate for the last 3 decades. (The exception to this would be a revaluation of current Government sea lice targets which are scientifically unjustifiable). Overall though what is required is *proactive strategic action* by policy-makers and regulators that allows the industry to expand sustainably and also offers much needed protection for wild salmonids. West Highlanders want to see both. It is only through such action that it will allow young people to remain in the highlands in a job that has genuine career security, whether that is as a fish farm worker or a highland river ghillie. It will also see the flourishing of associated industries - whether

that be fish processing factories or local fishing hotels - and give security for developers of such operations to invest with confidence in the future.

It is recognised that any changes will take time but in the meantime much could be done to assist local salmon fishery boards to protect what few spawning salmonids are left in many of the rivers of the West Coast. Currently West Coast boards run on a fraction of the resources of their East Coast counterparts (in spite of, interestingly, there being a Government moratorium on any fish farming on the East Coast). The Lochaber DSFB for example, which has a statutory remit to protect and enhance migratory salmonids over a vast area of the Scottish mainland currently runs on a budget of £28,000. Many East Coast Boards, such as the Spey or the Dee, run on budgets of around £500,000). Clearly there is something seriously flawed in this but with so few fish running West Coast rivers the levy-based funding has dried up (DSFB's are funded based on the value and income of local salmon fisheries).

One way that West Coast Fishery Boards could be funded and made more effective is through the fish farm licencing and sea bed leasing arrangements. Currently SEPA and the Crown Estate raise over £4.5 million per annum from fish farm licences and sea bed leases. From what I can determine, none of that is returned into managing the impacts of salmon farming on wild fish stocks or protecting damaged stocks. In the case of the River Lochy, which I manage, the Crown Estate take hundreds of thousands of pounds in leases every year from the fish farms that the Lochy smolts must pass on their way to sea (they charge £27.50 per tonne of salmon produced). While the River Lochy management has an excellent relationship with the fish farmers in the region and we attempt to work in partnership with our neighbours to address common problems, we could have delivered so much more for the local salmon populations had we had access to even a fraction of the huge sums being charged by the Crown Estate. While this might not directly address the direct impacts of fish farming (that can only be addressed through the step changes in production mentioned above) this would ensure that wild salmon and sea trout populations are fully monitored, protected and enhanced in the best manner possible while in the freshwater phase and while these wider industry changes are developed and bedded in.

I would be happy to provide any further details, research references and direct first-hand experiences to the committee on any of the above representation.

Lochaber District Salmon Fishery Board
February 2018

RURAL ECONOMY AND CONNECTIVITY COMMITTEE

SALMON FARMING IN SCOTLAND

SUBMISSION FROM GUY LINLEY ADAMS ON BEHALF OF SALMON AND TROUT CONSERVATION SCOTLAND

This is a short note, hopefully to assist the Committee in advance of my giving evidence on March 14th on behalf of Salmon and Trout Conservation Scotland. I am sure you will appreciate the limits to communicating great detail within an oral evidence session, so I hope you will excuse this.

This relates to a point made in oral evidence to the REC Committee on 7th March by Professor James Bron of the Institute of Aquaculture at the University of Stirling.

He stated that:

“mostly sea lice are under control in Scotland and as I said if you look at the data that has been produced there has been no rise in sea lice, so I think there is an impression that there has been a sort of skyrocketing of sea louse numbers, but actually if you look at the average that’s remained relatively static there”.

However, as farm-specific sea lice data is not publicly available, it is not clear what the basis can be for Professor Bron’s statement.

Note that on publication of farm-specific data, the ECCLR Report, at para 58 stated: *“The Committee believes the efforts of the industry have proven to be largely insufficient to address lice issues. The Committee welcomes the announcement by the SSPO that sea lice data will be published on a farm by farm basis. For that data to be most useful the Committee considers there should be no unreasonable delay in its publication, The industry should be required to publish it in real time. Data should be published in a consistent and comparable basis and should include numbers of fish and action taken in response. This information would advance the science and solutions available to the industry. The industry should also be required to publish consistent and comparable weekly historic data sets on sea lice figures on a farm by farm basis from the time records are available. There should be no delay in the industry publishing this information so this should initially be published on a voluntary basis by the end of April 2018”*

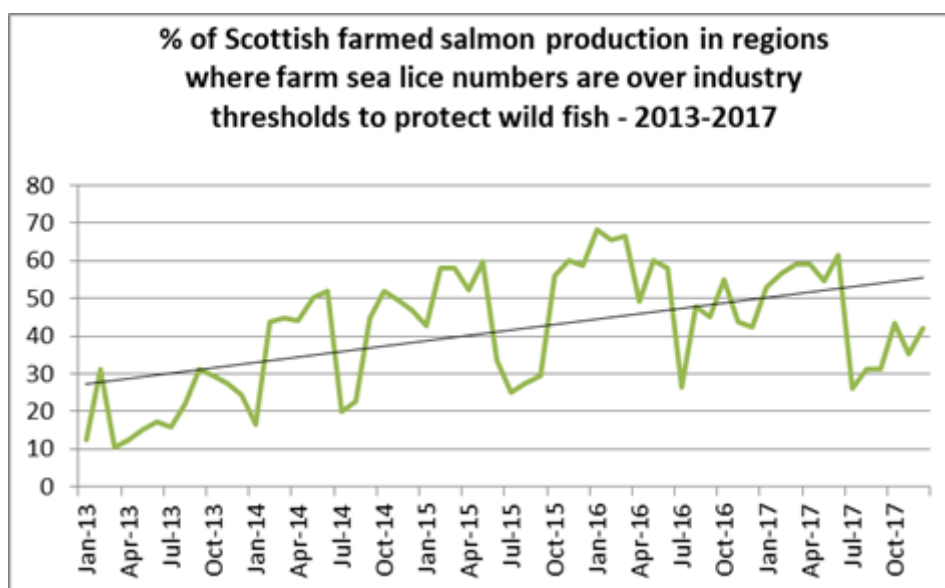
What we do know, from the output of Freedom of Information requests made by S&TCS to the Fish Health Inspectorate – at <https://beta.gov.scot/publications/foi-17-02315-review/> - is that the current sea lice figures on fish farms in Scotland are not encouraging.

Over the 14 months to December 2017, 81 salmon farms have gone over the 3 or 8 adult female sea lice per farmed fish trigger levels, which were announced by the Scottish Government at NASCO in 2016, but only one Enforcement Notice has been issued so far, which required nothing that the industry’s own Code of Good Practice did not already, in theory, require of the farmer, or that an ordinary inspection or enhanced sea lice inspection, as already operated by the Fish Health Inspectorate under the 2008 Guidance, would not have addressed.

See <https://www.salmon-trout.org/wp-content/uploads/2017/11/NewLiceBreachingList.pdf> for the full list of farms, also appended to this note. See also S&TCS' critique of the Scottish Government's 2016 sea lice management policy for Scottish salmon farming <https://www.salmon-trout.org/wp-content/uploads/2018/02/A-critique-of-the-Scottish-Government%E2%80%99s-new-sea-lice-management-policy-for-Scottish-salmon-farming.pdf>

In addition, aggregated sea lice data (in each of 30 regions) has been published by the SSPO in Fish Health Management reports since 2013 (on a three monthly in-arrears basis). Analysis of this data, as against the CoGP sea lice thresholds for treatment (0.5 and 1 adult female lice per fish), the proportion of the industry, as given in the SSPO reports, that is in regions over CoGP threshold shows a cyclical pattern and, between 2015 and 2017 has ranged between 26% and 68%.

Note that in 2013 and 2014, that range was 10% to 52%, so the data shows that the sea lice issue has got worse.



Note also that the ECCLR Committee Report stated, at para 57, that *“the Committee considers there should be a mandatory requirement to keep sea lice levels within those identified in the Code of Good Practice”*.

