ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE

AGENDA

9th Meeting, 2019 (Session 5)

Tuesday 12 March 2019

The Committee will meet at 9.30 am in the Robert Burns Room (CR1).

1. **Decision on taking business in private:** The Committee will decide whether to take item 5 in private.

2. **Wildlife Crime in Scotland: 2017 Annual Report:** The Committee will take evidence from—

   Detective Chief Superintendent David McLaren, Specialist Crime Division, Police Scotland;

   Sara Shaw, Head of Wildlife and Environmental Crime Unit, and David Green, Deputy Head of Specialist Casework & Head of the Scottish Fatalities Investigation Unit (SFIU), Crown Office and Procurator Fiscal Service;

   Mike Flynn, Chief Superintendent, Scottish SPCA.

3. **Subordinate legislation:** The Committee will take evidence on the Conservation of Salmon (Scotland) Amendment Regulations 2019 from—

   Simon Dryden, Policy Team Leader, Salmon and Recreational Fisheries, and Keith Main, Policy Manager, Salmon and Recreational Fisheries, Marine Scotland;

   Dr John Armstrong, Director of Freshwater Fisheries Laboratory, Marine Scotland.

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

   Conservation of Salmon (Scotland) Amendment Regulations 2019; and Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2019.
5. **Wildlife Crime in Scotland: 2017 Annual Report:** The Committee will consider the evidence heard earlier in the meeting.

Lynn Tullis
Clerk to the Environment, Climate Change and Land Reform Committee
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The papers for this meeting are as follows—

**Agenda item 2**

Wildlife Crime in Scotland: 2017 Annual Report cover note

PRIVATE PAPER

**Agenda item 3**

Subordinate legislation cover note

PRIVATE PAPER

**Agenda item 4**

Subordinate legislation cover note
Introduction

1. The purpose of today's evidence session is to explore the key findings of the *Wildlife Crime in Scotland 2017 Annual Report*. The Committee will also seek an update on issues identified in the previous year’s report.

2. The 2017 Annual Report was published on 21 December 2018. This paper sets out the background to this and previous annual reports.

3. The Committee will hear evidence from Police Scotland, the Crown Office Procurator Fiscal Service and the Scottish SPCA.

4. Previous work by the Committee on Wildlife Crime can be found on the Committee’s webpage.

Background

5. Section 20 of the *Wildlife and Natural Environment (Scotland) Act*, passed by the Scottish Parliament in 2011, introduced a requirement into the *Wildlife and Countryside Act 1981* that Scottish Ministers must, after the end of each calendar year, lay before the Scottish Parliament a report on offences relating to wildlife.

6. The reports published to date are listed below:

   - [Wildlife Crime in Scotland - 2013 Annual Report](#)
   - [Wildlife Crime in Scotland - 2016 Annual Report](#)

*Wildlife Crime in Scotland Annual Reports*

7. The Wildlife Crime in Scotland Annual Reports provide detailed data as to how wildlife crimes are handled and prosecuted in Scotland. Several organisations contribute data to this report which is collated by the Scottish Government.

8. Wildlife crime priority areas are set at a UK level. These are:

   - Badger persecution
   - Bat persecution
   - Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES)
   - Freshwater pearl mussels
   - Poaching (including deer poaching, hare coursing, fish poaching)
   - Raptor persecution
9. The annual reports include information broken down by these priority areas.

The 2017 Annual Report

10. The report covers the calendar year 2017, using data for the 2016-17 financial year.

11. The report contains the following chapters:

- **Headline trends** – containing information on wildlife crimes recorded by Police Scotland (including by division), Crown Office and Procurator Fiscal Service Statistics (including cases received, outcomes of reported cases, notable cases and criminal proceeding statistics, people with a charge of wildlife crime proved and penalties applied;

- **Additional data sources** - outlining information from sources such as Science and Advice for Scottish Agriculture (SASA), SAC Consulting Veterinary Services, Scottish Natural Heritage, the Scottish Society for the Prevention of Cruelty to Animals (SSPCA) and the National Wildlife Crime Unit (NWCU);

- **Wildlife Crime Priority areas** – Sections on each of the priority areas have been included. Wildlife crime priorities are set at a UK level by the Wildlife Crime Tasking and Co-ordinating Group. The priorities remain unchanged in 2016-2017. Information is provided on offences under the Protection of Wild Mammals (Scotland) Act 2002, in addition to trapping and snaring offences. Scottish Natural Heritage has also provided a “Health of Species” appraisal of the priority species falling within its remit;

- **PAW Scotland** – an update on the work of the Partnership for Action Against Wildlife Crime (PAW) Scotland;

- **Scottish Government** – an update on projects carried out by or on behalf of the Scottish Government throughout the period covered by the report;

- **Police Scotland** – Details of the work of Police Scotland throughout 2017;

- **Legislative changes** – information is provided on the Air Weapons and Licensing (Scotland) Act and its requirement from December 2016 for a person to have an air weapon certificate if they wish to use, possess, purchase or acquire an air weapon in Scotland, unless they are exempt under the legislation.

- **Priority work for 2018** – set out in the Scottish Government’s Programme for Government 2017-2018, includes:
  
  i. Take forward proposals with Police Scotland for new resources to tackle wildlife crime.
ii. Establish an independent group to consider how to ensure that the management of grouse moors is environmentally sustainable and compliant with the law.

iii. Commission work in relation to protecting gamekeepers’ employment and other rights.

iv. Commission a research project to examine the impact of large shooting estates on Scotland’s economy and biodiversity.

v. Establish an independent group to advise on effective and sustainable deer management.

vi. Progressing Lord Bonomy’s recommendations to strengthen the law on foxhunting and Professor Poustie’s recommendations to increase penalties for wildlife crime.

Key Findings

12. In the Ministerial Foreword to the report, the Cabinet Secretary highlights a number of key trends this year:

- A 50% reduction in hunting with dogs offences, down from an all-time high of 44 offences last year.
- A conviction rate of 96% for wildlife offences in the Scottish courts (the highest rate since 2012).
- The highest volume of wildlife crime was fish poaching (although this has reduced from the previous year from 75 to 68 offences).
- The number of poisoning incidents has decreased by a third this year.
- There were a number of incidents where tagged birds of prey disappeared (6 golden eagles and 3 hen harriers). As the birds or tags were not recovered, these were not recorded as crimes. The Cabinet Secretary, however, suggests that these disappearances were highly likely to be as a result of illegal killings.

13. The Cabinet Secretary also highlights actions taken to tackle wildlife crime this year, including:

- Increased resources for Police Scotland to tackle wildlife crime.
- A pilot wildlife crime scheme involving Special Constables in the Cairngorms National Park.
- The creation of a Grouse Moor Management Group in November 2017 to examine the environmental impact of grouse moor management
practices such as muirburn, the use of medicated grit and mountain hare culls.

- Ongoing partnership working with Police Scotland, Scottish Natural Heritage and the Scottish SPCA.

Recent Announcements


Public Petition

15. Committee Members may wish to note that the Public Petitions Committee is currently considering PE1705 on Wildlife – Penalties and Investigation. The petitioner has sent further submissions to the Committee ahead of this evidence session. These are included as Annexe A and Annexe B.

Previous Committee Consideration


17. This evidence covered:

   i. The admissibility of video evidence of alleged incidents of wildlife crime
   ii. Raptor persecution and associated conviction rates
   iii. Challenges in gathering wildlife crime evidence
   iv. The use of scientific data to understand wildlife crime hot-spots (e.g. in relation to birds disappearing)
   v. Preventative approaches towards wildlife crime
   vi. Improvements to the recording and reporting of wildlife crime
   vii. Use of DNA evidence to identify perpetrators of wildlife crime
   viii. Discussion of sector-specific problems – including badgers, bats, hunting with dogs, hare coursing and deer poaching.

18. At its meeting of 16 January 2018, the Committee considered the evidence heard from Police Scotland and the Crown Office Procurator Fiscal Service in the 2016 Annual Report and agreed to keep the matters raised in the evidence session under review.

19. At its meeting of 5 February 2019, the Committee decided it would seek an update from the Scottish Government on progress implementing the
recommendations of the Poustie Review report which was published in November 2015, specifically in relation to penalties for wildlife crime. The (then) Minister for Environment, Climate Change and Land Reform, issued a response to the report’s recommendations in February 2016.

20. In February 2019, the Committee also agreed that it would hear evidence on the Wildlife Crime in Scotland Annual Report 2017 from Police Scotland, the Crown Office Procurator Fiscal Office and the SSPCA.

Clerks/SPICe
Environment, Climate Change and Land Reform Committee
Annexe A

Additional evidence received from Alex Milne

Correspondence from Alex Milne to the ECCLR Committee, 6 March 2019.

This submission relates to the discussion on the admissibility of evidence at the meeting of the ECCLRC on 15th January 2018, which considered the 2016 wildlife crime report. The Crown Office Prosecution Service (COPFS) had responded to a letter from the convener of the committee giving some detail of the reasoning behind the decision to discontinue 2 court cases in March 2017. This was further examined at the January meeting.

The representatives of COPFS at the January meeting gave some additional details of the process by which admissibility is judged. Whilst it is true that prosecutors have a large amount of flexibility to decide whether prosecutions may proceed, admissibility to a large extent depends on a consideration of whether any perceived irregularity in the obtaining of evidence may be excused. The fact that prosecution decisions are entirely a matter for COPFS causes myself and MSPs some difficulty in what may be legitimately be discussed, and MSPs must not appear to question decisions lawfully made, but there are areas not previously raised where clarification may usefully be sought.

I was forwarded a letter to my MSP Ms Maureen Watt from Ms. Roseanna Cunningham, the Cabinet Secretary for Environment, Climate Change and Land Reform, which suggested in July 2017 that I contact COPFS for further details on the decisions. I did try to contact COPFS to obtain further details, but in my very limited correspondence with COPFS it was made clear to me that they would not communicate with me about the issues I raised or answer the questions I asked. I did however take up the suggestion made by COPFS to obtain independent legal advice, and this resulted in a submission I have made to the petitions committee about my petition PE01705, now lodged and having been considered once. The petition aims to ask the Scottish government to make suitable changes in the law such that wildlife crimes will likely reach court for a decision on admissibility.

This also leads me to suggest, as a completely separate matter, that members of the ECCLRC might themselves consider these general questions, which do not relate to any specific case or cases, but consider existing laws and admissibility.

I sent a letter on 22 February 2019 to the head of the Wildlife and Environmental Crime Unit at COPFS asking these questions, copied to the convener of the ECCLRC and others. As of 6 March 2019 I have not received an acknowledgement from COPFS. I did suggest that COPFS may wish to answer the questions direct to the convener if that was preferred, but I would not necessarily be aware of that. I said in the letter that if “I do not receive either acknowledgement or an answer in a reasonable time that you still do not consider it necessary or appropriate to communicate with me.” I have therefore taken the decision to make a submission to the ECCLRC, giving my opinion as to the answers to the questions. These answers have the benefit of independent legal advice, and this submission is made with the benefit of that advice, although extracted from a submission about PE1705, and are phrased somewhat differently. The questions are intended to be general, phrased in such a way as not to openly question any decisions made by COPFS, although they do directly relate to decisions.
The questions and my answers are as follows:

These questions are:

**Question a)** Is the statutory access right granted by section 1(2)(b) and 1(4)(b) of the Land Reform (Scotland) Act (LRA) to cross land granted to persons who may have intent, should an unlawful act be encountered, to take further measures including reporting the possible unlawful act to the police, and other actions, whether a perceived unlawful act is discovered or not?

**Answer a)** Yes

**Question b)** Is this a separate and additional right to that granted under 1(2)(a), 1(3) and 1(4)(a), which considers the purposes of the right to be on land?

**Answer b)** Yes

**Question c)** Provided that a perceived unlawful act is encountered in a public place and other conditions are satisfied, does the Regulation of Investigatory Powers (Scotland) Act 2000 under 1(2)(c), which includes the words: “otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under this Act to be sought for the carrying out of the surveillance”, grant persons the right to conduct surveillance activities without prior authorisation? Matters such as privacy and authorisation issues are more fully considered in the Office of Surveillance Commissioners 2016 Procedures & Guidance document Section 279 and elsewhere issued by the Investigatory Powers Commissioner's Office, and also in the Covert Surveillance and Property Interference Code of Practice section 3.30. published by the Scottish government.

**Answer c)** Yes

**Question d)** Should an individual such as myself encounter what they believe to be an unlawful trap when exercising rights under the LRA, what can such a person lawfully do in the way of actions preparatory to informing the police at the soonest opportunity of the presence of the trap, which would or would not not be permitted under the LRA, and which typical actions which an individual might undertake would not be able to be able to be excused due to a perceived irregularity?

**Answer d)** An individual has the right to take evidence, preferably without disturbing the scene of the probable unlawful act, including noting GPS coordinates, taking photographs, setting in place long time video and audio recording devices, whether automated or not, taking notes of anything which may be of interest to the police, and leaving security marked substances on the site which can be later be used to confirm if a particular person was likely at the scene after the substance was put in place. The individual should inform the police as soon as practicable of the actions taken, if they are unable to make an initial contact with the police from the location. If the police ask the individual to remain at the location and he is able to do so, he should comply with that request, and if later asked, he should assist the police in retrieval of the data from any apparatus left at the scene. None of these actions would be considered irregular if the evidence is later presented in court according to Scottish law as presently exists.
Correspondence from Alex Milne to the Crown Office, Wildlife and Environmental Crime Unit, 8 March, 2019.

I refer to your email of 8 March 2019 enclosing a letter to myself dated 7 March 2019.

I note that you do not consider it appropriate to comment on the questions in my letter or intend to contact the convener of the Environment, Climate Change and Land Reform Committee (ECCLRC) about my letter. This places me effectively in the same position I was in in July 2017 when the Cabinet Secretary for Environment, Climate Change and Land Reform suggested I should write to you for information but have so far not had any useful communication, perhaps even a slight insult to the Scottish Government office holder.

You did however suggest in September 2018 that I may wish to seek independent legal advice about the various matters. I am grateful for the suggestion, as I found it beneficial, even though my understanding of the Law did not change.