As the graph above shows, the Scottish industry is a very long way from that being delivered.

In its report, SAMS also noted (at para 2.1.4) that *“The main treatment methods used in Scotland are experiencing reduced efficacy in dealing with sea lice on farms. New techniques are being applied, although the long-term success of these is uncertain. The legislative and voluntary frameworks that underpin the management of lice levels on farms are not transparent. They appear neither to be succeeding in controlling sea lice, nor capable of addressing the environmental effects of the lice”*.

In conclusion, what published data there is does not support Professor Bron's evidence that "*mostly sea lice are under control in Scotland*".

Salmon and Trout Conservation Scotland
March 2018

SUBMISSION FROM PROFESSOR JAMES BRON

08/03/18

Re: REC Committee evidence session 7th March 2018

Dear members of the Rural Economy and Connectivity Committee,

I write to provide supporting evidence for comments which I made during the REC Committee evidence session convened on 7th March 2018 and to respond to alternative views which have been put forward.

In a recent communication to the REC Committee, Mr Linley-Adams referred to the following statement, which I made during the evidence session:

“...mostly sea lice are under control in Scotland and, as I said, if you look at the data that has been produced there has been no rise in sea lice. So I think there is an impression that there has been a sort of skyrocketing of sea louse numbers but actually, if you look at the average, that’s remained relatively static there...”

The above comment referred back to a statement that I had provided earlier in the same session, in which I indicated that:

“...if you look at the actual figures, and there is a recent paper by Hall and Murray, we can see that actually the numbers of sea lice have not been increasing, and the reason they are not increasing is that we have a lot more tools at our disposal to help us control these pathogens.....”

Mr Linley-Adams questions this in his communication to the Committee, saying that “...as farm-specific sea lice data is not publicly available, it is not clear what the basis can be for Professor Bron’s statement.” and asserting that

“what published data there is does not support Professor Bron’s evidence that “mostly sea lice are under control in Scotland””.

Mr Linley-Adams is incorrect. The statements to the Committee which Mr Linley-Adams contests are based on the reported findings of a recent study. This publication is in the public domain and employs data that are also in the public domain, and indeed are used by Mr Linley-Adams in his communication.

My statements to the Committee were informed by:

Hall L.M. and Murray A.G. (2018). Describing temporal change in adult female *Lepeophtheirus salmonis* abundance on Scottish farmed Atlantic salmon at the national and regional levels. *Aquaculture*, Volume **489**, Pages 148-153 (<http://www.sciencedirect.com/science/article/pii/S0044848617318367>). (See Annex)

The authors of this paper work at Marine Scotland Science (MSS) which is the scientific Division of Marine Scotland, a Directorate of the Scottish Government responsible for the integrated management of Scotland's seas. The authors of the paper are internationally

regarded leading statisticians / modellers in their field, and the paper is published in a respected peer-reviewed scientific journal. Having analysed data available at national and regional levels, the authors of this paper concluded in the abstract to their paper that, with regard to sea lice abundance between Dec 2010 and Sept 2017:

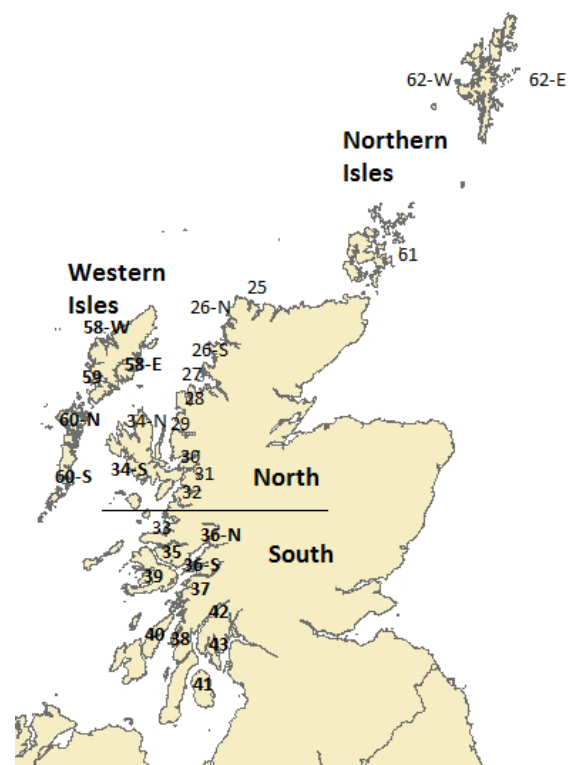
*“...longer-term changes at the national level and for two regions were also detected with **no apparent overall increase occurring over the period.**”* (bolding added).

Which is what I stated to the Committee in evidence.

I would now like to draw the Committee’s attention to other aspects of the analysis presented in this paper, something I did not do in the evidence session due to time constraints.

It can be observed in Figure 2b. (highlighted for the committee in the marked-up copy of the paper accompanying this commentary) that there is an apparent decline in sea lice abundance at the Scottish national level, running from mid-2015 to the last data point in September 2017. I contend that this demonstrates improvement in sea lice control, despite complicating factors such as complex gill disease, and I would argue that this has been achieved through increasingly successful use of a range of non-medicinal management tools e.g. cleaner fish and physical removal methods in addition to use of veterinary medicines.

Regional level models are presented in Hall and Murray’s paper in their Figure 3. These ‘reporting regions’ are shown on map A below, which is taken from an earlier paper by Murray referred to on p149 of Hall and Murray’s paper. Looking at Figure 3 of Hall and Murray’s paper, it can be seen that in the Northern Isles, Western Isles and North Mainland reporting regions there is a trend for relatively little change or even a decline in sea louse abundance. In the South Mainland region there is a slight upward trend in abundance, though it should be noted that there are quite wide confidence bands (dark grey stripe) around the data at this end suggesting higher variability and a less predictable line (*i.e.* the actual abundance might be higher or lower than that described by the model fit).



Map A. Map showing aquaculture regions in Scotland. From Murray (2016) ‘A note on sea lice abundance on farmed Atlantic salmon in Scotland 2011–2013: significant regional and seasonal variation’, *Aquaculture Research* [Volume 47, Issue 3](#), pages 961-968, 16 AUG 2014 DOI: [10.1111/are.12554](http://onlinelibrary.wiley.com/doi/10.1111/are.12554/full#are12554-fig-0001) <http://onlinelibrary.wiley.com/doi/10.1111/are.12554/full#are12554-fig-0001>.

On the basis of the analysis presented by Hall and Murray (2018) I consider it correct to suggest, as stated in my evidence to the Committee, that from a national perspective sea lice are “mostly” under control.

As discussed in the Committee meeting, this control is exerted by the use and gradual improvement of integrated pest management strategies (IPMS) that employ a broad range of tools. The use of multi-component IPMS mean that sea lice control in Scottish fish farming is increasingly less dependent upon, though still requiring, the use of veterinary medicines. This is not to say that the mean numbers of lice per fish can not be improved in the future, or that every farm has been able to keep numbers to a satisfactory level, but overall I consider that the industry in Scotland is making real headway in control of lice.

I do not dispute Mr Linley-Adams’ suggestion that sea lice numbers on some sites exceed nominal “trigger thresholds”. As I indicated in evidence, however, nowhere have these thresholds been scientifically established and, where set very low, farm louse estimates can not easily be statistically validated. However, rather than automatically triggering specific treatments, these are in practice “decision thresholds” that prompt farm staff, health teams, responsible vets and others to make decisions about best management taking into account specific contextual factors (e.g. fish health and welfare state, site parameters, stage of production cycle, presence of other diseases, algal blooms, water temperature, weather considerations etc.). Treatment decisions should not be based simply on *estimated* numbers of adult female lice derived from a small sub-sample of fish.

Mr Linley-Adams included the following quote from the SAMS report in support of his contention that sea lice are not under control in Scotland:

“The main treatment methods used in Scotland are experiencing reduced efficacy in dealing with sea lice on farms. New techniques are being applied, although the long-term success of these is uncertain. The legislative and voluntary frameworks that underpin the management of lice levels on farms are not transparent. They appear neither to be succeeding in controlling sea lice, nor capable of addressing the environmental effects of the lice”

To be clear, in my opinion and based on my scientific knowledge and expertise in this area:

1. While some veterinary medicines show reduced efficacy in some regions / farms, the widespread use of IPMS means that they are rarely the only or main treatment method employed on Scottish fish farms.
2. The wide range of new non-medicinal techniques being applied, including cleaner fish, functional feeds, barrier methods and physical removal techniques, are **currently** proving successful at reducing louse numbers.
3. Whilst the contribution of individual components in IPMS is less clear, the currently-employed range of tools and techniques for the management of sea lice **is** “mostly” controlling sea lice numbers on Scottish fish farms.
4. Whilst it is not feasible that there is **no** environmental impact of sea lice, well-supported evidence for the existence of any significant environmental impact of lice in Scotland is largely lacking. In my view, the ability of existing frameworks to address any environmental impacts of sea lice cannot easily be assessed until that evidence is available

My apologies to the Committee for the lack of specific evidence brought to bear in the latter part of this discussion, which results from the short time allowed for a response to Mr Linley-Adams' contentions rather than a lack of available evidence. I should nevertheless be happy to answer any further specific questions and to gather and to provide supporting evidence given sufficient time to do so.

Thank you for the opportunity to participate in these discussions.

Yours sincerely,

James Bron

Rural Economy and Connectivity Committee

8th Meeting, 2018 (Session 5), Wednesday 14 March 2018

Subordinate legislation - parking

Background

1. The Committee will consider three related SSIs at this meeting which relate to a decriminalised parking regime within the Midlothian Council area, which are:

Negative:

- SSI 2018/60: The Road Traffic (Permitted Parking Area and Special Parking Area) (Midlothian Council) Designation Order 2018
- SSI 2018/61: The Parking Attendants (Wearing of Uniforms) (Midlothian Council Parking Area) Regulations 2018
- SSI 201/62: The Road Traffic (Parking Adjudicators) (Midlothian Council) Regulations 2018

2. The Committee has dealt with similar regulations previously which applied to different local authority areas.

3. **Annexe A** is a clerk's note in relation to all three instruments. **Annexe B** is the Scottish Government policy note in relation to all three instruments. **Annexe C** contains the three instruments.

Rural Economy and Connectivity Committee clerks
March 2018

Annexe A – clerk’s note in relation to all three instruments

Title of Instruments

- SSI 2018/60: The Road Traffic (Permitted Parking Area and Special Parking Area) (Midlothian Council) Designation Order 2018
- SSI 2018/61: The Parking Attendants (Wearing of Uniforms) (Midlothian Council Parking Area) Regulations 2018
- SSI 201/62: The Road Traffic (Parking Adjudicators) (Midlothian Council) Regulations 2018

Type of Instruments: Negative

Laid Date: 16 February 2018

Minister to attend the meeting: No

Purpose

1. The purpose of this package of Scottish Statutory Instruments (SSI’s) is to introduce a decriminalised parking regime within the Midlothian Council area. The Committee has looked at similar sets of SSIs previously for other local authority areas.
2. To date, 19 Scottish local authorities have introduced decriminalised parking regimes. This enables them to administer their own parking penalty schemes, and to retain the penalties collected to finance parking enforcement procedures and other traffic management measures.

INSTRUMENTS

Background

3. The Road Traffic Act 1991 introduced provisions enabling the decriminalisation of most non-endorsable parking offences in London and permitted similar arrangements to be introduced elsewhere in the UK. Decriminalised Parking Enforcement (DPE) is a regime which enables a local authority to administer its own parking penalty schemes, including the issuing of Penalty Charge Notices (PCNs) to motorists breaching parking controls in specific areas.

The Road Traffic (Permitted Parking Area and Special Parking Area) (Midlothian Council) Designation Order 2018 (SSI 2018/60):

4. The SSI defines the area within Midlothian where DPE can be enforced. This area covers all local roads in Midlothian, and excludes the trunk roads specified in schedule 1 of the Order from the DPE area. The trunk roads excluded from the DPE regime will continue to be the responsibility of Police Scotland, following agreement with the Council that they are best equipped to enforce these

sections.

The Parking Attendants (Wearing of Uniforms) (Midlothian Council Parking Area) Regulations 2018 (SSI 2018/61)

5. This SSI stipulates that a parking attendant must be wearing an identifiable uniform when carrying out the duties associated with a parking attendant.

The Road Traffic (Parking Adjudicators) (Midlothian Council) Regulations 2018 (SSI 2018/62)

6. This SSI provides for the adjudication process to be followed where a motorist believes that a penalty charge notice has been incorrectly issued.

Procedure

7. 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.

8. 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.

Consideration by the Delegated Powers and Law Reform Committee

9. The Delegated Powers and Law Reform Committee considered these instruments at its meeting on 27 February 2018 and did not raise any issues.

10. The regulations and accompanying documents are included in Annexes B and C. They are also available online here:

- [SSI 2018/60: The Road Traffic \(Permitted Parking Area and Special Parking Area\) \(Midlothian Council\) Designation Order 2018](#)
- [SSI 2018/61: The Parking Attendants \(Wearing of Uniforms\) \(Midlothian Council Parking Area\) Regulations 2018](#)
- [SSI 201/62: The Road Traffic \(Parking Adjudicators\) \(Midlothian Council\)](#)

[Regulations 2018](#)

Recommendation

The Committee is invited to consider any issues that it wishes to raise in reporting to the Parliament on these instruments.

Rural Economy and Connectivity Committee clerks
March 2018

Annexe B - Scottish Government policy note in relation to all three instruments

POLICY NOTE

THE ROAD TRAFFIC (PERMITTED PARKING AREA AND SPECIAL PARKING AREA) (MIDLOTHIAN COUNCIL) DESIGNATION ORDER 2018

SSI 2018/60

THE PARKING ATTENDANTS (WEARING OF UNIFORMS) (MIDLOTHIAN COUNCIL PARKING AREA) REGULATIONS 2018

SSI 2018/61

THE ROAD TRAFFIC (PARKING ADJUDICATORS) (MIDLOTHIAN COUNCIL) REGULATIONS 2018

SSI 2018/62

1. The above instruments were made in exercise of powers conferred by Schedule 3 of the Road Traffic Act 1991, sections 73(11) and (12) of the Road Traffic Act 1991, and section 63A of the Road Traffic Regulation Act 1984 respectively. The instruments are subject to negative procedures before the Scottish Parliament.

Policy Objectives and background

2. The purpose of the three Scottish Statutory Instruments is to introduce a decriminalised parking regime within the Midlothian Council area.

3. The Road Traffic Act 1991 introduced provisions enabling the decriminalisation of most non-endorable parking offences in London and permitted similar arrangements to be introduced elsewhere in the UK. Decriminalised Parking Enforcement (DPE) is a regime which enables a local authority to administer its own parking penalty schemes, including the issuing of Penalty Charge Notices (PCNs) to motorists breaching parking controls in specific areas. DPE seeks to ensure compliance with parking controls through transparent, effective enforcement aimed at dissuading motorists from breaching parking controls and achieving 100% compliance with such controls.

4. To date, 19 Scottish local authorities have now introduced DPE within their areas. Under these arrangements, local authorities are allowed to retain the penalties collected. However, section 55 of the Road Traffic Regulations Act 1984 requires that any surplus accrued by local authorities from their DPE regimes should be ring-fenced and may only be used for certain transport-related provisions, including the provision and maintenance of off-street parking, the provision or operation of (or facilities for) public passenger transport services or for road improvement projects in the local authority area.