I am copying this letter to the ECCLRC as in my recent submission I stated that I had not received a response to the letter to which you replied. It does not change the position markedly, as the response was entirely negative. In case when you read the papers published on 7 March for the meeting you saw that I had made a submission to the committee but perhaps did not receive a copy, I enclose one with this letter. You will note that I asked the same 4 general questions which so far have not been addressed in any correspondence I can find, but I gave my version of the answers. My last letter, effectively rejected, suggested that the Crown Office Procurator Fiscal Service may wish to answer the same 4 questions. I am perfectly content to receive clear interpretations of Law markedly different to mine for the questions, but without any communication to the contrary, I am happy to maintain that my interpretation of the Law is likely correct. You and I will be aware that although general in nature, the 4 questions and answers are likely to have application in at least one case.

You will have seen that my submission is in front of members for the meeting at which you are to give evidence. It cannot be expected that you would have to hand the 4 answers at the busy meeting, but if members do, as I hope that they do, request that COPFS provide answers, I trust that you will ask Crown Counsel to provide them, perhaps to the committee convener, at a later date. I am content that the 4 answers may be markedly different from mine, but would ask to receive a copy of them if they are requested to be provided.

My petition PE1705 seeks changes to the Law to allow wildlife crime cases to reach court, and is therefore not an appropriate place to discuss admissibility. The ECCLRC, however, has still an interest in admissibility, as I’m sure that you are aware, and I may yet be persuaded to raid my reduced piggy bank for the cost of a new car again, if I am uncertain as to the points of Scottish Law in any response from COPFS, should one be agreed to be provided by COPFS to members during the meeting.
SSI 2019/56: Conservation of Salmon (Scotland) Amendment Regulations 2019

Type of Instrument: Negative

Laid Date: 20 February 2019

Meeting Date: 12 March 2019

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: 25 March 2019

Background

1. The Conservation of Salmon (Scotland) Amendment Regulations 2019 (SSI 2019/56) were laid in the Scottish Parliament on 20 February 2019 and referred to the Environment, Climate Change and Land Reform Committee for consideration under the negative procedure.

2. The Committee last considered the Salmon Regulations at its 9th meeting of 2018 (13 March 2018) when the Conservation of Salmon (Scotland) Amendment Regulations 2018 (SSI 2018/37) was laid. The Committee raised several issues when considering this instrument, including the robustness of the methodology used. The Cabinet Secretary has since addressed some of the Committee’s concerns, including in letters dated 24 October 2018 and 20 February 2019.

Committee consideration

3. The Committee will take evidence from Scottish Government officials and formally consider the instrument.

Purpose

4. Salmon is a protected species under the EU Habitats Directive and the Scottish Government intends to continue following the principles and policies set out in the Directive following the UK’s withdrawal from the European Union.

5. As the policy note states, the purpose of the instrument is to amend the Conservation of Salmon (Scotland) Regulations 2016 – which make provision to regulate the killing of salmon in specified areas – to reflect the most recent stock
assessment for the 2019 fishing season. These regulations set out a mandatory catch and release regime for Atlantic salmon caught in coastal waters, and in specified inland waters by prohibiting the retention of salmon. This is the fourth time that an annual assessment of conservation status has been undertaken.

6. The assessment model for the 2019 fishing season categorised 173 rivers or assessment groups, including 17 Special Areas of Conservation (SACs), according to their conservation status.

7. The Scottish Government has described the process of the development of the instrument on its website, including details of a public consultation. A table of the grading of each river is also available online and is included in Annexe C, and the Scottish Government’s assessment document is also included in Annexe D. These new measures would come into force on 1 April 2019.

8. The SSI is being laid before the Scottish Parliament under section 68(2) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003. The negative instrument is subject to annulment within 40 days of it being laid.

9. A copy of the Scottish Government’s Policy Note is included in Annexe A.

10. A copy of the Scottish Government’s Business and Regulatory Impact Assessment is included in Annex B.

Delegated Powers and Law Reform Committee (DPLRC)

11. At its meeting on 5 March 2019, the DPLRC considered the instrument and had no comments to make.

Procedure for Negative Instruments

12. 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.

13. 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.

Clerks, Environment, Climate Change and Land Reform Committee
POLICY NOTE
THE CONSERVATION OF SALMON (SCOTLAND) AMENDMENT
REGULATIONS 2019
SSI 2019/56

Policy Objectives

1. Salmon is a protected species under the EU Habitats Directive and the Scottish Government will continue to follow the principles and policies set out in the Directive following the UK’s withdrawal from the European Union. In addition, the North Atlantic Salmon Conservation Organisation (NASCO)\(^1\) provides guidance that makes it clear that fisheries are best managed on a single river stock basis and that action should be taken to reduce the risks posed by any Mixed Stock Fisheries (those fisheries exploiting salmon from more than one river). Salmon continue to face many pressures in the marine and freshwater environment and there is an ongoing need to ensure and to demonstrate that any killing of wild salmon in Scottish waters is sustainable. In addition, greater protection and enhancement of stocks will help to maximise the socio-economic benefits that flow from them.

2. The Conservation of Salmon (Scotland) Amendment Regulations 2019 amend the Conservation of Salmon (Scotland) Regulations 2016 (‘the 2016 Regulations’) which make provision for the conservation of salmon in Scotland. The purpose of the 2016 Regulations is to ensure that the killing of Atlantic salmon in Scotland is managed by assessing and categorising specified areas of inland water in relation to their conservation status. The 2016 Regulations prohibit the retention of Atlantic salmon caught in any coastal waters in a salmon fishery district and in specified areas of inland waters. In addition, Ministers may agree a conservation plan with the local district salmon fishery board or salmon fishery proprietors, particularly in Special Areas of Conservation (SACs) where stocks have been identified as being in poor conservation status.

3. The 2016 Regulations place a statutory duty on the Scottish Ministers to carry out an assessment of the stock levels for salmon in inland waters for the purposes of establishing the conservation status of salmon in defined areas. This assessment is carried out annually. Where an area of inland waters includes a SAC the Scottish Ministers must have regard to the conservation objectives of the SAC when carrying out their assessment. The purpose of the assessment is to determine whether fishing is sustainable in the area in question. The assessment process entails the collation of information on population levels of salmon in each area based on rod catch statistics and other data including information from in-river fish counters.

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\(^1\) The Convention for the Conservation of Salmon in the North Atlantic Ocean is a multilateral agreement which came into force on 1st October 1983. Its aim is to promote the conservation, restoration, enhancement and rational management of salmon stocks in the North Atlantic through international co-operation. The EU is one of the contracting parties. One of the measures in the Convention is the prohibition of fishing for salmon outwith the 12 mile zone in coastal States (article 2.2). It also makes general provision regarding the availability, and sharing, of statistics for catch as well as stocks and the provision of scientific data. NASCO, the North Atlantic Salmon Conservation Organisation, is the international organisation established by the Convention.
4. Since the introduction of the 2016 Regulations, Marine Scotland has engaged with the sector to develop and improve the annual conservation assessment process and the robustness of the data used in the assessment. In the past year, for example, Marine Scotland has refined the methodology used to define egg deposition targets, moving from an all-Scotland to more specific targets for individual rivers or assessment groups. The impact of this change has been to reduce the egg targets used in the assessments.

Legislative Context

5. Section 38(1) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (‘the 2003 Act’) enables the Scottish Ministers to make regulations considered necessary or expedient for the conservation of salmon. The Conservation of Salmon (Scotland) Regulations 2016 were made in February 2016 and came into force on 31 March 2016. Previous Amendment Regulations, reflecting developments in the assessment process and the outcomes of the annual assessment came into force on 1 April 2017 and 2018. The purpose of the current Regulations is to amend the 2016 Regulations to reflect the most recent stock assessment, for the 2019 fishing season.

The Regulations

6. The Conservation of Salmon (Scotland) Amendment Regulations 2019 amend the 2016 Regulations. Regulations 2(2) and (3) amend the 2016 Regulations by removing regulation 3(2A) which provides that the prohibition on retaining salmon caught in inland waters does not apply to any salmon caught on or after 1st July 2017 in the River Ness and all inland waters which drain, or drain to some extent, to the outflow point, but excluding the River Moriston and all areas of inland waters which drain, or drain to some extent, to the outflow point on the north shore of Loch Ness at Invermoriston. Both rivers are assessed at Grade 1 for 2019 and therefore this provision is no longer required. Regulation 2(4) substitutes schedule 2 of the 2016 Regulations. Schedule 2 describes the areas of inland waters where there is a prohibition on the retention of any salmon caught.

Consultation

7. In accordance with paragraphs 10 and 11 of schedule 1 of the 2003 Act, the Scottish Ministers have consulted with such persons they considered appropriate and have given notice of the general effect of their proposals by way of an advertisement in three national newspapers. The consultation period ran from 25 October to 23 November 2018.

8. A total of 39 responses were received to the consultation and, in accordance with paragraphs 12 and 14(1) of schedule 1 of the 2003 Act, Ministers have considered each of these. The representations covered a range of issues, from those who objected to rivers being assessed at Grade 3 (mandatory catch and release); several submissions questioning the assessment approach; and a number who consider a higher grading awarded for this year could be seen as counter-productive given the overall downward trend in salmon numbers and the difficult fishing conditions in 2018.
9. Marine Scotland has responded to each of the submissions received, with a view to answering the points made. In one case, missing catch data was obtained for fisheries in the North Harris SAC, which had the effect of raising the grading from Grade 3 to Grade 1, allowing the exploitation of salmon in the new season. Ministers did not, however, consider that any other changes were required to the proposals as advertised.

**Impact and Financial effects**

10. A **Business and Regulatory Impact Assessment (BRIA)** has been prepared for these Regulations.

_Marine Scotland_
_February 2019_
Title of Proposal
The Conservation Of Salmon (Scotland) Amendment Regulations 2019

Purpose and intended effect

Background
The Conservation of Salmon (Scotland) Amendment Regulations 2019 amend the Conservation of Salmon (Scotland) Regulations 2016 (‘the 2016 Regulations’) which make provision for the conservation of salmon in Scotland. The regulations set out a mandatory catch and release regime for Atlantic salmon caught in coastal waters, and in specified inland waters by prohibiting the retention of salmon. This is the fourth time that an annual assessment of conservation status has been undertaken. The assessment model for the 2019 fishing season categorised 173 rivers or assessment groups, including 17 Special Areas of Conservation (SACs), according to their conservation status.

Objective
The package of regulatory measures places a statutory duty on the Scottish Ministers to carry out an assessment of the conservation status of salmon in specified inland waters. Where areas include a Special Area of Conservation (SAC) Ministers must have regard to the conservation objectives for that SAC. The purpose of the assessment is to determine whether fishing is sustainable in each area.

Rationale for Government intervention
Salmon is a protected species under the EU Habitats Directive and the Scottish Government will continue to follow the principles and policies set out in the Directive following the UK’s withdrawal from the European Union. In addition, the North Atlantic Salmon Conservation Organisation (NASCO) provides guidance that makes it clear that fisheries are best managed on a single river stock basis and that action should be taken to reduce the risks posed by any Mixed Stock Fisheries (those fisheries exploiting salmon from more than one river).

Salmon continue to face many pressures in the marine and freshwater environment and there is an ongoing need to ensure and to demonstrate that any killing of wild salmon in Scotland is sustainable. In addition, greater protection and enhancement of stocks will help to maximise the socio-economic benefits that flow from them.

Consultation
Within Government
Discussions took place with Scottish Natural Heritage (SNH), Scottish Environmental Protection Agency (SEPA) and the Crown Office and Procurator Fiscal Service around the early development of the Regulations. In addition, Marine Scotland set up
a Local Biologist Liaison Group to coordinate the involvement of local biologists throughout Scotland in refining the data and methods used to determine conservation status. Marine Scotland and the Salmon Liaison Group (SLG) continue to work closely with the aim of improving the assessment process and the robustness of the data used in the assessment.

Public Consultation
1. For the 2019 fishing season Ministers have consulted with such persons they considered appropriate and have given notice of the general effect of their proposals by way of an advertisement in three national newspapers. The consultation period ran from 25 October to 23 November 2018. In addition, more than 1,500 individuals and organisations were alerted by e-mail to the consultation.

A total of 39 written representations and objections were received from individuals and organisations including angling clubs, district salmon fishery boards (DSFBs), fishery owners and local businesses. These covered a range of issues, from those who objected to rivers being assessed at Grade 3 (mandatory catch and release); several submissions questioning the assessment approach; and a number who consider a higher grading awarded for this year could be seen as counter-productive given the overall downward trend in salmon numbers and the difficult fishing conditions in 2018. Each of these has been considered in finalising the draft amendment regulations and Marine Scotland has responded to each of the submissions received, with a view to answering the points made.

Business
For the 2019 season we have continued to engage with those sectors directly impacted by the measures, both through regular liaison group meetings and through the public consultation process. The majority of recent representations and discussions have taken place with district salmon fishery boards, angling clubs and individuals involved in angling. We did not receive any representations from the wider business sector.

Options
A detailed assessment of options was carried out prior to introducing the original Conservation of Salmon (Scotland) Regulations 2016.

The Conservation of Salmon (Scotland) Amendment Regulations 2019 do not introduce any new or changed policies, but give effect to the outcomes of the fourth annual assessment of the conservation status of salmon. This has been undertaken to meet a previous Ministerial commitment to carry out such an assessment.

Option 1: Do nothing
Under this option the current regulations would remain in force. These are based on an out of date assessment. This would not meet Ministers’ commitment to protect and conserve salmon stocks, and would not be addressing concerns expressed by the European Commission about how we are applying the requirements under the Habitats Directive in relation to wild salmon.
Option 2: Place a greater emphasis on local voluntary conservation measures
While local voluntary conservation measures have had some success in the past - the practice of catch and release is already widely observed in Scotland with some 0% of all rod caught salmon released in 2016 – such measures are not consistent cross Scotland and do not incorporate any evidence that they relate and/or meet the requirements of the Habitats Directive. In addition, the high nature of catch and release Scotland should be seen in the context of continuing concerns around salmon stocks and the need to take more proactive action to protect them.

Option 3: Statutory measures to manage the killing of wild salmon in Scotland.
There is an on-going need to ensure and be seen to be demonstrating that any killing of Atlantic salmon is sustainable. In addition, greater protection and enhancement of stocks will help to maximise the socio-economic benefits that flow from them. Salmon continue to face many pressures in the marine and freshwater environment.