5. Previously, and continuing for authorities that have not introduced DPE, income generated from fines arising from parking infringements accrue to the Exchequer as these are non-endorable criminal offences. Under DPE, enforcement powers no longer rest with the police but are implemented by parking attendants employed either directly by, or under contract to, the local authority. As such, a breach of parking rules within an area where DPE is in force requires payment to the local authority of a penalty charge.

The Road Traffic (Permitted Parking Area and Special Parking Area) (Midlothian Council)

Designation Order 2018 (SSI. 2018/60)

6. The SSI defines the area within Midlothian where DPE can be enforced. This area covers all local roads and sections of the A68 and A702 in Midlothian. A section of the A720 as specified in schedule 1 of the Order is excluded from the DPE area. The trunk road excluded from the DPE regime will continue to be the responsibility of Police Scotland, following agreement with the Council that they are best equipped to enforce this section.

The Parking Attendants (Wearing of Uniforms) (Midlothian Council) Regulations 2018 (SSI. 2018/61)

7. This SSI stipulates that a parking attendant must be wearing an identifiable uniform when carrying out the duties associated with a parking attendant.

The Road Traffic (Parking Adjudicators) (Midlothian Council) Regulations 2018 (SSI. 2018/62)

8. This SSI provides for the adjudication process to be followed where a motorist believes that a penalty charge notice has been incorrectly issued.

Consultation

9. All statutory requirements regarding the consultation for these three Scottish Statutory Instruments have been carried out. We received comments/responses from the Scottish Borders Council, Police Scotland and the Traffic Commissioner for Scotland in relation to Midlothian Council's draft SSIs, indicating that they were content with the proposals.

Business and Regulatory Impact Assessment

10. As the draft regulations relate to the enforcement of existing parking restrictions and do not therefore constitute an additional burden on business a Business and Regulatory Impact Assessment is not required. The enforcement costs incurred by Midlothian Council are expected to be absorbed by income from parking penalties.

Financial Effects

11. These SSIs will have no financial effect on the Scottish Government.

Roads Policy Team

Transport Scotland

14 February 2018

Annex C - Subordinate Legislation

SCOTTISH STATUTORY INSTRUMENTS

2018 No. 60**ROAD TRAFFIC****The Road Traffic (Permitted Parking Area and Special Parking Area) (Midlothian Council) Designation Order 2018**

Made - - - - - *14th February 2018*

Laid before the Scottish Parliament *16th February 2018*

Coming into force - - - *2nd April 2018*

The Scottish Ministers make the following Order in exercise of the powers conferred by paragraphs 1(1), 2(1) and 3(3) of schedule 3 of the Road Traffic Act 1991(a) and all other powers enabling them to do so.

In accordance with paragraphs 1(1)(d) and 2(1)(c) of that schedule they have received an application for this Order from Midlothian Council.

In accordance with paragraphs 1(3) and 2(3) of that schedule they have consulted the chief constable of the Police Service of Scotland.

Citation and commencement

1. This Order may be cited as the Road Traffic (Permitted Parking Area and Special Parking Area) (Midlothian Council) Designation Order 2018 and comes into force on 2nd April 2018.

Interpretation

2. In this Order—

“the 1991 Act” means the Road Traffic Act 1991; and

“the parking area” means the area designated as a permitted parking area and a special parking area by article 3.

(a) 1991 c.40; paragraphs 1(1) and 2(1) of schedule 3 were relevantly amended by the Local Government etc. (Scotland) Act 1994 (c.39), schedule 13, paragraph 171. The functions of the Secretary of State under that schedule of the 1991 Act, so far as they are exercisable within devolved competence, were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (c.46).

Designation as permitted parking area and special parking area

3. That part of the Midlothian local government area^(a) specified in schedule 1 is designated as—

- (a) a permitted parking area; and
- (b) a special parking area.

Modifications and application of Part II of the 1991 Act

4. Sections 66, 69 to 74, 79 and 82 of, and schedule 6 of the 1991 Act apply in relation to the parking area subject to the modifications specified in schedule 2.

Modifications of the Road Traffic Regulation Act 1984

5. The Road Traffic Regulation Act 1984^(b) is modified in relation to the parking area as specified in schedule 3.

Consequential modification

6. In relation to a parking adjudicator appointed under section 73(3) of the 1991 Act by virtue of this Order, the reference in paragraph 40(b) of schedule 1 of the Tribunals and Inquiries Act 1992^(c) to a parking adjudicator appointed under section 73(3)(a) of the 1991 Act shall be construed as if it were a reference to a parking adjudicator appointed under section 73(3) of that Act by virtue of this Order.

H YOUSAF

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
14th February 2018

(a) Midlothian local government area was established by section 1(2) and (4) of, and schedule 1 of, the Local Government etc. (Scotland) Act 1994.
(b) 1984 c.27.
(c) 1992 c.53.

SCHEDULE 1

Article 3

SPECIFICATION OF PARKING AREA

The Midlothian local government area, except such length of the A720 Edinburgh City Bypass as falls within that area.

SCHEDULE 2

Article 4

MODIFICATIONS OF PROVISIONS OF PART II OF THE ROAD
TRAFFIC ACT 1991

- 1.**—(1) Section 66 is modified as follows.
- (2) In subsection (1) omit “in a designated parking place”.
 - (3) In subsection (2) omit—
 - (a) “For the purposes of this Part of the Act”; and
 - (b) paragraphs (a)(i), (b) and (c).
 - (4) In subsection (3)—
 - (a) in paragraph (d) for “the specified proportion” substitute “one half”; and
 - (b) in paragraph (e) for “London” substitute “parking”.
 - (5) Omit subsection (4).
 - (6) For subsection (5)(b) substitute—
 - “(b) the parking authority.”.
- 2.**—(1) Section 69 is modified as follows.
- (2) In subsection (1)—
 - (a) omit “in a designated parking place”; and
 - (b) for “specified in section 66(2)(a), (b) or (c) of this Act” substitute “in which a penalty charge is payable”.
 - (3) In subsection (8) for the words from “London” to the end substitute “parking authority”.
- 3.**—(1) Section 71 is modified as follows.
- (2) In subsection (1) for “a London” substitute “the parking”.
 - (3) For subsection (4) substitute—
 - “(4) The grounds are—
 - (a) that there were no reasonable grounds for the parking attendant concerned to believe that the vehicle had been permitted to remain at rest in the parking area in circumstances in which a penalty charge was payable;
 - (b) that the vehicle had been permitted to remain at rest in the place where it was by a person who was in control of the vehicle without the consent of the owner;
 - (c) that the place where the vehicle was at rest was not in the parking area;
 - (d) in a case within subsection (1)(d) above, that, by virtue of an exemption given by section 70 of this Act, section 69 of this Act did not apply to the vehicle in question at the time in question; or
 - (e) that the penalty or other charge in question exceeded the amount applicable in the circumstances of the case.”.
 - (4) In subsection (8)(b) for “costs” substitute “expenses”.
- 4.**—(1) Section 73 is modified as follows.
- (2) Omit subsections (1), (1A) and (2).
 - (3) For subsection (3) substitute—
 - “(3) The traffic commissioner must, with the consent of the Lord Advocate, appoint persons to act as parking adjudicators.”.

(4) After subsection (3) insert—

“(3A) A parking adjudicator appointed by virtue of this section is authorised to act as a parking adjudicator in relation to the parking area.

(3B) The parking authority, after consultation with the traffic commissioner—

(a) must—

(i) provide, or enter into arrangements for the provision of, accommodation and administrative staff for the parking adjudicators acting in relation to the parking area; and

(ii) determine the places at which such parking adjudicators are to sit; and

(b) may enter into arrangements for the remuneration of such parking adjudicators.”.

(5) In subsection (4) for the words from “have” to the end substitute “be an advocate or solicitor of at least five years’ standing”.

(6) In subsection (5) for “appointing authorities” substitute “traffic commissioner”.

(7) For subsections (8) to (10) substitute—

“(8) The reasonable expenses of the traffic commissioner incurred in connection with the discharge of the duties imposed on him by this section, shall be met by the parking authority.”.

(8) In subsection (11) for “The Secretary of State” substitute “The Scottish Ministers”.

(9) In subsection (12)—

(a) in each of paragraphs (i) and (j) for “costs” substitute “expenses”; and

(b) in paragraph (j) for “county” substitute “sheriff”.

(10) In subsection (15) for the words from “if a” to the end substitute “be recoverable by the person to whom the amount is payable as if it were payable under an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court for any sheriffdom in Scotland”.

(11) In subsection (17) for “Joint Committee”, in each place where it occurs, substitute “parking authority”.

(12) In subsection (18)—

(a) for “Joint Committee” substitute “parking authority”; and

(b) for “the Secretary of State” substitute “the Scottish Ministers”.

5. For section 74 substitute—

“Fixing of certain parking and other charges for parking area

74.—(1) It shall be the duty of the parking authority to set the levels of additional parking charges to apply in the parking area.

(2) Different levels may be set for different parts of the parking area.

(3) The levels of additional parking charges set by the parking authority under this section shall accord with any guidance given by the Scottish Ministers whether such guidance is given specifically to the parking authority or to local authorities generally.

(4) Any guidance given by the Scottish Ministers under subsection (3) above may be varied at any time by them.

(5) The parking authority must publish, in such manner as the Scottish Ministers may determine, the levels of additional parking charges which have been set under this section.

(6) In this section “additional parking charges” means penalty charges, charges made by the parking authority for the removal, storage and disposal of vehicles and charges for the release of vehicles from immobilisation devices fixed under section 69 of this Act.”.

6.—(1) Section 82 is modified as follows.

(2) For subsection (1) substitute—

- “(1) In this section and sections 66, 69 to 74 and 79 of, and schedule 6 of, this Act(a)—
- “hiring agreement” and “vehicle-hire firm” have the same meanings as in section 66 of the Road Traffic Offenders Act 1988(b);
- “immobilisation device” has the same meaning as in section 104(9) of the Road Traffic Regulation Act 1984(c);
- “parking area” means the area designated as a permitted parking area and a special parking area by the Road Traffic (Permitted Parking Area and Special Parking Area) (Midlothian Council) Designation Order 2018(d);
- “parking attendant” has the same meaning as in section 63A(e) of the Road Traffic Regulation Act 1984;
- “parking authority” means—
- (a) in relation to a parking place which was provided or authorised under section 32(1) of the Road Traffic Regulation Act 1984, the local authority as defined by section 32(4)(a) of that Act in relation to the parking place;
- (b) in any other case, the traffic authority (other than the Scottish Ministers) as defined by section 121A(f) of that Act;
- “penalty charge” means a penalty charge which is payable by virtue of paragraph 3(1) and (2) of schedule 3 of this Act;
- “prescribed” means prescribed by regulations made by the Scottish Ministers; and
- “traffic commissioner” means the traffic commissioner appointed for the Scottish Traffic Area under section 4 of the Public Passenger Vehicles Act 1981(g).”

(3) In subsection (5) for “London authority concerned” substitute “parking authority”.

(4) In subsection (6) for “a Minister of the Crown” substitute “the Scottish Ministers”.

(5) In subsection (7) for “either House of Parliament” substitute “the Scottish Parliament”.

7.—(1) Schedule 6 is modified as follows.

(2) In paragraph 1(1) for “London authority concerned” substitute “parking authority”.

(3) In paragraph 2—

- (a) in subparagraph (1) for the words from “London” to the end substitute “parking authority”;
- (b) in subparagraph (2) for the words from “such” to the end substitute “writing”;
- (c) in subparagraph (3) after “The”, where it first occurs, insert “parking”;
- (d) in subparagraph (4)(c) for “place” substitute “area”; and
- (e) in subparagraph (7) for “an authority to whom representations are duly made” substitute “the parking authority when representations are duly made to it”.

(4) In paragraph 3(1) and (2) for “London authority concerned” in each place where it occurs substitute “parking authority”.

(5) In paragraph 4—

- (a) for “London authority concerned” substitute “parking authority”;
- (b) in subparagraph (b), for “costs” substitute “expenses”; and
- (c) for “authority consider appropriate” substitute “parking authority consider appropriate”.

(a) Road Traffic Act 1991 c.40.

(b) 1988 c.53.

(c) 1984 c.27.

(d) S.S.I. 2018/60.

(e) Section 63A was inserted by the 1991 Act, section 44(1).

(f) Section 121A was inserted by the New Roads and Street Works Act 1991 (c.22), schedule 8, paragraph 70.

(g) 1981 c.14.

(6) In paragraph 5—

(a) in subparagraph (1)—

(i) for “an authority” substitute “the parking authority”; and

(ii) for “authority’s decision” substitute “parking authority’s decision”;

(b) in subparagraph (2) for “London authority concerned” substitute “parking authority”; and

(c) in subparagraph (3) for the words from “any” to the end substitute “the parking authority to comply with any direction given to it under subparagraph (2) above”.

(7) In paragraph 6—

(a) in subparagraph (1) for “authority serving the notice” substitute “parking authority”; and

(b) in subparagraph (2)(b)(ii) for “authority concerned” substitute “parking authority”.

(8) In paragraph 7 for the words from “authority concerned” to the end substitute “parking authority may recover the increased charge as if the charge certificate were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court in any sheriffdom in Scotland”.

(9) Omit paragraph 8.

SCHEDULE 3

Article 5

MODIFICATIONS OF THE ROAD TRAFFIC REGULATION ACT
1984

1. In section 46(1A)(a) for “Greater London” substitute “the parking area”.
 - 2.—(1) Section 55 is modified as follows.
 - (2) For subsection (1) substitute—
 - “(1) A local authority must keep an account—
 - (a) of their income and expenditure in respect of designated parking places for which they are the local authority and which are in the permitted parking area; and
 - (b) of their income from additional parking charges (as defined in section 74(6) of the Road Traffic Act 1991) received by them in respect of vehicles found within the special parking area and the expenditure incurred by them in relation to that area by virtue of any provision of Part II of the Road Traffic Act 1991 as it applies in relation to that area.
 - (1A) As soon as reasonably practicable after the end of each financial year, the local authority must send to the Scottish Ministers a copy of the account for that year.”.
 - (3) Omit subsections (3A) and (3B)(b).
3. In section 63A(4)(c)—
 - (a) for “Greater London”, where it first occurs, substitute “the parking area”; and
 - (b) for “Greater London Authority” substitute “Scottish Ministers”.
- 4.—(1) Section 101 is modified as follows.
 - (2) Omit subsection (4).
 - (3) In subsection (4A)(d) for “Greater London” substitute “the parking area”.
 - (4) Omit subsection (5).
 - (5) In subsection (5A)(e) for “Greater London” substitute “the parking area”.
- 5.—(1) Section 102 is modified as follows.
 - (2) For subsection (1) substitute—
 - “(1) If a vehicle is removed by the local authority in circumstances in which an offence would have been committed but for the provisions of paragraph 1(4) or 2(4) of schedule 3 of the Road Traffic Act 1991, the local authority will be entitled to recover from any persons responsible such charges in respect of the removal, storage and disposal of the vehicle as they may require.”.
 - (3) Omit subsections (2) and (3).
 - (4) For subsection (4) substitute—
 - “(4) Without prejudice to subsection (1) above, where any sum is recoverable in respect of a vehicle by a local authority in whose custody the vehicle is, the local authority shall be entitled to retain custody of it until that sum has been paid.”.
 - (5) In subsection (5) for “an authority” substitute “the local authority”.