Sectors and groups affected

Grade 3 categorisation – mandatory catch and release
A number of angling clubs have concerns about a reported decline in the renewal of club memberships because of the inability to kill a salmon (but still the ability to fish) and in spite of the current high levels of catch and release across Scotland. While such concerns have been expressed in response to recent public consultations, none of those responding have provided detailed evidence of such impact. In addition, this concern should be viewed against a long term trend away from annual membership and towards a more flexible “day ticket” approach to angling.

Benefits
The package of regulatory measures places a statutory duty on the Scottish Ministers to carry out an assessment of the conservation status of salmon in inland waters. The purpose of the assessment is to determine whether fishing is sustainable in the area in question. The impact of fishing on the conservation objectives of each SAC and the ecological requirements of Atlantic salmon form part of the wider consideration of the likely significance of the effect netting/angling may have on designated sites.

Where there is a favourable conservation status for an area it is accorded a grade 1 or 2 status. For those areas where there is no favourable conservation status for Atlantic salmon, a grade 3 status is applied. Those areas listed in Schedule 2 to the 2016 Regulations, where retaining salmon is prohibited, are those areas which have been accorded category 3 status.

Costs
The conservation measures, including the continuing prohibition on the retention of salmon outwith estuary limits, has given rise to concerns expressed by a number of individuals and angling clubs, a number of whom have suggested that a decline in their membership is directly associated with the inability to kill a salmon (even with the high evidence of voluntary catch and release already evidenced in Scotland). Ministers remain committed to examining ways in which to support angling clubs going forward.
Scottish Firms Impact Test
We have engaged with representative bodies and individual businesses during the development of the conservation measures and, during the consultation period in 2018, specifically sought information on the potential financial impact of the proposed conservation measures. Those firms affected by the proposals range from small individual netting companies to larger sporting estates. Whilst some respondents expressed concern that there would potentially be a financial loss to their business they were unable to quantify the extent or provide any financial information.

Competition Assessment
The measures will restrict fishing to a catch and release regime in many areas of Scotland.

Test run of business forms
No new forms will be introduced

Legal Aid Impact Test
There are no legal aid implications associated with this legislation.

Enforcement, sanctions and monitoring
Enforcement will be through the powers within the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003. Failure to comply with the 2016 Regulations is an offence under section 38(7) of the 2003 Act. A person who is found guilty of an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Implementation and delivery plan
The new measures will come into force on 1 April 2019.

Post-implementation review
The impact of the package of regulatory measures and the use of data in the assessment process will continue to be reviewed on an annual basis.

Summary and recommendation
In recognition of continuing concerns about salmon stocks and the pressures that they face there is a need to ensure and be seen to be demonstrating that any killing is sustainable. The package of regulatory measures seeks to protect the weakest stocks by requiring catch and release in a number of areas to allow stocks to recover or at the very least maintain them at current levels.

Scottish Ministers consider that the package of measures set out in the 2016 Regulations, to be amended in the light of the most recent assessment of stocks, strikes the right balance between the interests of those who fish for salmon and the conservation of the species for the benefit of future generations.
Declaration and publication
I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed:

Date: 18th February 2019

Roseanna Cunningham
Cabinet Secretary for Environment, Climate Change and Land Reform

Scottish Government contact point: Keith Main
## Conservation of Salmon – Assessment for the 2019 season

### Annexe C

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<td>Stenscholl River</td>
<td>NG 4760 6848</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>NG 4847 6820</td>
<td></td>
<td></td>
</tr>
<tr>
<td>n/a</td>
<td>3</td>
<td>Lealt River</td>
<td>NG 5203 6046</td>
<td>3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>3</td>
<td>River Sliochachan</td>
<td>NG 4908 3044</td>
<td>3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>3</td>
<td>Varragill River</td>
<td>NG 4786 4122</td>
<td>2</td>
<td>▲</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>3</td>
<td>Small Isles</td>
<td>No individual river data held</td>
<td></td>
<td>***</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>3</td>
<td>Snizort</td>
<td>Drynoch and Eynort</td>
<td></td>
<td>3</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Eynort River</td>
<td>NG 3810 2644</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>River Drynoch</td>
<td>NG 4062 3140</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>3</td>
<td></td>
<td>Fhionnairgh and Scavaig</td>
<td>Abhainn Camas Fhionnairgh</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>NG 5096 1880</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Scavaig River</td>
<td>NG 4874 1949</td>
<td>New</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Ant-Statha Mhoir</td>
<td>5642 2239</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>3</td>
<td>Hinnisdal to Haultin</td>
<td>River Haultin</td>
<td>NG 4168 5173</td>
<td>2</td>
<td>▲</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>River Hinnisdal</td>
<td>NG 3828 5755</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>River Romesdal</td>
<td>NG 4079 5338</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>3</td>
<td></td>
<td>River Ose</td>
<td>NG 3137 4063</td>
<td>2</td>
<td>▲</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>River Snizort</td>
<td>NG 4137 4878</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Final grade for 2017</td>
<td>Final grade for 2018</td>
<td>District</td>
<td>River Name</td>
<td>Outflow point</td>
<td>Grade for 2019</td>
<td>Change</td>
</tr>
<tr>
<td>---------------------</td>
<td>---------------------</td>
<td>----------</td>
<td>-----------------------------</td>
<td>---------------</td>
<td>----------------</td>
<td>--------</td>
</tr>
<tr>
<td>1</td>
<td>2</td>
<td>South Esk</td>
<td>River South Esk SAC</td>
<td>NO 6753 5771</td>
<td>1</td>
<td>▲</td>
</tr>
<tr>
<td>1</td>
<td>1</td>
<td>Spey</td>
<td>River Spey SAC</td>
<td>NJ 3439 6567</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>1</td>
<td>Stinchar</td>
<td>River Stinchar</td>
<td>NY 0810 8166</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>3</td>
<td>Strathy</td>
<td>River Strathy</td>
<td>NC 8346 6578</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>3</td>
<td>Sunart</td>
<td>Carnoch River</td>
<td>NM 8352 6071</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>3</td>
<td>Tay</td>
<td>River Earn</td>
<td>NO 1980 1865</td>
<td>2</td>
<td>▲</td>
</tr>
<tr>
<td>2</td>
<td>3</td>
<td>Eden</td>
<td>River Eden</td>
<td>NO 4519 1919</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>1</td>
<td>Thurso</td>
<td>River Thurso SAC</td>
<td>ND 1176 6817</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>3</td>
<td>Torridon</td>
<td>River Torridon</td>
<td>NG 8095 5510</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>1</td>
<td>Tweed</td>
<td>River Tweed SAC</td>
<td>NU 0010 5228</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>3</td>
<td>Ugie</td>
<td>River Ugie</td>
<td>NK 1217 4739</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>3</td>
<td>Ullapool</td>
<td>Ullapool River</td>
<td>NH 1233 9469</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>2</td>
<td>Urr</td>
<td>Urr Water</td>
<td>NX 8362 5458</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>1</td>
<td>Wick</td>
<td>Wick River</td>
<td>ND 3623 5089</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>3</td>
<td>Ythan</td>
<td>River Ythan</td>
<td>NK 0063 2441</td>
<td>3</td>
<td></td>
</tr>
</tbody>
</table>

* The River Leven (Dunbartonshire) is awarded a Grade 2 due to the presence of the Endrick Water SAC, also Grade 2, within the system.
** The River Teith SAC excludes: 1) the Allan Waters which drains to NS 7686 9603 and 2) all inland waters which drain to NS 7695 9614.
*** No individual river data is held in 8 Districts - These remain Grade 3 for 2019.

**Summary**

<table>
<thead>
<tr>
<th>Category</th>
<th>2016 (Districts)</th>
<th>2017 (Rivers)</th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>11</td>
<td>47</td>
<td>28</td>
<td>49</td>
</tr>
<tr>
<td>2</td>
<td>15</td>
<td>48</td>
<td>21</td>
<td>30</td>
</tr>
<tr>
<td>3</td>
<td>82</td>
<td>73</td>
<td>122</td>
<td>94</td>
</tr>
</tbody>
</table>

▲ Grade rises one level 28
▲▲ Grade rises two levels 15
▼ Grade falls one level 7
▼▼ Grade falls two levels 1
CONSERVATION OF SALMON – ASSESSMENT FOR THE 2019 SEASON

BACKGROUND

1. The Conservation of Salmon (Scotland) Regulations 2016 outlined for the first time a system whereby the killing of Atlantic salmon in inland waters is managed on an annual basis by categorising the conservation status of their stocks.

2. The conservation status of stocks is assessed on a river by river basis, except those areas where fishery catch cannot be assigned to individual rivers. The conservation status of each stock is defined by the probability of the stock meeting its conservation limit over a five-year period. Rather than a simple pass or fail, stocks are allocated to one of three grades, each with its own recommended management actions:

<table>
<thead>
<tr>
<th>Category</th>
<th>Probability of Meeting Conservation Limit</th>
<th>Advice</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>At least 80%</td>
<td>Exploitation is sustainable therefore no additional management action is currently required. This recognises the effectiveness of existing non-statutory local management interventions.</td>
</tr>
<tr>
<td>2</td>
<td>60-80%</td>
<td>Management action is necessary to reduce exploitation: catch and release should be promoted strongly in the first instance. The need for mandatory catch and release will be reviewed annually.</td>
</tr>
<tr>
<td>3</td>
<td>Less than 60%</td>
<td>Exploitation is unsustainable therefore management actions required to reduce exploitation for 1 year i.e. mandatory catch and release (all methods).</td>
</tr>
</tbody>
</table>

NOTE - The definition of Grade 2 status has changed slightly for 2019, giving greater emphasis to promoting catch and release as one management intervention to support and improve the conservation status of salmon stocks.

CHANGES TO THE ASSESSMENT

3. The overall structure and methodology for assessing the sustainability of salmon stocks has remained the same as in previous years. However, there are two changes between the 2018 and 2019 assessments which might be noted: the way in which the egg requirements for each river are calculated; and the estimate of numbers of returning adults.

Egg requirements

4. In previous years the number of salmon eggs required was estimated to fall between 1.1 and 9.8 eggs for every square metre of wetted area of salmon habitat. This was used in the absence of Scotland specific information and Marine Scotland has been working to produce Scotland specific egg requirements. The new egg requirements are based on information from 11 sites in Scotland and allow targets to
differ between areas. The new estimates are all lower than those used previously, mostly substantially so. However, as shown in the Table below, these new estimates are generally in line with egg requirements used in other countries in their assessments of salmon conservation status.

<table>
<thead>
<tr>
<th>Area</th>
<th>Median egg requirement</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scotland</td>
<td>2.1</td>
<td>0.7-8.3</td>
</tr>
<tr>
<td>England &amp; Wales</td>
<td>2.2</td>
<td>0.7-4.0</td>
</tr>
<tr>
<td>Ireland</td>
<td>-</td>
<td>2.0-4.5</td>
</tr>
<tr>
<td>Norway</td>
<td>-</td>
<td>0.5-7.0</td>
</tr>
</tbody>
</table>

**Adult assessments**

5. Following feedback from stakeholders the methods used to estimate the numbers of adults from rod catches have been re-examined. The updated methods remove any geographic component from the process with the relationship between catch and salmon numbers being determined by month and the flow conditions. The rod catches and the estimated adult abundance can then be compared to produce an annual exploitation rate for each assessment areas. Exploitation rates derived for Scotland are slightly larger than those from Ireland, similar to those from England & Wales and generally lower than those used in Norway.

<table>
<thead>
<tr>
<th>Area</th>
<th>Median exploitation</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scotland</td>
<td>15</td>
<td>7-38</td>
</tr>
<tr>
<td>England &amp; Wales</td>
<td>16.5</td>
<td>7-49</td>
</tr>
<tr>
<td>Ireland</td>
<td>11</td>
<td>4-30</td>
</tr>
<tr>
<td>Norway</td>
<td>-</td>
<td>10-80</td>
</tr>
</tbody>
</table>

**Overall impact**

6. The overall effect of these changes is that, despite a general and continuing decline in catches and counts, the number of areas in grade 1 and 2 is higher in the 2019 assessment compared to the 2018 regulations.
PUBLIC CONSULTATION - OUTCOMES

7. The Scottish Government carried out a full public consultation on the outcomes of the latest assessment during October and November 2018. In total, 39 individuals and organisations responded to the invitation to comment. It is clear from some of the responses received that there is still some disagreement and misunderstanding about the modelling process, with 14 out of 39 responses questioning the assessment overall.

8. Of the other, more specific comments:
   - Six people responding argued that the grading of their river is too low, and that they should be allowed to retain salmon;
   - Eight people are concerned that the grading is overstated, and that this gives a false impression of the overall trends in salmon status;
   - Seven respondents were concerned that the assessment does not take account of fishing effort, and that low effort leads to low catches and therefore a lower grading for the river in future years; and
   - A number of people argued that the model should not rely on catch data, but use juvenile modelling to estimate salmon abundance.

CONSERVATION OF SALMON REGULATIONS

9. The Scottish Ministers have considered all of the points raised and have taken the view that the gradings proposed in the consultation remain valid, subject to one change for the North Harris SAC, which has risen from Grade 3 to Grade 1.

10. Ministers have now made regulations for the 2019 salmon season. These replace the current schedule which details the specific inland waters which are subject to the prohibition on retaining salmon. In addition, the regulations make a number of small changes to the text of the main regulations. These remove Regulation 3(2A) which was introduced in April 2017 to set specific catch and release requirements with regard to the Rivers Ness and Moriston. Both rivers are assessed at Grade 1 for 2019 and therefore this provision is no longer required.

RIVER TWEED

11. Separate legislation and arrangements are in place for the management of salmon and freshwater fisheries in the River Tweed district. The Tweed Regulation (Salmon Conservation) (No. 2) Order 2016 (“the Tweed No. 2 Order”) came into force on 1 April 2017 and made provision to regulate the taking of salmon in the district. The outcome of the conservation assessment for the river for the 2019 season again accords the Tweed Category 1 status.

FUTURE DEVELOPMENTS

12. The Scottish Government is continuing to develop the assessment model, responding to concerns and issues raised by stakeholders and aiming to develop longer term improvements to the assessment process. In particular:
Freeze the model – the assessment methodology will be frozen for two years beyond the 2019 season. This will allow a period of stability for stakeholders in terms of the scientific basis for the assessments and give time to assess the potential for developing a complementary juvenile assessment. Although the structure of the model will be frozen, we will continue to use the most up to date data, utilising the latest 5 year rod catch returns and fish counter data, for example, to assess the sustainability of exploitation annually;

Juvenile assessment tool - a national juvenile electro-fishing project across 27 regions commenced in July 2018. The project aims to provide a harmonised estimate of numbers of young salmon across Scottish rivers, and data will be compared with the background model as part of the development of a juvenile assessment tool;

Peer review - freezing the model will also allow time for a scientific peer review of the model; and

Rod effort data – from the 2019 season we are asking anglers, proprietors and owners of fisheries to complete a simple new return reporting rod effort as the total number of rod days fished for salmon in each month. Data on rod fishing effort can be used to estimate catch per unit effort or to allocate individual rivers into groups representing heavily to lightly fished rivers. Our aim is to use these data to increase accuracy of estimates of the total number of fish returning to rivers and to help explain trends in rod catch data.
Environment, Climate Change and Land Reform Committee
9th Meeting, 2019 (Session 5), Tuesday 12 March 2019

SSI 2019/64: The Conservation (Natural Habitats &c.) Amendment (Scotland) Regulations 2019

Type of Instrument: Negative

Laid Date: 22 February 2019

Meeting Date: 12 March 2019

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 April 2019

Purpose


2. The negative instrument is subject to annulment within 40 days of it being laid.

3. A copy of the Scottish Government’s Policy Note is included in Annexe 1.

4. A copy of the Scottish Government’s Business and Regulatory Impact Assessment is included in Annexe 2.

5. A copy of a letter from the Cabinet Secretary, received on Monday 25 February, setting out additional detail in respect of the management regime in included as Annexe 3. Further guidance has been submitted by SNH (Annexe 4). This was published by SNH on 1 March 2019. The Committee understands that this may be subject to further refinement.

Delegated Powers and Law Reform Committee (DPLRC)

6. At its meeting on 5 March 2019, the DPLRC considered the instrument and had no comments.
Environment Climate Change and Land Reform Committee consideration

7. The Committee previously heard from Scottish Government officials and from SNH on 5 March on the SSI.

8. A submission received from the NFUS is included as Annexe 5.

Procedure for Negative Instruments

9. 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.

10. 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.
POLICY NOTE
THE CONSERVATION (NATURAL HABITATS &C.) AMENDMENT (SCOTLAND) REGULATIONS 2019
SSI 2019/64

The above instrument was made under section 2(2) of the European Communities Act 1972. The instrument is subject to the negative procedure.

Policy objectives

Scottish Ministers announced on 24 November 2016 that the beaver populations in Knapdale in Argyll and in the Tay and Earn catchments can remain in Scotland, subject to satisfactory completion of a Strategic Environmental Assessment (SEA) and a Habitats Regulations Assessment (HRA). The intention was that beavers in Scotland would be given protection under the law as a European Protected Species (EPS) as soon as is practicable after completion of the Assessment processes.

The Order adds the Eurasian or European beaver (Castor fiber), to Schedule 2 of the Conservation (Natural Habitats, &c.) Regulations 1994. Schedule 2 lists those species that have European Protected Species status. The species that are currently listed on Schedule 2 are—

- Bats, Horseshoe (all species) Rhinolophidae
- Bats, Typical (all species) Vespertilionidae
- Butterfly, Large Blue Maculinea arion
- Cat, Wild Felis silvestris
- Dolphins, porpoises and whales (all species) Cetacea
- Dormouse Muscardinus avellanarius
- Lizard, Sand Lacerta agilis
- Newt, Great Crested (or Warty) Triturus cristatus
- Otter, Common Lutra lutra
- Snake, Smooth Coronella austriaca
- Sturgeon Acipenser sturio
- Toad, Natterjack Bufo calamita
- Turtles, Marine Caretta caretta, Chelonia mydas, Lepidochelys kempii, Eretmochelys imbricata, Dermochelys coriacea Beavers are currently not afforded any protection. Beavers are within their natural range in Scotland and as such, they are entitled to protection under Article 12 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (“the Habitats Directive”). This legislation is therefore necessary to comply with the Habitats Directive. By adding beavers to Schedule 2 of the Conservation (Natural Habitats, &c.) Regulations 1994, and giving them European protected species status, it will be an offence to deliberately or recklessly:
• capture, injure or kill such an animal
• harass an animal or group of animals
• disturb an animal while it is occupying a structure or place used for shelter or protection
• disturb an animal while it is rearing or otherwise caring for its young
• obstruct access to a breeding site or resting place, or otherwise deny an animal use of a breeding site or resting place
• disturb an animal in a manner or in circumstances likely to significantly affect the local distribution or abundance of the species
• disturb an animal in a manner or in circumstances likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young
• disturb an animal while it is migrating or hibernating

It is an offence of strict liability to damage or destroy a breeding site or resting place of such an animal. These sites and places are protected even when the animal isn’t present.

Legislative Background

The Order is made under section 2(2) of the European Communities Act 1972.

Consultation

As required by Section 16(2) of the Environmental Assessment (Scotland) Act 2005, the Scottish Government consulted on the documents relating to the Strategic Environmental Assessment Report. The consultation on Citizen Space opened on 12 December 2017 and closed on 6 March 2018. The Scottish Government received 533 responses to this consultation, both from organisations (39) and individuals (494). The Analysis of Consultation Responses Report was published on 17 October 2018 which highlighted that the Strategic Environmental Assessment Environmental Report had correctly identified potential impacts and appropriate mitigation measures regarding the reintroduction of beavers to Scotland.

Impact Assessments

A Strategic Environmental Assessment (SEA) and the Habitats Regulations Appraisal (HRA) were carried out in May 2017. The SEA assessed the impact on protected sites that could be affected by beavers. It concluded that the impacts were acceptable provided appropriate mitigation was put in place. The SEA also concluded beaver impacts were manageable. The HRA assessed the potential negative effects beavers may have on Natura sites. The HRA concluded that adverse effects will be avoided on the integrity of 34 European sites within the Beaver Policy Area taking into account the current range of mitigation techniques which are available. Regarding 47 of the 67 qualifying interests affected it was concluded that mitigation measures would be required to avoid effects on site integrity. There were no Natura sites where it was concluded there would be an adverse effect on their integrity.

Business Regulatory Impact Assessment (BRIA)

A BRIA has been prepared for this Order and has been placed in the Scottish Parliament Information Centre.
Equalities impact assessment

There are no equality impact issues.

Scottish Government
Environment and Forestry Directorate
February 2019
1. Title of Proposal
The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2019

2. Purpose and intended effect

Background
While beavers have an overall positive effect on biodiversity, their ability to modify their environment can have a detrimental impact on some types of farming systems affecting livestock and machinery, and the undermining of flood defences that can pose a risk to landowners and householders.

At present, beavers are not protected in Scotland. There are currently two known populations of beavers in Scotland; a small population in Knapdale, Argyll which was the subject of a trial which has now finished; and an unofficial population in the Tay and Earn catchment area which is the result of illegal releases or escapes.

Scottish Ministers announced on 24 November 2016 that the beaver populations in Knapdale in Argyll and in the Tay and Earn catchments can remain in Scotland, subject to satisfactory completion of a Strategic Environmental Assessment (SEA) and a Habitats Regulations Assessment (HRA). The intention was that beavers in Scotland would be given protection under the law as a European Protected Species (EPS) as soon as is practicable after completion of the Assessment processes. The SEA and HRA have now been carried out. The HRA assessed the impact on protected sites that could be affected by beavers. It concluded that the impacts were acceptable provided appropriate mitigation was put in place. Similarly the SEA also concluded beaver impacts were manageable.

Objective

Article 12 of the EU Habitats Directive requires that Member States establish a system of strict protection for all animals on Annex IV to that Directive within their natural range.

Annex IV of the Directive includes beaver. The Scottish Government assesses that beavers would be considered to be within their natural range and therefore we are obliged to provide strict protection in line with the requirements of the Directive. The Conservation (Natural Habitats, &c.) Regulations 1994 which implement the Habitats Directive, will remain on the statute book if and when Scotland leaves the EU.

Rationale for Government intervention

This Order, The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2019, will add the Eurasian or European beaver (Castor fiber), to
Schedule 2 of the Conservation (Natural Habitats, &c.) Regulations 1994. Schedule 2 lists those species that have European Protected Species status.

By giving protection to beavers, this supports the environment National Outcome in that we are protecting and enhancing our environment.

Beavers are widely considered ‘ecosystem engineers’, a term used for species that have a large impact on habitats and species through the alterations they make to the physical environment. Beavers can fundamentally change ecosystems and create new and unusual habitats.

Beaver activity provides habitat for otters, great crested newts and water voles, all species of conservation importance. Other species will often benefit e.g. animals that live and feed on standing dead wood such as woodpeckers and bats, pond and wetland species such as herons, wildfowl, frogs and toads, and a range of invertebrates.

On flooding, beaver dams can slow flood water from rushing down catchments, and also act to filter sediment leading to clearer burns and rivers.

3. Consultation

Within Government

The following government agencies and departments have been consulted: Scottish Natural Heritage has provided advice on policy proposals; Scottish Environment Protection Agency has provided advice on management of beaver dams and watercourses; Scottish Government Legal Directorate provided advice on the legal issues; Scottish Government Planning and Architecture Division have provided advice on the SEA process.

Public Consultation

As required by Section 16(2) of the Environmental Assessment (Scotland) Act 2005, the Scottish Government consulted on the documents relating to the Environmental Report. The Consultation closed on 6 March 2018. The Analysis of Consultation Responses Report was published on 17 October 2018 which highlighted that the Strategic Environmental Assessment Environmental Report had correctly identified potential impacts and appropriate mitigation measures regarding the reintroduction of beavers to Scotland.

4. Options

There were no other options. Beavers are currently not afforded any protection in Scotland. Scottish Ministers intention was that beavers would be given protection in Scotland as a European Protected Species.

Sectors and groups affected

The main sector that may be adversely affected is agriculture. Other land uses and activities such as forestry, management of fisheries, in particular for migratory salmonids;
and, management of transport infrastructure could all be affected by beavers’
damming, burrowing and tree-felling activities. Providing protection for beavers
through the proposed SSI does not alter the type or scale of the potential impacts, but
it does change the legal context within which preventative and mitigation measures
are carried out.

Scottish Natural Heritage will operate a flexible and responsive licensing system that
will allow action to be taken, including shooting, trapping and re-locating, and dam
removal to be carried out to prevent damage before it occurs. Many actions will
however continue to not require any licensing before they can be carried out. Full
guidance on beaver mitigation and management will be available from SNH.

5. Implementation and delivery plan

Post-implementation review

Protection for beavers is required by the EU Habitats Directive. If this is no longer
applicable to Scotland in the future, protection for beavers will be reviewed within ten
years of this SSI coming into force.

6. Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that
(a) it represents a fair and reasonable view of the expected costs, benefits and impact
of the policy, and (b) that the benefits justify the costs. I am satisfied that business
impact has been assessed with the support of businesses in Scotland.

Signed: Roseanna Cunningham
Date: 20th February 2019
Cabinet Secretary for Environment, Climate Change and Land Reform
Correspondence from the Cabinet Secretary to the Committee: 25 February 2016.

Dear Gillian

I am writing to advise you that the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2019 Scottish Statutory Instrument was laid before Parliament on 22 February 2019.


Regulation 2 amends schedule 2 of the 1994 Regulations to add the Eurasian Beaver (otherwise known as the European Beaver) to the list of European Protected Species of Animals that are given protection under the 1994 Regulations.

I have also attached a copy of the latest version of the Scottish Natural Heritage (SNH) document “Managing the impacts of beavers in Scotland - Guidance for land, property and infrastructure managers” which will be published on the SNH website by Friday 1 March 2019. In the meantime, SNH has published an overview of the management framework on their website which includes what the guidance will cover.

I hope you find this information useful.

Yours sincerely

Roseanna Cunningham
Managing the impacts of beavers in Scotland
Guidance for land, property and infrastructure managers

The law protects beavers but this doesn't mean you can't do anything to prevent damage they cause. There are lots of things you can do without a licence. This guidance explains how to get SNH help, what management does and doesn't need a licence and, if you need a licence, how to get one.

Introduction

Scottish Ministers agree that Eurasian beaver populations originating in Argyll and Tayside (Rivers Tay and Earn catchments) areas can remain and that beavers will be allowed to expand their range naturally from these areas. The beaver is a European protected species given protection under Scots law.

However, beaver activity - building dams, burrowing or foraging - can impact on a range of interests and so it is important that provision is made to intervene and manage these impacts to prevent damage. Some types of intervention may have to be carried out under a licence from SNH as beavers are protected by law. For example, you will need a licence to kill or trap beavers, or to damage or destroy their breeding sites or resting places. SNH is responsible for beaver licensing.

This document describes where to get advice, the interventions and management actions that do and do not need a licence and how we will consider and administer licences to manage the impacts of beavers. We will review this document on at least an annual basis as our knowledge and experience of dealing with beaver casework grows.

Getting help and advice

SNH are operating a telephone helpline to provide advice about beavers. We can provide advice over the phone to help people affected by beaver activities to make the appropriate decision on what to do next. Sometimes a site visit may be necessary and, if so, we can arrange one to provide free expert advice. The site visit will help determine how beavers are using the area, the management options available and any licensing requirement. There is no application form to complete.

To contact SNH for help, advice and/or a licence ring the helpline: 01463 725364 or email licensing@snh.gov.uk

In emergency circumstances where there is an imminent risk to public safety or serious damage to land/property, ring 07717 413478 to speak to the SNH licensing manager.
How to manage beaver impacts

Beavers can have a range of impacts on a range of interests. There are a number of different ways to manage these impacts, from fitting protectors to trees to manipulating or removing dams to carrying out lethal control. All of these techniques are discussed in more detail in Annex 1. Which technique to use will depend on the circumstances. Some of these actions require a licence, but many do not.

Whatever the situation you can call the helpline for advice to help understand the possible impacts and get expert advice. You should certainly contact the helpline if you propose to do anything that might require a licence. If you are in any doubt at all then call us.