(a) Section 46(1A) was inserted by the 1991 Act, section 64(2).
(b) Section 55(3A) and (3B) were inserted by the 1991 Act, schedule 7, paragraph 5.
(c) Section 63A was inserted by the 1991 Act, section 44(1).
(d) Section 101(4A) was inserted by the 1991 Act, section 67(4).
(e) Section 101(5A) was inserted by the 1991 Act, section 67(6).

(6) Omit subsections (6) and (7).

(7) In subsection (8), in paragraph (b) of the definition of “appropriate authority”, for the words “outside Greater London” substitute “within the parking area”.

6. In section 142(1)—

(a) after the definition of “owner” insert—

““parking area” means the area designated as a permitted parking area and a special parking area by the Road Traffic (Permitted Parking Area and Special Parking Area) (Midlothian Council) Designation Order 2018; and “permitted parking area” and “special parking area” are to be read accordingly;”;

(b) in the definition of “prescribed” for “the Secretary of State” substitute “the Scottish Ministers”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies, to the Midlothian local government area, arrangements for enforcing parking controls already available in London and certain other areas in England and in Edinburgh, Glasgow, Perth and Kinross, Aberdeen, Dundee, South Lanarkshire, Renfrewshire, East Renfrewshire, East Ayrshire, South Ayrshire, Fife, East Dunbartonshire, Argyll and Bute, Inverclyde, Highland, East Lothian, Angus, Stirling, and North Lanarkshire local government areas.

The Order designates Midlothian local government area (with a specified exception) as a permitted parking area and as a special parking area in accordance with schedule 3 of the Road Traffic Act 1991 (“the 1991 Act”). The Order applies, to the designated area, various provisions of the 1991 Act and modifies them where necessary. It also makes consequential modifications to certain provisions of the Road Traffic Regulation Act 1984 (“the 1984 Act”) dealing with parking and related matters.

While the Order is in force, certain specified offences will be decriminalised: for example, in the case of the permitted parking area, breaches of orders relating to free on-street parking places and, in the case of the special parking area, orders prohibiting or restricting waiting, loading and unloading.

Enforcement will be carried out by parking attendants provided under section 63A of the 1984 Act. A system of parking adjudicators will deal with disputes.

SCOTTISH STATUTORY INSTRUMENTS

2018 No. 61

ROAD TRAFFIC

The Parking Attendants (Wearing of Uniforms) (Midlothian Council Parking Area) Regulations 2018

Made - - - - 14th February 2018

Laid before the Scottish Parliament 16th February 2018

Coming into force - - 2nd April 2018

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 63A of the Road Traffic Regulation Act 1984(a) and all other powers enabling them to do so.

In accordance with section 134(8)(b) of that Act they have consulted with such representative organisations as they think fit.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Parking Attendants (Wearing of Uniforms) (Midlothian Council Parking Area) Regulations 2018 and come into force on 2nd April 2018.

(2) In these Regulations—

“the 1984 Act” means the Road Traffic Regulation Act 1984;

“the 1991 Act” means the Road Traffic Act 1991(c); and

“the Midlothian Council parking area” means the area designated as a permitted parking area and a special parking area by article 3 of the Road Traffic (Permitted Parking Area and Special Parking Area) (Midlothian Council) Designation Order 2018(d).

Prescribed functions

2.—(1) All functions conferred on parking attendants by or under the enactments mentioned in paragraph (2) are prescribed for the purposes of section 63A(4) of the 1984 Act (wearing of uniforms by parking attendants when exercising prescribed functions) in its application to the Midlothian Council parking area.

(a) 1984 (c.27). Section 63A was inserted by the Road Traffic Act 1991 (c.40), section 44(1); section 142(1) contains a definition of “prescribed” relevant to the making of these Regulations. Sections 63A and 142(1) are modified in relation to the Midlothian Council parking area by the Road Traffic (Permitted Parking Area and Special Parking Area) (Midlothian Council) Designation Order 2018, S.S.I. 2018/60. The functions of the Secretary of State, so far as they are exercisable within devolved competence, were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (c.46).

(b) Section 134(8) was inserted by the Scotland Act 2016 (c.11), schedule 2, paragraph 12(5).

(c) 1991 c.40.

(d) S.S.I. 2018/60.

(2) The enactments referred to in paragraph (1) are—

- (a) section 99 of the 1984 Act (removal of vehicles);
- (b) section 66(1) of the 1991 Act (issue of a penalty charge notice)(a); and
- (c) section 69 of the 1991 Act (immobilisation of vehicles).

St Andrew's House,
Edinburgh
14th February 2018

H YOUSAF
Authorised to sign by the Scottish Ministers

(a) Sections 66 and 69 of the 1991 Act are modified in relation to the Midlothian Council parking area by the Road Traffic (Permitted Parking Area and Special Parking Area) (Midlothian Council) Designation Order 2018.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe functions during the exercise of which a parking attendant must wear such uniform as the Scottish Ministers may determine (regulation 2).

The requirement to wear a uniform is contained in section 63A(4) of the Road Traffic Regulation Act 1984. Section 63A itself applies to Greater London only but by virtue of the Road Traffic (Permitted Parking Area and Special Parking Area) (Midlothian Council) Designation Order 2018 that section is modified so as to apply to the parking area designated by that Order. Accordingly, parking attendants exercising the prescribed functions within that parking area are required to wear a uniform when doing so.

SCOTTISH STATUTORY INSTRUMENTS

2018 No. 62

ROAD TRAFFIC

**The Road Traffic (Parking Adjudicators) (Midlothian Council)
Regulations 2018**

<i>Made</i> - - - -	<i>14th February 2018</i>
<i>Laid before the Scottish Parliament</i>	<i>16th February 2018</i>
<i>Coming into force</i> - -	<i>2nd April 2018</i>

CONTENTS

PART I

Preliminary

1. Citation and commencement
2. Interpretation

PART II

Procedure relating to Appeals

3. Making an appeal
4. Action upon receipt of notice of appeal and copy
5. Further representations
6. Power to require attendance of witnesses
7. Disposing of an appeal without a hearing
8. Notice of time and place of hearing
9. Procedure at a hearing
10. Decisions on appeals
11. Review of adjudicator's decision
12. Expenses
13. Conjoining of appeals
14. Miscellaneous powers of the adjudicator
15. Clerical errors
16. Sending of documents

PART III

The Register

17. The Register

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 73(11) and (12) of the Road Traffic Act 1991^(a) and all other powers enabling them to do so.

PART I

Preliminary

Citation and commencement

1. These Regulations may be cited as the Road Traffic (Parking Adjudicators) (Midlothian Council) Regulations 2018 and come into force on 2nd April 2018.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Road Traffic Act 1991;

“adjudicator” means a parking adjudicator appointed under section 73(3) of the Act;

“appeal” means an appeal under section 72 or paragraph 5 of schedule 6 of the Act;

“fax” means the making of a facsimile copy of a document by the transmission of electronic signals;

“hearing” means an oral hearing;

“proper officer” means a member of the administrative staff provided under section 73(3B)(a)(i)^(b) of the Act appointed to perform the duties of the proper officer under these Regulations; and

“register” means the register of appeals and decisions kept in pursuance of these Regulations.

(2) In these Regulations, in relation to an appeal or any process connected with an appeal—

“appellant” means the person making the appeal;

“disputed decision” means a decision of the parking authority against which an appeal is made under these Regulations;

“original representations” means the representations made to the parking authority under section 71 or paragraph 2 of schedule 6 of the Act; and

“parking authority” has the meaning ascribed to it in section 82(1) of the Act^(c).