### Actions that do not require a licence

- Carrying out ongoing land management activities near lodges, burrows or dams (providing they don’t damage those structures) e.g. ploughing a field next to a beaver lodge
- Discouraging dam building e.g. through fencing
- Removing new dams (less than 2 weeks old), notching or installing flow-devices to them.
- Protecting banks from burrowing activity
- Destroying short burrows with no end chamber
- Infilling channels/canals created by beavers
- Fitting protectors to vulnerable trees
- Fencing off areas to keep beavers out e.g. from crops or woodland

### Actions that do require a licence

- Removing older dams (more than 2 weeks old), notching or installing flow-devices to them
- Destroying lodges or chambered burrows
- Trapping and relocating beavers
- Lethal control

### Notes

- See Annex 1 for guidance on beaver management techniques.
- If other protected species may be present or if activities could affect a designated site qualifying interest then please contact SNH even if a licence is not required.
- Sometimes management of older dams may be able to be carried out without a licence, but determining this will require expert advice, which SNH can provide.
- Removal of beaver dams using hand tools and or ropes/ grapnels does not require authorisation from SEPA, nor does removal using bank-based
machinery. Use of in-stream machinery may require a CAR licence from SEPA.

### Licensing assessment

In order to issue a licence we have to be satisfied that three legal ‘tests’ are met. These tests are summarised below together with details on how we will assess them.

<table>
<thead>
<tr>
<th><strong>Test 1 – Licence purpose</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>We issue a licence for purposes set out in the legislation: these include for preventing serious damage to certain interests such as crops, timber or fisheries, for public health and safety reasons or other important social, economic or environmental purposes which are in the public interest and for conserving natural habitats or wild animals.</td>
</tr>
</tbody>
</table>

This means that there has to be a legitimate problem that needs addressing. To help us consider if this test is passed we will rely on your information and/or the information gathered by the expert adviser from a site visit.

In certain situations which may be particularly vulnerable (e.g. dam building affecting areas of prime agricultural land* or sensitive in-stream infrastructure, flooding public transport infrastructure, damage to protected features on Natura sites or burrowing into flood embankments) we consider that this test is likely to be met.

* Prime agricultural land here means land classes 1, 2 and 3.1

<table>
<thead>
<tr>
<th><strong>Test 2 – Alternatives</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>We issue licences as a last resort. This means we have to be assured that other possible actions that would either not require a licence or have less impact on beavers, have either been tried or are not likely to resolve the problem. Again we will rely on information from the affected person, the expert adviser and previous experience to help us judge whether this test is passed.</td>
</tr>
</tbody>
</table>

We accept that there will be situations where it can automatically be assumed that there is no satisfactory alternative other than to issue a licence for lethal control. These situations include where there is serious damage (or the risk of it) to prime agricultural land, and where we know alternative mitigation measures either have not or will not address the problem.
### Test 3 – Conservation impact

We have to ensure that licensed actions do not harm the conservation status of beavers in Scotland and so will not affect population trends or the overall range of beavers. In the first instance we would follow the principles above in that those actions with the lowest impact on beavers that solve the problem must be considered first. Where we licence lethal control of beavers we will monitor the cumulative impact of this management.

Given the evidence from recent survey information that beavers continue to expand their range even with ongoing lethal control in places, we are confident that the actions we licence will not be detrimental to the conservation status of beavers and so this test is likely to be met. We will maintain an oversight of the cumulative impacts of what we licence and the population dynamics and range of the Scottish wild beaver population to ensure that this is the case.

### Licensing in Practice

If you think you need a licence, or even if you are not sure, then you should call the helpline on 01463 725364. We can provide advice over the phone and organise a site visit to look at the specific issues you face and offer tailored advice to help manage the impacts of beavers. For land-holdings where beavers are affecting or likely to affect areas of prime agricultural land we offer a streamlined approach to licensing. We will also be able to issue emergency licences for other particularly vulnerable and urgent situations, and for all other cases we will be able to consider licences and be able to provide advice.

#### Licensing on Prime Agricultural Land

We accept that if beaver activity is affecting areas of Prime Agricultural Land (PAL) then the three licensing tests are met and that a licence can be issued to the landowner or land manager. Therefore if you are experiencing problems from beaver activity affecting PAL or anticipate that you are likely to have problems in the future then you should contact the helpline and a licence can be issued. Licences will cover the land management unit where intervention is necessary to protect prime agricultural land. This means that the area covered by such a licence would not have to be wholly classified as PAL.

SNH will be able to issue a licence to permit the removal of dams and, if required, lethal control. A site visit will also be offered to provide further advice. Licences can be emailed or posted to the landowner or manager. Licences can run for multiple years but if they permit lethal control the law restricts the length of time for any one licence to two years. If the landowner indicates that problems are likely to persist/recur the licence will be renewed automatically.

#### Licensing for other ‘vulnerable situations’
Knowledge of beaver activity means that we can anticipate other ‘vulnerable’ situations where licences are likely to be sought to address beaver impacts. This could include burrowing into embankments, damming affecting infrastructure, fisheries, other agricultural land (i.e. non-PAL land) or species of conservation concern. Such situations will be assessed on a case-by-case basis and any licence issued will explain what you can do in the particular circumstances.

We recognise that in some situations immediate action will be required. Where there is a need for immediate action we can licence immediately and on the basis of a telephone conversation. Similarly, in simple cases, such as dam removal or manipulation outside of the kit dependency period\(^1\) a licence may be granted on the basis of a phone call or email, but we are happy to arrange a site visit if that would be helpful.

In other situations, such as new cases where there are multiple or likely to be ongoing issues we can arrange a site visit to ensure that any licence granted can address the problems being experienced. We will aim to hold a site visit as soon as is mutually convenient and within one week of contact.

We will aim to issue licences within one or two working days of having the requisite information. SNH will review and adapt how we licence beaver casework. We can develop new approaches if beaver activity continues to be problematic at certain locations.

Key principles of the approach to licensing are summarised below;

**Activities licensed**

Any licence granted will aim to provide a solution to the problem being experienced. Whilst in many cases solutions may be possible with relatively minor interventions, in others a greater degree of intervention will be required. We will set up a Mitigation Scheme to trial new approaches to addressing beaver impacts and to learn from them but we will also licence lethal control in vulnerable situations (see above).

**Minimising welfare impacts**

Whatever the activity that is licensed we have to ensure that impacts on animal welfare are minimised. This means that we expect licence holders to try to avoid actions during more sensitive periods if at all possible. We accept that sometimes this might not be possible, but if actions have to be carried out during the kit dependency period then additional measures will have to be put in place to minimise welfare impacts.

**Translocation of beavers**

Translocation (i.e. trap and relocation) of beavers that are causing impacts to other interests is possible. However, whilst it may initially be seen as an attractive alternative to lethal control there are also risks with this as an approach. Translocation can have significant welfare implications associated with capture, transport and following release. It can also be a time consuming and costly process and has to be carefully planned. Translocation is only likely to be a viable option if either a suitable unoccupied

\(^1\) Kit Dependency Period = 01 April to 16 August
site is available nearby or if it is undertaken as part of a recognised reintroduction or reinforcement project.

**Lethal control**

We accept that there are situations where there will be no alternative other than for lethal control. This includes where damming activity threatens serious damage to prime agricultural land and where we know alternative mitigation measures either have not or will not address the problems being experienced.

Lethal control is easier to undertake during autumn and winter when beavers are more predictable in their emergence pattern and should be used to remove the entire family group. In order to ensure that lethal control is carried out humanely, it can only be carried out by trained individuals (accredited controllers) and subject to agreed procedures.

Ideally lethal control should be undertaken outside of the kit dependency period. However, where it is necessary to prevent an imminent threat to public health or safety or serious damage to property or to prime agricultural land or it can be permitted subject to strict conditions to address the associated additional welfare risks. There is a general assumption against lethal control in the kit dependency period in other situations.

**Period licensed and renewal of licences**

Licences will aim to provide a solution to the problem being experienced. Licences can run for multiple years, but if they permit lethal control the law restricts the length of time for any one licence to a two-year period. If problems are likely to recur or persist we can renew licences quickly on the basis of an email or phone call.

**Annex 1 Summary of Beaver Management Techniques**

**Introduction**

Techniques for the effective management of beavers and their activity are well developed across Europe and North America. Many of these have potential application in Scotland and are summarised below. SNH recognise that that in some instances techniques are not currently available to solve all problems being experienced. The Mitigation Scheme will look to identify and trial new methods where this is the case.

Further information on these some of these existing techniques is available from the following resources:


SNH will in due course provide a series of technical advice notes covering the use and installation of newly developed and existing techniques considered to be most
appropriate in Scotland. Provided below is a summary of the existing techniques, describing what they are and why they are used.

Techniques to manage beaver dam building activity

- **Dissuasion techniques (short-term)** - Use of dissuasion to prevent dam-building, either where known 'pinch points' occur or perhaps where a dam has been removed and is likely to be reconstructed. A range of techniques have been trialled and found ineffective long term. Might include electric fencing strung above the dam site. Flashing lights etc. may work until animals become habituated to them.

- **Dam-notching** - Partial removal of a small section of the middle of a beaver dam, usually by hand, to increase water flow over that section. Most often associated with aiding fish passage. May be used to lower water levels in beaver ponds behind a dam

- **Dam removal** - Complete removal of whole dam structure either by hand or using a mechanical device. Used where no increase in water level, or potential blockage to fish passage, is considered acceptable in a watercourse or part of a watercourse.

- **Deterrent fencing (in-stream)** - Fencing or gate-type structure, either permanent or temporary, to prevent beavers accessing areas of water, crops or trees where damage from damming activity is deemed intolerable.

- **Piped dam with mesh filter (water flow devices)** - Placing a long pipe through a beaver dam with a wire mesh filter attached to the end, to manage the water level behind the dam on a permanent basis. Used to manage water level behind or above a dam where a certain water level is tolerable, but any further increase would not be. Essentially, it acts as an overflow device for the dam.

- **Culvert protection** - Using in-stream fencing (with or without a pipe/wire mesh) to prevent blockage to the entrance of culvert from dam building activity.

- **Grilles** - Use of metal grille or guard to prevent beavers blocking culvert exists.

Techniques used to manage beaver burrowing and digging activity

- **Infilling of beaver-dug channels** - Infilling beaver dug channels (canals), by hand or using machinery, starting at riverbank and working inland.

- **Preventing burrowing** - Use of sheet metal piling, rock armour or mesh to prevent burrowing (or further burrowing) into vulnerable flood embankments or adjacent land. Prevents beaver burrowing activity from starting, continuing or moving into adjacent land. To note, these hard engineering techniques unlikely to be widely applicable in Scotland. New techniques will be trialled through the Mitigation
Scheme.

- *Destruction of burrow or lodge* - Destruction of a beaver built lodge and or burrow usually by infilling either by hand or using machinery where beaver presence is deemed intolerable.

**Techniques used to manage beaver foraging activity**

- *Tree protection* - Protection of individual or small numbers of amenity or other valuable trees by use of individual fences, mesh wrapping or deterrent paints. Prevents beavers foraging on individual trees.

- *Deterrent fencing (on land)* - Fencing, either permanent or temporary, to prevent beavers accessing areas of water, crops or trees where damage from foraging activity is deemed intolerable.

- *Deterrent fencing (in-stream)* - Fencing or gate-type structure, either permanent or temporary, to prevent beavers accessing areas of water, crops or trees where damage from foraging activity is deemed intolerable.

**Techniques to manage beavers themselves**

- *Translocation (Trap & relocate)* - Live trapping of beaver(s) for transport and release (i.e. translocation). May be carried out for conflict management of ‘problem’ animals, for welfare (i.e. a sick or injured animal) or conservation purposes (i.e. reinforce existing population).

- *Lethal control* - Culling of beavers by land managers or public bodies to reduce/manage the population or remove ‘problem’ animals where no other mitigation technique currently exists.
Annexe 4

Additional Information Received from SNH on the Management Framework for Beavers in Scotland

Contents
Introduction
ANNEX A Management Framework for Beavers in Scotland
ANNEX B Lethal control – A staged approach
ANNEX C Disturbance to beavers
ANNEX D Ecological definitions
ANNEX E Translocation policy
ANNEX F Stakeholder issues
ANNEX G Guidance for land, property and infrastructure managers

Introduction
The following annexes contain the Management Framework arranged by Scottish Natural Heritage (SNH) following the addition of the Eurasian Beaver to the list of European Protected Species of Animals that are given protection under the 1994 Regulations.

Further information can be sent upon request.
Annex A

Management Framework for Beavers in Scotland - An Overview

Background
The Scottish Government intend to give beavers European Protected Species (EPS) status in Scotland and to allow them to naturally expand their range across the country from the existing populations in Tayside and Argyll.

Beavers will bring many ecological benefits but we also recognise that in some situations they will need to be managed to minimise impacts on other interests including land use.

Purpose of the Framework
The Management Framework sets out the suite of policy, guidance and actions that we will take forward in order to achieve these aims. The framework will be available on SNH’s website and a communications plan will be developed to ensure that we can raise awareness of beavers and the framework.

Structure
There are 4 main elements to the framework as follows:

1. **Management Guidance and Policy** - Information about our approach to beavers and their management. It will include the following elements:
   - Beaver EPS Licensing Guidance: The activities that require a licence and those that do not, where to get advice, how to apply for licences and our approach on how they will be assessed and issued.
   - Lethal Control: Our approach to using lethal control under licence.
   - Ecological and legal definitions: The different types of places and structures built and used by beavers, the protection afforded to them and why, avoiding welfare impacts during the ‘kit dependency period’ and what constitutes disturbance and how it can be avoided.
   - Translocation guidance: Our approach to translocations of beavers. When it may be necessary and how it should be carried out.
   - Conservation status implications: Understanding the status of beaver populations and the impact of management on them.
   - Frequently Asked Questions: A live document providing answers to key questions about beavers, their benefits and impacts and our approach to them.