(3) Unless the context otherwise requires, any reference in these Regulations to—

(a) a provision of the Act is a reference to that provision as applied and, where appropriate, modified by the Road Traffic (Permitted Parking Area and Special Parking Area) (Midlothian Council) Designation Order 2018^(d);

(b) a numbered regulation is a reference to the regulation bearing that number in these Regulations; and

(c) a numbered paragraph is a reference to the paragraph bearing that number in the regulation in which that reference appears.

(a) 1991 c.40; section 82(1) contains a definition of “prescribed” relevant to the making of these Regulations. The functions of the Secretary of State so far as they are exercisable within devolved competence were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) Section 73(3B)(a)(i) was inserted by schedule 2 of the Road Traffic (Permitted Parking Area and Special Parking Area) (Midlothian Council) Designation Order 2018, S.S.I. 2018/60.

(c) A definition of “parking authority” was inserted by schedule 2 of the Road Traffic (Permitted Parking Area and Special Parking Area) (Midlothian Council) Designation Order 2018.

(d) S.S.I. 2018/60

PART II

Procedure relating to Appeals

Making an appeal

- 3.**—(1) An appeal is to be made by a notice of appeal sent to the proper officer.
- (2) A notice of appeal—
- (a) must state the full name and address of the appellant;
 - (b) may specify some other address as being the address to which the appellant wishes documents to be sent to him or her in connection with the appeal;
 - (c) must state the date and reference number of the disputed decision; and
 - (d) may include any representations which the appellant desires to make in addition to the original representations.
- (3) If the appeal is made later than the time limit mentioned in section 72(1) or (as the case may be) paragraph 5(1) of schedule 6 of the Act, the notice of appeal must include a statement of the reasons on which the appellant relies for justifying the delay, and the adjudicator must treat any such statement of reasons as a request for extending that time limit.
- (4) The notice of appeal must be signed by the appellant or his or her authorised representative.

Action upon receipt of notice of appeal and copy

- 4.**—(1) Upon receiving a notice of appeal in accordance with regulation 3 the proper officer must—
- (a) send an acknowledgement of receipt to the appellant;
 - (b) enter particulars of the appeal in the register; and
 - (c) send to the parking authority a copy of the notice of appeal and any direction extending the time limit for appealing.
- (2) Upon receiving a copy of the notice of appeal in accordance with paragraph (1)(c), the parking authority must within 21 days send to the proper officer a copy of—
- (a) the original representations;
 - (b) the relevant penalty charge notice (if any) issued under section 66(1) of the Act; and
 - (c) the notice served under section 71(6) or (as the case may be) paragraph 2(7) of schedule 6 of the Act.

Further representations

- 5.**—(1) Any party to an appeal under these Regulations may send representations to the proper officer at any time before that appeal is determined.
- (2) The adjudicator may invite a party to send to the proper officer representations dealing with any matter relating to an appeal within such time and in such a manner as may be specified.
- (3) Where a party fails to respond to an invitation under paragraph (2), the adjudicator may draw such inferences as appear to him or her proper.
- (4) Any representations sent under this regulation must be signed by the party concerned or his or her authorised representative.
- (5) Where the appellant sends representations to the proper officer under this regulation, the proper officer must send a copy of the representations to the parking authority.
- (6) Where the parking authority sends representations to the proper officer under this regulation, it must at the same time send a copy of those representations to the appellant.
- (7) This regulation is without prejudice to the powers of an adjudicator under regulation 9.

Power to require attendance of witnesses

6.—(1) The adjudicator may require the attendance of any person (including a party to the proceedings) as a witness, at a time and place specified by him or her, at the hearing of an appeal and require the person to answer any questions or produce any document in the person's custody or control which relate to any matter in the proceedings.

(2) Where the adjudicator makes a requirement under paragraph (1) the adjudicator must make reference to the fact that, under section 73(14) of the Act, any person who without reasonable excuse fails to comply with this requirement is liable on summary conviction to a fine, and the adjudicator must state the amount of the maximum fine current at that time.

(3) A person in respect of whom a requirement has been made under paragraph (1) may apply to the adjudicator to vary or set aside that requirement.

(4) A person is not bound to comply with the requirement under paragraph (1) unless he or she has been given at least 7 days' notice of the hearing or, if less than 7 days, the person has informed the adjudicator that he or she accepts such notice as he or she has been given.

(5) A person other than an appellant is not bound to comply with the requirement under paragraph (1) unless the necessary expenses of his or her attendance are paid or tendered to him or her.

(6) No person is required to give any evidence or produce any document under paragraph (1) which he or she could not be required to give or produce in proceedings before a court.

Disposing of an appeal without a hearing

7.—(1) Subject to paragraph (2), the adjudicator may dispose of an appeal without a hearing.

(2) The adjudicator must not dispose of an appeal without a hearing if either party has requested a hearing unless—

- (a) the party who made the request withdraws his or her request before notice of a hearing has been sent to the other party under regulation 8; or
- (b) both parties have subsequently consented to the appeal being disposed of without a hearing.

(3) Unless both parties consent to the disposal taking place on an earlier date, the adjudicator must not dispose of an appeal without a hearing until after the expiry of 28 days beginning on the day an acknowledgement is sent in accordance with regulation 4.

(4) Notwithstanding anything in paragraphs (2) and (3), if both parties, having been sent a notice of the hearing of an appeal in accordance with regulation 8, fail to attend or be represented at the hearing, the adjudicator may subsequently dispose of the appeal without a hearing.

Notice of time and place of hearing

8.—(1) This regulation has effect where a hearing is to be held for the purpose of disposing of an appeal.

(2) The proper officer must fix the time and place of the hearing and, not less than 28 days (or such shorter time as the parties may agree) before the date so fixed, send to each party a notice that the hearing is to be at such time and at such place or notify them in such other manner as he or she thinks fit.

(3) The adjudicator may alter the time and place of any hearing and the proper officer must, not less than 7 days (or such shorter time as the parties may agree) before the date on which the hearing is then to be held, send to each party notice of the time and place of the hearing as altered or notify them in such other manner as he or she thinks fit.

(4) This regulation applies to an adjourned hearing but, if the time and place of the adjourned hearing are announced before the adjournment, no further notice is required.

Procedure at a hearing

9.—(1) At the beginning of the hearing the adjudicator must explain the procedure which he or she proposes to adopt.

(2) Subject to the provisions of this regulation, the adjudicator must conduct the hearing of an appeal in such manner as he or she considers most suitable to the clarification of the issues before him or her and generally to the just handling of the proceedings and he or she must, so far as appears to him or her appropriate, seek to avoid formality in the proceedings.

(3) A hearing of an appeal must be held in public except where the adjudicator is satisfied that, by reason of exceptional circumstances, it is just and reasonable for the hearing, or part of the hearing, to be held in private.

(4) Any adjudicator appointed under section 73(3) of the Act may attend the hearing of an appeal whether or not it is held in private.

(5) The adjudicator, with the consent of the parties, may permit any other person to attend the hearing of an appeal which is held in private.

(6) Without prejudice to any other powers the adjudicator may have, he or she may exclude from the hearing of an appeal, or part of it, any person whose conduct has disrupted or is likely, in the opinion of the adjudicator, to disrupt the hearing.

(7) Subject to paragraph (8), at the hearing of an appeal the appellant may conduct his or her case him or herself (with the assistance of any person he or she wishes) or may appear and be represented by any person whether or not legally qualified.

(8) If in any particular case the adjudicator is satisfied that there are good and sufficient reasons for doing so, he or she may refuse to permit a particular person to assist or represent the appellant at the hearing.

(9) At the hearing of an appeal—

- (a) the parties are entitled to give evidence, to call witnesses, to question any witnesses and to address the adjudicator both on the evidence and generally on the subject matter of the appeal; and
- (b) the adjudicator may receive evidence of any fact which appears to him or her to be relevant notwithstanding that such evidence would be inadmissible in proceedings before a court.