2. **Management Actions** – The provision of specialist advice in situations where it is necessary to manage beavers or their activities and how we can help implement action on the ground to minimise adverse impacts. It will include;
   - The provision of specialist advice on beaver ecology, their impacts and their management including the potential for a management manual
   - The development and implementation of a Scottish Beaver Mitigation Scheme to support land managers and trial and demonstrate how impacts can be managed
   - The establishment of Technical Groups to develop and trial new techniques to mitigate impacts of beavers in Scotland
3. **Monitoring, Survey and Research** – How we will monitor beaver populations and their impacts (positive and negative) and identifying where there are gaps in our knowledge and potential research needed to fill these gaps.

4. **The Benefits of Beavers** – How we will promote, facilitate, demonstrate and learn more about the many benefits that beavers can provide. This will include:

   - Beavers as nature's engineers
   - Beavers and their role in positive land management and ecosystem services
   - Beavers and socio-cultural opportunities.
ANNEX B
Managing who can undertake licensed lethal control of beavers in Scotland
A Staged approach

1. Introduction
Beavers most likely escaped from captivity or were released illegally into parts of Tayside and have successfully bred in the wild for a number of years. A population survey undertaken in 2012 estimated there to be 38-39 family groups. A follow up survey in 2018 provided evidence of a continued increase to 114 family groups with corresponding expansion in range across and beyond the Tay and Earn catchments.

For some time now beavers in certain parts of Tayside have been lethally controlled although actual figures of animals killed remain anecdotal. Information necessary to assess the impact of lethal control is therefore not available, which impacts on our ability to understand or predict how the population may develop over time – information which is key to informing an adaptive management approach.

As a European Protected Species status lethal control of beavers can only be carried out under licence from SNH. This paper outlines who will be able to undertake lethal control of beaver and why a staged approach is needed. It assumes the decision has been made that a species licence for lethal control will be issued. See EPS Management Guidance for further details on how the decision to issue a licence for lethal control is made. Central to this approach, is the commitment to review this position after the first year with a view to move towards longer term arrangements once sufficient experience and best practice has been established across practitioners. Indicators for which have been described below.

2. Wildlife management in Scotland
Wildlife management is about species conservation, encouraging people to visit the outdoors and protecting habitats but is also about shooting, country sports and resolving conflict. Carried out effectively, wildlife management can support vulnerable species while facilitating economic activity and engaging people. SNH has developed a set of Wildlife Management Principles that guide work in wildlife and their management.

2.1 Animal Welfare
Animal welfare is understandably a significant element that needs to be addressed in beaver management. SNH has published a ‘position on wildlife welfare’. Welfare is more than simply the avoidance of suffering; it’s about the beaver’s ability to adapt to environmental challenge through their inherent behaviour and physiology. Our understanding of how beaver can cope with different welfare pressures is complex and not well understood. They have after all been absent from Scotland for some 400 years and so across practitioners we are still learning.

Consideration of beaver welfare should first be assessed from the animal’s perspective and its ability to respond to a welfare issue. Management decisions need to be based on a well-founded understanding of the biological and behavioural responses from the individual beaver or group of beavers. In some management action situations the difference between animal rights and animal welfare is confused. Thus while actions need to be mindful of public opinion, the final assessment should be based on the assessment of the impact on the animal and the reason the actions
is being considered. For example lethal control, if carried out humanely is a not a welfare issue for the individual animal.

2.2 Managing beavers in Scotland

Managing beavers in Scotland, including lethal control, is relatively new and as such the detailed knowledge and the experience across a broad spectrum of practitioners covering principles of animal welfare and beaver behaviour is not widespread. Assuring a base level of competency to meet welfare concerns, demonstrate suitable understanding of behaviour, physiology and ecology is fundamental to assuring the public interest and wildlife management principles referred to above.

Training and accreditation is integral to the management of many other species in Scotland, covering a range of techniques. Examples include a Professional Development Award in Seal Management for lethal control of seals (under licence), code of practice training for use of snare and Deer Stalking Certificates for authorised persons on the ‘fit and competent’ register.

At this stage in their reintroduction, but mindful of the eventual goal to enable a pragmatic approach to beaver management in line with land managers’ own responsibilities for managing wildlife, there must be trust and confidence across the range of interested parties. This will require agreement on the robustness of the population and the skill levels of those charged with managing that population. As such SNH is supportive of a staged approach to lethal control that assures those that can undertake the control but also provides the development of knowledge and practical skill to support future beaver management.

3. A staged approach to lethal control of beavers in Scotland

In the short term, a phased approach to who can carry out lethal control of beaver allows for meaningful capacity building in the voluntary, land management and community sectors. It will build trust and provide a standardised level of base competency across controllers that safeguards animal welfare concerns and develops appropriate conduct for a highly protected species.

Our approach across the short and longer term is outlined below:

3.1 Short term - Use of accredited controlled for lethal control of beavers (under licence)

With the advent of EPS status, the following arrangements will be in place

- To become accredited, controllers will undertake training in partnership with SNH.
- Only accredited controllers will be authorised to conduct lethal control through conditions attached to the species licence.
- The training package (mostly via a training course) will be open to all and free with alternative training approach options to be explored by SNH, depending on the demand.
- Accredited controllers can be called upon by land managers to undertake lethal control when a lethal control licence is issued.

2 Public Interest refers to something in which the people of Scotland as a whole have an interest. Parliament and public bodies produce policy statements or laws that describe the public interest in specific issues such as rural development, increasing biodiversity, protecting animal welfare, supporting public access and safeguarding public safety.
Accredited controllers will be required to comply with basic principles as to how lethal control is carried out both to minimise welfare implications and maximise effectiveness in addressing the problems being experienced.

Accredited controllers will be required to report back on lessons learnt and include more comprehensive information such as shot placement, reaction to shot, and wounding rate. This information will be used to update the training package for future controllers.

SNH/SG will contribute to the cost of any call out to support the desire for more in depth audit, skills/training development and closer monitoring.

Authorised controllers may be subject to random checks on their activity.

3.1 Moving from a short to longer term arrangement

SNH will review the need to continue using the short term approach after the first year, and annually thereafter if required. The decision to move to a longer term approach will be taken in partnership with the Scottish Beaver Forum and other stakeholders including Police Scotland.

Agreement would need to be reached that the factors outlined below are broadly being met before we would consider moving to the longer term arrangements:

- A healthy uptake of best practice training across sectors so that there are a sufficient number of individuals trained to ensure management action is available quickly and at a reasonable price.
- Confidence that the necessary base level of skill and competence is routinely being met with no major issues identified through compliance spot checks.
- Confidence that the licensing and training arrangements for lethal control of beavers are not being abused by reviewing the extent of any wildlife crime incident with Police Scotland.
- Willingness by all parties to adhere to best practice in beaver management and lethal control of beaver. SNH would facilitate the development and continual refinement of best practice in partnership with stakeholders and trained accredited controllers. We would look to achieve a signed agreement with relevant stakeholders across the sectors.
- Continued availability of best practice training for those wishing to gain accredited controller status in line with existing wildlife management arrangements.

3.3 Longer term arrangement – wider skill base and knowledge across sector

Once the decision to move to long term arrangements has been made, the following factors will apply thereafter:

- The same level of accreditation used in the short term approach may no longer be a pre-requisite by those carrying out lethal control (under licence).
- Instead, any licence issued for lethal control will require that the licence holder ensures that lethal control of beavers adheres to bests practice.
- Continuation of compliance spot checks to confirm no major issues.
Continued availability of good practice training for those wishing to gain accreditation. Any such longer-term arrangement or approach will be subject to review using all available evidence. Should it become apparent that the approach is not fulfilling the overarching aims in relation particularly to beaver welfare and adherence to best practice then we will reserve the right to revert to adapt our approach accordingly including to revert to an accredited controller approach.
Understanding what ‘disturbance’ means for Beavers in Scotland

This is not legal advice; it is for the Courts to interpret and to apply the law. If you require an interpretation of the law you should seek your own legal advice.

Summary

This guidance sets out SNH’s view of what might constitute disturbance to beavers in a range of circumstances, placing it within the context of the behavioural and ecological adaptations shown by beavers.

Legislative context

When the beaver becomes a European protected species (EPS), the Habitats Regulations will protect animals from various actions including disturbance under certain circumstances. Such that, it will be an offence to deliberately or recklessly

- harass a beaver or group of beavers
- disturb a beaver while it is occupying a structure or place used for shelter or protection
- disturb a beaver while it is rearing or otherwise caring for its young
- disturb a beaver in a manner or in circumstances likely to significantly affect the local distribution or abundance of the species
- disturb a beaver in a manner or in circumstances likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young

What is disturbance?

Article 12(1)(b) of the Habitats Directive prohibits deliberate disturbance of protected species especially at sensitive times such as during their breeding periods or when they are rearing young. It does not define activities that could cause illegal disturbance for beaver since species vary ecologically, biologically and behaviourally in a given situation.

Behavioural and ecological context of beavers

Beavers demonstrate a capacity to tolerate and actively utilise human-dominated landscapes where they may readily establish territories, modify habitat and create structures for shelter and protection or for water level regulation all of which sets them apart from many other species.

Disturbing a beaver

Disturbance to beavers would not include for example, infrequent, short term responses e.g. startle response where a beaver might swim away from walkers using a riverbank footpath perhaps, as this would not result in a longer term behavioural changes or welfare impacts.

Disturbance impacts to beavers are unlikely to occur where human action avoids physical damage to key beaver built structures (i.e. breeding sites and resting places).

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3 In Scotland, the Habitats Directive is translated into specific legal obligations by the Conservation (Natural Habitats, &c.) Regulations 1994, as amended. This legislation usually referred to as the Habitats Regulations, covers requirements for species requiring strict protection, and introduces the term ‘European protected species’.
and allows access to these and suitable foraging habitat, and that avoids any interruption of normal ecological behaviour that goes beyond a short-term temporary period.

**Practical advice**

This advice should act as a key starting point for land managers when undertaking activity in close proximity to beaver lodges or chambered burrows. It means that for most activities e.g. forestry operations or agricultural practices, providing that measures are taken to avoid physical damage of these structures, then disturbance offences are unlikely. However, if in any doubt, or if undertaking activities that may be more disruptive, then SNH can be contacted for advice. SNH will work with land and fisheries managers across sectors to assist them in this process, as required.
ANNEX D

Ecological and legal definitions in relation to Beavers in Scotland: Breeding sites and resting places

1. Introduction
Beavers are protected under the Conservation (Natural Habitats &c.) Regulations 1994 as European Protected Species (EPS). The Regulations set out a number of offences in relation to all EPS but we need to be clear about how they apply to different species which often have very different characteristics and ecology. This paper has been developed to help clarify what some of these terms mean in relation to Eurasian beaver (Castor fiber), and particularly in relation to what we consider to constitute breeding sites and resting places for beavers. This is important in terms of providing guidance for practitioners and development of licensing advice and delivery.

2. The Law
In summary, under the Habitats Regulations, it is an offence to deliberately or recklessly:

- Capture, injure or kill a beaver;
- Harass a beaver or group of beavers;
- Disturb a beaver while it is occupying a structure or place which it uses for shelter or protection;
- Disturb a beaver while it is rearing or otherwise caring for its young;
- Obstruct access to a breeding site or resting place of beavers, or otherwise to deny the animal use of that site or place;
- Disturb a beaver in a manner that is, or in circumstances which are, likely to significantly affect the local distribution or abundance of the species;
- Disturb a beaver in a manner that is, or in circumstances which are, likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young.

It is also an offence to:

- Damage or destroy a beaver’s breeding site or resting place (note: this does not need to be deliberate or reckless to constitute an offence);
- Keep, transport, sell or offer for sale or exchange any wild beaver or any part or derivative of one (if obtained after 10 June 1994).

Note: the Regulations also list a number of exceptions and defences to these offences, but these are not considered here. For a full list of these the legislation itself should be consulted.

3. Beaver ecology
Beavers live in social family groups. Mating takes place in water between late December and the end of February. A family group consists of a breeding pair with a litter of kits from that year and the previous year (sub-adults). A breeding pair has a single litter of kits (usually 2-4) per year, born between April and mid-June. Sub-adults are non-breeding until they disperse and find a new territory and partner. Kits are dependent on their mother until aged around 62 days old. By this time they have fully

Kit Dependency Period = 01 April to 16 August. This has been defined primarily as a management tool to avoid welfare impacts when carrying out (licensed) lethal control where kits aged 62days+ would reasonably be expected to survive were the adults removed.
developed locomotion as well as grooming and defensive (escape) behaviours. They exhibit all the main social behaviours and can eat mainly solids, handle twigs/stalks, and peel bark. At around 2 years beavers become sexually mature and usually disperse from the natal territory seeking a mate to establish their own territory.

A breeding pair or family unit will defend their territory against other non-related beavers. They can also build a number of different structures within a territory. These structures provide an ecological function associated with survival and reproduction (i.e. shelter from weather and predators, place to rest, to give birth (parturition), rear dependant young (kits) and provision food for overwintering). Each territory may have some or all of these structures or may have multiples of one but none of another. For example, not all territories have dams. Not all have lodge(s) and a mixture of simple and chambered burrow(s) and some may just have various burrows. Some territories will have a food cache of some sort to sustain the family group over the colder winter period. Dams can be used to raise water levels around lodge or burrow entrances to protect themselves or to protect food caches or improve access to food. Beavers can also dig canals to provide better access to foraging areas.

4. Breeding sites and resting places

While Article 12(1) of Habitats Directive explicitly refers to the protection of breeding sites and resting places of species listed in Annex IV(a), it does not define them. European Commission guidance provides generic definitions to help prepare species-specific definitions and considers that breeding sites and resting places are necessary for protection because they are crucial to the life cycle of the animals in question. It also states that the aim of protection is to safeguard the ecological functionality of those sites.

Breeding sites are defined in the guidance as, ‘the areas needed to mate and give birth in and covers also the vicinity of the nest or parturition site, where offspring are dependent on such sites’. Areas required for courtship, mating, parturition and rearing dependant young may be covered but depends on the life history requirements of the species concerned.

The Guidance defines resting places “as the areas essential to sustain an animal or group when they are not active”, and “will include structures created by animals to function as resting places”. Places may include structures and habitat essential for survival including those required for resting, sleeping or recuperation and hiding, protection or refuge. Beavers build a variety of specific structures (see section 5 below) for all of these elements and to provision the family group overwinter.