(10) Without prejudice to regulation 7(4), where a party who has been sent a notice of the hearing of an appeal or otherwise notified of the hearing in accordance with regulation 8, fails to attend or be represented at the hearing, the adjudicator may dispose of the appeal in his or her absence.

Decisions on appeals

10.—(1) Where an appeal is disposed of at a hearing, the decision of the adjudicator may be given orally at the end of the hearing or reserved.

(2) Where an appeal has been disposed of, whether at a hearing or otherwise, the decision when given must be entered forthwith in the register with (save in the case of a decision by consent) a statement of the reasons for the decision and the proper officer must send a copy of that entry to each party.

Review of adjudicator's decision

11.—(1) The adjudicator has power on the application of a party, to review and revoke or vary any decision to dismiss or allow an appeal or any decision as to expenses on the grounds in each case that—

- (a) the decision was wrongly made as the result of an error on the part of his or her administrative staff;

- (b) a party who had failed to appear or be represented at a hearing had good and sufficient reason for his or her failure to appear;
- (c) where the decision was made after a hearing, new evidence has become available since the conclusion of the hearing the existence of which could not have been reasonably known of or foreseen;
- (d) where the decision was made without a hearing, new evidence has become available since the decision was made, the existence of which could not have been reasonably known of or foreseen; or
- (e) the interests of justice require such a review.

(2) An adjudicator has power, on the application of a party, to review and revoke or vary any interlocutory decision.

(3) An application under this regulation must be made to the proper officer within 14 days after the date on which a copy of the entry of the decision was sent to the parties and must state in full the grounds for that application.

(4) The parties have the opportunity to be heard on any application for review under this regulation and if, having reviewed the decision, the adjudicator directs the decision to be revoked, he or she shall substitute such decision as he or she thinks fit or order a redetermination by either the same or a different adjudicator.

(5) Regulation 10 applies to a decision under paragraph (1) as it applies to a decision made on the disposal of an appeal.

Expenses

12.—(1) The adjudicator is not normally to make an order as to expenses but may, subject to paragraph (2), make such an order—

- (a) against a party (including an appellant who has withdrawn his or her appeal or the parking authority if that authority has consented to an appeal being allowed) if he or she is of the opinion that that party has acted frivolously or vexatiously or that that party's conduct in making, pursuing or resisting an appeal was wholly unreasonable; or
- (b) against the parking authority where he or she considers that the disputed decision was wholly unreasonable.

(2) An order is not to be made under paragraph (1) against a party unless that party has been given an opportunity to make representations against the making of the order.

(3) An order under paragraph (1) is to require the party against whom it is made to pay to the other party a specified sum in respect of the expenses incurred by that other party in connection with the proceedings.

Conjoining of appeals

13.—(1) Where there are pending two or more appeals and at any time it appears to the adjudicator that—

- (a) some common question of law or fact arises in both or all the appeals; or
- (b) for some other reason it is desirable to make an order under this regulation,

the adjudicator may order that some or all of the appeals as may be specified in the order are to be considered together and may give such consequential directions as he or she may consider necessary.

(2) An order is not to be made under this regulation unless all parties concerned have been given an opportunity to make representations about the making of such an order.

Miscellaneous powers of the adjudicator

14.—(1) The adjudicator may, if he or she thinks fit—

- (a) extend the time appointed by or under these Regulations for doing any act notwithstanding that the time appointed may have expired;
- (b) if the appellant at any time gives notice of the withdrawal of his or her appeal, dismiss the proceedings;
- (c) if the parking authority consents to an appeal being allowed, allow the appeal;
- (d) if both or all of the parties agree in writing on the terms of a decision to be made by an adjudicator, decide accordingly; or
- (e) adjourn a hearing.

(2) The powers of the adjudicator conferred by—

- (a) these Regulations (other than regulation 11);
- (b) section 72(1)(b) of the Act; and
- (c) paragraph 5(1)(b) of schedule 6 of the Act,

may be exercised on his or her own motion or on the application of a party.

Clerical errors

15. Clerical errors or omissions in any document recording a direction or decision of the adjudicator may be corrected by the proper officer on the direction of the adjudicator.

Sending of documents

16.—(1) This regulation has effect in relation to any notice or other document required or authorised by these Regulations to be sent to a party to an appeal, to the proper officer or to any other person.

(2) Subject to paragraph (3), any such document is to be regarded as having been sent to the person concerned if it is—

- (a) delivered to him or her personally;
- (b) left at his or her proper address;
- (c) sent to him or her at that address by post or through a document exchange; or
- (d) transmitted to him or her by fax or other means of electronic data transmission in accordance with paragraphs (3), (4) and (5).

(3) A document may be transmitted by fax where the person concerned has indicated in writing that he or she is willing to regard the document as having been duly sent to him or her if it is transmitted to a specified fax number and the document is transmitted to that number.

(4) In the case of the parking authority, an indication under paragraph (3) can be expressed to apply to any appeal to which it is a respondent.

(5) Paragraphs (3) and (4) apply with the appropriate modification to a transmission of electronic data other than by fax as it applies to a transmission by fax.

(6) Regulations 3(4) and 5(4)—

- (a) are, in the case of a document transmitted by fax, satisfied if a copy of the signature of the relevant person appears on the transmitted copy; and
- (b) do not apply in relation to a document transmitted by other means of electronic data transmission.

(7) Where the proper address includes a numbered box number at a document exchange, a document may be sent by leaving the document addressed to that numbered box at that document exchange or at a document exchange which transmits documents every business day to that

exchange; and any document which is left at a document exchange in accordance with this paragraph is, unless the contrary is proved, deemed to have been delivered on the second business day following the day on which it is left.

(8) For the purposes of these Regulations and of section 7 of the Interpretation Act 1978(a) in its application to this regulation—

- (a) the proper address of the appellant is the address specified in his or her notice of appeal pursuant to regulation 3(2)(b) or (if no such address is so specified) the address stated pursuant to paragraph (2)(a) of that regulation; and
- (b) the proper address of the parking authority in proceedings in which it is the respondent is such address as the parking authority from time to time specifies in a notice sent to the proper officer as being the proper address in all such proceedings.

(9) If no address has been specified or stated, the proper address for the purposes of these Regulations and section 7 of the Interpretation Act 1978 is—

- (a) in the case of an individual, his or her usual or last known address;
- (b) in the case of a partnership, the principal or last known place of business within the United Kingdom; or
- (c) in the case of an incorporated or unincorporated body, the registered or principal office of that body.

(10) An appellant may at any time by notice in writing to the proper officer change his or her proper address for the purposes of these Regulations and section 7 of the Interpretation Act 1978.

(11) A party may by notice in writing sent to the proper officer vary or revoke any indication given by him or her under paragraph (3).

PART III

The Register

The Register

17.—(1) The register must be kept at the principal office of the adjudicator and is to be open to the inspection of any person without charge at all reasonable hours.

(2) The register need not be kept in visible or legible form.

(3) If the register is kept otherwise than in a legible form, the duty to allow inspection is to be treated as a duty to allow inspection of a reproduction in legible form of the entry the inspection of which is being sought.

(4) A document purporting to be certified by the proper officer to be a true copy of any entry of a decision in the register is sufficient evidence of that entry and of the matters contained therein.

H YOUSAF

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
14th February 2018

(a) 1978 c.30.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the procedure to be followed in relation to appeals before parking adjudicators against decisions of the parking authority under a decriminalised parking regime in the Midlothian local government area (regulations 3-16). The parking adjudicators are appointed under section 73 of the Road Traffic Act 1991 (“the 1991 Act”). That section, along with other provisions of that Act relating to the decriminalisation of certain parking offences, is applied with modifications, where appropriate, to Midlothian Council parking area by the Road Traffic (Permitted Parking Area and Special Parking Area) (Midlothian Council) Designation Order 2018.

The procedure relates to appeals under section 72 and paragraph 5 of schedule 6 of the 1991 Act.