For wide ranging species such as otters or bats the guidance states that it may be appropriate to restrict the definition of a breeding site or resting place to a clearly delimited locality e.g. the roost of a bat or the holt of an otter. It is appropriate to follow a similar approach for beavers, where there are a number of key structures used or built by beavers that could either constitute breeding sites or resting places or be necessary to maintain the ecological function of such places.

Beavers use a lodge or chambered burrow to give birth in and rear young (kits) – this is referred to as the natal lodge or burrow. During this time, the adult male and sub-

5 In Scotland, predators of beavers are likely to include foxes, pine martens and American mink
6 European Commission (2007), Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC, paragraphs II.3.4.b) (52)-(65)
adults (i.e. kits of the previous 1-2 years) may make use of other structures elsewhere in the territory at different times, coming and going from the natal lodge. Some lodges or burrows are used year on year, some are not. Likewise, some may always be used for giving birth and rearing dependant young and some may not. Lodges or chambered burrows can also be important to beavers not just for breeding but for their survival particularly through the winter. In taking account of this associated temporal variance in structure occupancy and function, we would consider that such structures would constitute breeding sites or resting places (and are therefore protected) while a territory is active, and therefore regardless of whether they are physically occupied at a particular point in time. An absence of kit sightings during the Kit Dependency Period does not necessarily means they are not present.

Dams built by beavers can perform a number of different functions, including maintain a water level that will protect entrances to natal lodges or burrows that might be present. Given this, the removal of any such dam could compromise the ecological functionality of that site (i.e. meaning that it cannot or will not be used for breeding or as a resting place).
The Translocation of Beavers in Scotland

What is translocation?
Translocation involves people moving living organisms from one area to another. For beavers it would usually involve trapping animals and releasing them into another area. Given their status as European Protected Species any translocation of beavers in Scotland would require a licence from SNH.

When might there be an opportunity for the translocation of beavers?
Opportunities to translocate beavers might arise in the following situations;

- **Management translocation**: Where the presence of beavers is causing adverse impacts to other interests (e.g. human-wildlife conflict) and there is a need to intervene.
- **Conservation translocation**: Where a proposal has come forward to relocate beavers to support a conservation project (e.g. a reintroduction).
- **Welfare translocation**: Where sick, injured or orphaned beavers are rescued and rehabilitated, but have to be released away from where they were found.

What are the benefits and risks of translocation?
Translocation has the potential to be used to help alleviate impacts that beavers may be causing to particular interests, to support conservation projects or to do both. Whilst knowledge and experience of translocation methods is improving, the process is not without risks, including to the welfare of the animals themselves. The process requires expert input, specialist equipment and facilities as well as significant time and effort.

Given the above, any proposal for translocation needs careful consideration.

When might translocation be appropriate?
Translocation will only be appropriate when each of the following have been met;

- When there is an identified need
- When there is a suitable receptor site
- When there are sufficient resources and expertise available to carry it out
- When all appropriate permissions are in place

**Identified need**
Translocations will only be acceptable if there is a strong case that the identified need would be satisfied by the use of translocation over alternative management options. We envisage that this is likely to be specific to a limited number of scenarios (see Annex 1 for full consideration).

For **management translocations** this would mean that the removal of an animal(s) would resolve the problems that are being experienced, so in other words would have to follow the criteria given in our published *Managing the impacts of beavers in Scotland: Guidance for land, property or infrastructure managers*.

**Conservation translocations**, such as reintroduction or reinforcement projects, would only be acceptable if they were part of a recognised and approved (see
permissions below) proposal. In all cases this would mean that we would expect the Scottish Code for Conservation Translocations to be adhered to.

A sick, injured or orphaned beaver may be rescued and rehabilitated, and would normally be released at its site of capture. If that is not possible for some reason, a welfare translocation may be considered to area suitable receptor site.

Suitable receptor site
Translocation will only be acceptable if an appropriate receptor site has been identified. Given the Minister's statement (see Annex 1) that the Scottish beaver populations should naturally expand in range from the two original populations, this means that in Scotland suitable receptor sites would have to be within the current range of beavers at that time. This is likely to mean that translocation in Scotland would only be permitted within gaps in this range or to reinforce the existing Knapdale population. Conservation translocation to areas outside of Scotland would only be acceptable as part of an approved project as described above.

Any receptor site would have to have the appropriate habitat and conditions to be able to support beavers and appropriate landowner permission and engagement with the relevant stakeholders.

Resources and Expertise
Translocation can be extremely time-consuming and expensive. It also has to be carried out professionally both to minimise welfare impacts and other risks, and to maximise the chances of success. Translocation will therefore only be acceptable if we can be assured that sufficient resources and expertise are available to successfully undertake it.

Permissions
Translocation of beavers can only be carried out under licence from Scottish Natural Heritage. In order to be able to licence any translocation, as well as satisfying all of the above criteria, applicants would have to ensure that all other permissions were in place - this would include permission from landowners at both donor and receptor sites and, if translocating animals outside of Scotland, the relevant licences to do so. The broad principles relating to landowner permission and engagement with other people potentially affected are set out in The Scottish Code for Conservation Translocations.
ANNEX F

Stakeholder issues

NFUS, SWT, SLE & RZSS sent a letter to Roseanna Cunningham on 14 November 2016 highlighting some of their issues concerning beavers and their management.

The following provides a point-by-point consideration of progress toward satisfying the points raised in the above letter. These will be taken forward via the Beaver Management Framework and much of the detail is provided in the Beaver Management Guidance document.

<table>
<thead>
<tr>
<th>Point raised</th>
<th>Comments</th>
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<tbody>
<tr>
<td>1. <em>Beavers should be given EPS status but we should make full use of derogation provisions to prevent damage to agriculture and other land uses, as well as housing and infrastructure.</em></td>
<td><strong>Fully addressed</strong>&lt;br&gt;Derogation possible using species licences issued to individuals experiencing unacceptable beaver impacts under Regulation 44 provisions. This is covered in the Beaver Management Guidance document (to be approved on or shortly after 18th May 2018).</td>
</tr>
<tr>
<td>2. <em>We should approach the issue of beaver management via a hierarchy of actions of increasing impact – education, mitigation, trapping &amp; relocation, and finally lethal control. We should also accept that the pace at which we move up this hierarchy, and the burden of evidence required to do so, will vary from place to place – largely dependent on the ability of a place to sustain beavers without unacceptable impacts.</em></td>
<td><strong>Fully addressed</strong>&lt;br&gt;Hierarchical approach to beaver management will be followed. Management guidance document clarifies that:&lt;br&gt;• many actions will not require a species licence,&lt;br&gt;• we are adopting a simple approach to licensing low impact activities, and,&lt;br&gt;• where we anticipate problems, lethal control is an option but the last resort.&lt;br&gt;Lethal control will be carried out by trained, accredited operators.&lt;br&gt;We accept that in certain situations, particularly on Prime Agricultural Land, lethal control is likely to be the only satisfactory solution. There has been substantial experience of alternatives such as dam removal but this becomes a very time consuming, difficult and expensive option that must be repeated time after time in these situations to the extent that it</td>
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</table>
| 3. **We should try, wherever possible, to integrate efforts to provide suitable habitats for beavers and mitigate their impacts elsewhere, with other policy priorities and payment mechanisms. Where possible and appropriate, we should strive to do this on a catchment basis.** | **On target**
A Beaver Mitigation Scheme funded by Scottish Government is under development with key organisations working together (SEPA, FCS, RPID & SNH) through the Scottish Beaver Forum (SBF) and Technical Group. The Scheme will offer advice to land managers and fund implementation of the full range of existing mitigation techniques and trial new solutions. The Scheme should also be able to consider trial management on a catchment basis.

A longer term aspiration is to deliver beaver management measures through a new, post-Brexit agriculture-environment arrangement. This might include options for management of negative impacts and facilitate positive impacts where there is scope to do so. |
| --- | --- |
| 4. **The management regime we put in place should be robust and defensible, but it should also be pragmatic and enabling. It should also be kept under review as beavers spread, are relocated to other parts of Scotland, encounter other land uses (e.g. salmon fisheries), and our knowledge of how to live alongside them develops.** | **Fully addressed**
Management guidance developed in consultation with the SBF to ensure flexible and enabling approach to beaver management now and in the future, within legal constraints. The guidance will be reviewed annually through the SBF, as our approach adapts to better knowledge of beavers in Scotland. |
| 5. **The Scottish Government should continue to ensure independent technical advice is pro-actively provided to land managers in relation to** | **Fully addressed**
Written technical advice and guidance will be available for land managers. Also there will be a free telephone support service for land managers. |

Advice and mitigation
mitigation of existing and/or potential beaver impacts. | advice service, free site visits and a technical advisory group established to advise on the development of new techniques.

6. The Scottish Government should put in place a mechanism whereby appropriate funding is made available to help affected or at-risk land managers to mitigate beaver damage (e.g. to install flow control devices, bank and flood bank protection, and beaver fencing). | On Target
Scottish Government have committed funding to take forward the Mitigation Scheme which commenced in January 2019.

7. Removal of beaver dams that negatively affect the drainage of Prime Agricultural Land (Land Capability for Agriculture (LCA) classes 1-3.1) should be regulated via the Controlled Activities Regulations (CAR) General Binding Rules (GBRs) and the General Licensing regime. | Partially addressed to develop workable and legally compliant approach
We have agreed that Prime Agricultural Land covers land classes 1-3.1 for the purposes of beaver management and species licensing.

Dam removal on PAL through a ‘general licence’ is unlikely to meet legal requirements for a system of strict protection required for a new population of a European protected species.

No species licence is necessary for removal of new dams (those less than two weeks old).

A simple, quick and non-onerous licensing approach is in place to allow removal of older dams affecting PAL.

Where problems are known or anticipated, licences can permit dam removal over a longer time period.

Removal of beaver dams using hand tools and or ropes/ grapnels does not require authorisation from SEPA, nor does removal using bank-based machinery. Use of in-stream machinery may require a CAR licence from SEPA.
8. Removal of beaver dams that negatively affect the drainage of areas not classed as Prime Agricultural Land should be regulated via the CAR GBRs and a species management licence. It should be a pre-condition of this licence being granted that flow-control devices have previously been tried and have failed, or are accepted by SNH as being inappropriate for the circumstances.

**Fully addressed**

Any licence granted will aim to provide a solution to the problem being experienced, including consideration of the most appropriate mitigation. On non-PAL land alternatives will need to be either demonstrated to have been tried and failed or accepted as inappropriate by SNH before a licence is issued. The regulatory regime re. CAR licences will be the same as on PAL. This is covered in the Management Guidance document.

9. Wherever a land manager applies for a licence to use lethal control, they should be offered the alternative of publicly-funded and qualified experts to attempt to trap the relevant beavers and relocate them to an alternative location where their potential impacts will be acceptable and where they are unlikely to return to where they were trapped.

**Partially addressed**

Translocation (Trap and relocation) of beavers for management reasons may be a viable option in particular circumstances given the risks associated with this approach. Translocation may not always be appropriate and there can be significant welfare implications that must be considered. Where translocation is approved it will be carried out by experts and not at the expense of land managers and has to follow our translocation policy to ensure that welfare impacts in particular a (refer to translocation guidance for more information).

10. Land managers who are authorised to carry out the activities listed in point seven above, but who after at least one month of trying to control the impacts, are unable to do so, should be able to apply for a species management licence for lethal control of the associated beavers at a point in time where there are no broader welfare considerations.

**Fully addressed**

We accept that there will be situations where it can be assumed there is no satisfactory alternative to lethal control, such as where there is serious damage (or the risk of it) to PAL and where we know alternative mitigation measures have not or will not address the problem. In recognition that serious damage may occur to PAL during the Kit Dependency Period we acknowledge that lethal control may have to be undertaken during this time in
11. Managers of land not classed as Prime Agricultural Land who can evidence that they are experiencing, or reasonably expect to experience, serious agricultural damage (especially where this is to land of disproportionately high importance to the wider agricultural unit) should be able to apply for species management licence for lethal control of the associated beavers at a point in time where there are no broader welfare considerations.

<table>
<thead>
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<th>Exceptional circumstances albeit using a different approach. We will aim to ensure that in these situations all reasonable measures are employed to try to avoid this sensitive time.</th>
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12. Land managers who have beavers burrowing into engineered flood banks should be able to apply for a species management licence for lethal control of the associated beavers. Acknowledging the seriousness of the situation, this licence should be determined within a maximum of ten working days. In extreme circumstances, where there is an imminent risk that the flood bank will fail and damage life and/or property, this licence should be able to be issued verbally in the first instance and should be exercisable at any time of year.

<table>
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<th>Fully addressed</th>
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Any land manager experiencing adverse impacts from beaver burrowing activity can request a licence for lethal control. A site visit will identify if other management techniques are an option in the particular circumstances. The licensing decision would be made well within 10 working days of receipt of the licensing request.

In extreme situations, we would be able to give permission verbally in order to allow urgent lethal control to be carried out using an accredited controller at any time of year.

Appropriate techniques will be developed through the Embankment Protocol, Mitigation Scheme and Technical Group.

| Fully addressed |
Guidance for land, property and infrastructure managers

The law protects beavers but this doesn’t mean you can’t do anything to prevent damage they cause. There are lots of things you can do without a licence. This guidance explains how to get SNH help, what management does and doesn’t need a licence and, if you need a licence, how to get one.

Introduction

Scottish Ministers agree that Eurasian beaver populations originating in Argyll and Tayside (Rivers Tay and Earn catchments) areas can remain and that beavers will be allowed to expand their range naturally from these areas. The beaver is a European protected species given protection under Scots law.

However, beaver activity - building dams, burrowing or foraging - can impact on a range of interests and so it is important that provision is made to intervene and manage these impacts to prevent damage. Some types of intervention may have to be carried out under a licence from SNH as beavers are protected by law. For example, you will need a licence to kill or trap beavers, or to damage or destroy their breeding sites or resting places. SNH is responsible for beaver licensing.

This document describes where to get advice, the interventions and management actions that do and do not need a licence and how we will consider and administer licences to manage the impacts of beavers. We will review this document on at least an annual basis as our knowledge and experience of dealing with beaver casework grows.

Getting help and advice

SNH are operating a telephone helpline to provide advice about beavers. We can provide advice over the phone to help people affected by beaver activities to make the appropriate decision on what to do next. Sometimes a site visit may be necessary and, if so, we can arrange one to provide free expert advice. The site visit will help determine how beavers are using the area, the management options available and any licensing requirement. There is no application form to complete.

To contact SNH for help, advice and/or a licence ring the helpline: 01463 725364 or email licensing@snh.gov.uk

In emergency circumstances where there is an imminent risk to public safety or serious damage to land/property, ring 07717 413478 to speak to the SNH licensing manager.

How to manage beaver impacts

Beavers can have a range of impacts on a range of interests. There are a number of different ways to manage these impacts, from fitting protectors to trees to manipulating or removing dams to carrying out lethal control. All of these techniques are discussed in more detail in Annex 1. Which technique to use will depend on the circumstances. Some of these actions require a licence, but many do not.
Whatever the situation you can call the helpline for advice to help understand the possible impacts and get expert advice. You should certainly contact the helpline if you propose to do anything that might require a licence. If you are in any doubt at all then call us.

### Actions that do not require a licence

- Carrying out ongoing land management activities near lodges, burrows or dams (providing they don’t damage those structures) e.g. ploughing a field next to a beaver lodge
- Discouraging dam building e.g. through fencing
- Removing new dams (less than 2 weeks old), notching or installing flow-devices to them.
- Protecting banks from burrowing activity
- Destroying short burrows with no end chamber
- Infilling channels/canals created by beavers
- Fitting protectors to vulnerable trees
- Fencing off areas to keep beavers out e.g. from crops or woodland

### Actions that do require a licence

- Removing older dams (more than 2 weeks old), notching or installing flow devices to them
- Destroying lodges or chambered burrows
- Trapping and relocating beavers
- Lethal control

### Notes

- See Annex 1 for guidance on beaver management techniques.
- If other protected species may be present or if activities could affect a designated site qualifying interest then please contact SNH even if a licence is not required.
- Sometimes management of older dams may be able to be carried out without a licence, but determining this will require expert advice, which SNH can provide.
- Removal of beaver dams using hand tools and or ropes/ grapnels does not require authorisation from SEPA, nor does removal using bank-based machinery. Use of in-stream machinery may require a CAR licence from SEPA.

### Licensing assessment

In order to issue a licence we have to be satisfied that three legal ‘tests’ are met. These tests are summarised below together with details on how we will assess them.
Test 1 – Licence purpose

We issue a licence for purposes set out in the legislation: these include for preventing serious damage to certain interests such as crops, timber or fisheries, for public health and safety reasons or other important social, economic or environmental purposes which are in the public interest and for conserving natural habitats or wild animals.

This means that there has to be a legitimate problem that needs addressing. To help us consider if this test is passed we will rely on your information and/or the information gathered by the expert adviser from a site visit.

In certain situations which may be particularly vulnerable (e.g. dam building affecting areas of prime agricultural land* or sensitive in-stream infrastructure, flooding public transport infrastructure, damage to protected features on Natura sites or burrowing into flood embankments) we consider that this test is likely to be met.

* Prime agricultural land here means land classes 1, 2 and 3.1

Test 2 – Alternatives

We issue licences as a last resort. This means we have to be assured that other possible actions that would either not require a licence or have less impact on beavers, have either been tried or are not likely to resolve the problem. Again we will rely on information from the affected person, the expert adviser and previous experience to help us judge whether this test is passed.

We accept that there will be situations where it can automatically be assumed that there is no satisfactory alternative other than to issue a licence for lethal control. These situations include where there is serious damage (or the risk of it) to prime agricultural land, and where we know alternative mitigation measures either have not or will not address the problem.

Test 3 – Conservation impact

We have to ensure that licensed actions do not harm the conservation status of beavers in Scotland and so will not affect population trends or the overall range of beavers. In the first instance we would follow the principles above in that those actions with the lowest impact on beavers that solve the problem must be considered first. Where we licence lethal control of beavers we will monitor the cumulative impact of this management.

Given the evidence from recent survey information that beavers continue to expand their range even with ongoing lethal control in places, we are confident that the actions we licence will not be detrimental to the conservation status of beavers and so this test is likely to be met. We will maintain an oversight of the cumulative impacts of what we licence and the population dynamics and range of the Scottish wild beaver population to ensure that this is the case.

Licensing in Practice

If you think you need a licence, or even if you are not sure, then you should call the helpline on 01463 725364. We can provide advice over the phone and organise a site visit to look at the specific issues you face and offer tailored advice to help manage
the impacts of beavers. For land-holdings where beavers are affecting or likely to affect areas of prime agricultural land we offer a streamlined approach to licensing. We will also be able to issue emergency licences for other particularly vulnerable and urgent situations, and for all other cases we will be able to consider licences and be able to provide advice.

**Licensing on Prime Agricultural Land**

We accept that if beaver activity is affecting areas of Prime Agricultural Land (PAL) then the three licensing tests are met and that a licence can be issued to the landowner or land manager. Therefore if you are experiencing problems from beaver activity affecting PAL or anticipate that you are likely to have problems in the future then you should contact the helpline and a licence can be issued. Licences will cover the land management unit where intervention is necessary to protect prime agricultural land. This means that the area covered by such a licence would not have to be wholly classified as PAL.

SNH will be able to issue a licence to permit the removal of dams and, if required, lethal control. A site visit will also be offered to provide further advice. Licences can be emailed or posted to the landowner or manager. Licences can run for multiple years but if they permit lethal control the law restricts the length of time for any one licence to two years. If the landowner indicates that problems are likely to persist/recur the licence will be renewed automatically.

**Licensing for other ‘vulnerable situations’**

Knowledge of beaver activity means that we can anticipate other ‘vulnerable’ situations where licences are likely to be sought to address beaver impacts. This could include burrowing into embankments, damming affecting infrastructure, fisheries, other agricultural land (i.e. non-PAL land) or species of conservation concern. Such situations will be assessed on a case-by-case basis and any licence issued will explain what you can do in the particular circumstances.

We recognise that in some situations immediate action will be required. Where there is a need for immediate action we can licence immediately and on the basis of a telephone conversation. Similarly, in simple cases, such as dam removal or manipulation outside of the kit dependency period a licence may be granted on the basis of a phone call or email, but we are happy to arrange a site visit if that would be helpful.

In other situations, such as new cases where there are multiple or likely to be ongoing issues we can arrange a site visit to ensure that any licence granted can address the problems being experienced. We will aim to hold a site visit as soon as is mutually convenient and within one week of contact.

We will aim to issue licences within one or two working days of having the requisite information. SNH will review and adapt how we licence beaver casework. We can develop new approaches if beaver activity continues to be problematic at certain locations.

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7 Kit Dependency Period = 01 April to 16 August
Key principles of the approach to licensing are summarised below;

**Activities licensed**

Any licence granted will aim to provide a solution to the problem being experienced. Whilst in many cases solutions may be possible with relatively minor interventions, in others a greater degree of intervention will be required. We will set up a Mitigation Scheme to trial new approaches to addressing beaver impacts and to learn from them but we will also licence lethal control in vulnerable situations (see above).

**Minimising welfare impacts**

Whatever the activity that is licensed we have to ensure that impacts on animal welfare are minimised. This means that we expect licence holders to try to avoid actions during more sensitive periods if at all possible. We accept that sometimes this might not be possible, but if actions have to be carried out during the kit dependency period then additional measures will have to be put in place to minimise welfare impacts.

**Translocation of beavers**

Translocation (i.e. trap and relocation) of beavers that are causing impacts to other interests is possible. However, whilst it may initially be seen as an attractive alternative to lethal control there are also risks with this as an approach. Translocation can have significant welfare implications associated with capture, transport and following release. It can also be a time consuming and costly process and has to be carefully planned. Translocation is only likely to be a viable option if either a suitable unoccupied site is available nearby or if it is undertaken as part of a recognised reintroduction or reinforcement project.

**Lethal control**

We accept that there are situations where there will be no alternative other than for lethal control. This includes where damming activity threatens serious damage to prime agricultural land and where we know alternative mitigation measures either have not or will not address the problems being experienced.

Lethal control is easier to undertake during autumn and winter when beavers are more predictable in their emergence pattern and should be used to remove the entire family group. In order to ensure that lethal control is carried out humanely, it can only be carried out by trained individuals (accredited controllers) and subject to agreed procedures.

Ideally lethal control should be undertaken outside of the kit dependency period. However, where it is necessary to prevent an imminent threat to public health or safety or serious damage to property or to prime agricultural land or it can be permitted subject to strict conditions to address the associated additional welfare risks. There is a general assumption against lethal control in the kit dependency period in other situations.
Period licensed and renewal of licences

Licences will aim to provide a solution to the problem being experienced. Licences can run for multiple years, but if they permit lethal control the law restricts the length of time for any one licence to a two-year period. If problems are likely to recur or persist we can renew licences quickly on the basis of an email or phone call.

Annex 1 Summary of Beaver Management Techniques

Introduction

Techniques for the effective management of beavers and their activity are well developed across Europe and North America. Many of these have potential application in Scotland and are summarised below. SNH recognise that that in some instances techniques are not currently available to solve all problems being experienced. The Mitigation Scheme will look to identify and trial new methods where this is the case.

Further information on these some of these existing techniques is available from the following resources:


SNH will in due course provide a series of technical advice notes covering the use and installation of newly developed and existing techniques considered to be most appropriate in Scotland. Provided below is a summary of the existing techniques, describing what they are and why they are used.

Techniques to manage beaver dam building activity

- **Dissuasion techniques (short-term)** - Use of dissuasion to prevent dam-building, either where known ‘pinch points’ occur or perhaps where a dam has been removed and is likely to be reconstructed. A range of techniques have been trialled and found ineffective long term. Might include electric fencing strung above the dam site. Flashing lights etc. may work until animals become habituated to them.

- **Dam-notch** - Partial removal of a small section of the middle of a beaver dam, usually by hand, to increase water flow over that section. Most often associated with aiding fish passage. May be used to lower water levels in beaver ponds behind a dam

- **Dam removal** - Complete removal of whole dam structure either by hand or using a mechanical device. Used where no increase in water level, or potential blockage to fish passage, is considered acceptable in a watercourse or part of a watercourse.
- **Deterrent fencing (in-stream)** - Fencing or gate-type structure, either permanent or temporary, to prevent beavers accessing areas of water, crops or trees where damage from damming activity is deemed intolerable.

- **Piped dam with mesh filter (water flow devices)** - Placing a long pipe through a beaver dam with a wire mesh filter attached to the end, to manage the water level behind the dam on a permanent basis. Used to manage water level behind or above a dam where a certain water level is tolerable, but any further increase would not be. Essentially, it acts as an overflow device for the dam.

- **Culvert protection** - Using in-stream fencing (with or without a pipe/wire mesh) to prevent blockage to the entrance of culvert from dam building activity.

- **Grilles** - Use of metal grille or guard to prevent beavers blocking culvert exists.

### Techniques used to manage beaver burrowing and digging activity

- **Infilling of beaver-dug channels** - Infilling beaver dug channels (canals), by hand or using machinery, starting at riverbank and working inland.

- **Preventing burrowing** - Use of sheet metal piling, rock armour or mesh to prevent burrowing (or further burrowing) into vulnerable flood embankments or adjacent land. Prevents beaver burrowing activity from starting, continuing or moving into adjacent land. To note, these hard engineering techniques unlikely to be widely applicable in Scotland. New techniques will be trialled through the Mitigation Scheme.

- **Destruction of burrow or lodge** - Destruction of a beaver built lodge and or burrow usually by infilling either by hand or using machinery where beaver presence is deemed intolerable.

### Techniques used to manage beaver foraging activity

- **Tree protection** - Protection of individual or small numbers of amenity or other valuable trees by use of individual fences, mesh wrapping or deterrent paints. Prevents beavers foraging on individual trees.

- **Deterrent fencing (on land)** - Fencing, either permanent or temporary, to prevent beavers accessing areas of water, crops or trees where damage from foraging activity is deemed intolerable.

- **Deterrent fencing (in-stream)** - Fencing or gate-type structure, either permanent or temporary, to prevent beavers accessing areas of water, crops or trees where damage from foraging activity is deemed intolerable.

### Techniques to manage beavers themselves

- **Translocation (Trap & relocate)** - Live trapping of beaver(s) for transport and release (i.e. translocation). May be carried out for conflict management of
‘problem’ animals, for welfare (i.e. a sick or injured animal) or conservation purposes (i.e. reinforce existing population).

- *Lethal control* - Culling of beavers by land managers or public bodies to reduce/manage the population or remove ‘problem’ animals where no other mitigation technique currently exists.
Written evidence from NFU Scotland

The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2019

1. NFU Scotland notes that the Scottish Government laid the Conservation (Natural Habitats, &C.) Amendment (Scotland) Regulations 2019 in parliament on the 23rd February and understands that the Environment, Climate Change and Land Reform Committee will be taking evidence on the instrument from Scottish Government officials and Scottish Natural Heritage (SNH) staff on 5 March 2019. With that evidence session in mind, we thought that it would be useful if we provided NFU Scotland’s perspective.

2. When the problems associated with the illegally-reintroduced population of beavers in Tayside became apparent, NFU Scotland initially argued that the population should be removed. While NFU Scotland acknowledges the value that beavers can add to Scotland’s biodiversity, there are some places—such as the areas of highly productive agricultural land—where they are simply not appropriate and will create problems that could be extremely costly to farming businesses and agricultural productivity.

3. However, since the problem was not dealt with quickly and the population was allowed to increase, the issue became too difficult to deal with and the government decided to allow the beavers to remain and that they should receive protected status.

4. Given the government’s decision, NFU Scotland had little option but to accept that beavers will be protected and our focus moved to ensuring that the management framework that would be put in place when beavers are protected is fit for purpose and allows farmers to deal with problems should they arise.

5. As such, NFU Scotland, together with Scottish Land & Estates, the Scottish Wildlife Trust and the Royal Zoological Society of Scotland, wrote to the Cabinet Secretary in 2016 accepting that beavers would be protected, but also setting out some of the key issues that a management framework should address.

6. This remains our position. NFU Scotland accepts that beavers should be given European protected status, but we are keen to ensure that the management framework operates in a way that works for farmers.

7. Since 2016 Scottish Natural Heritage has been developing the management framework and consulting the members of the Scottish Beaver Forum in an effort to ensure that the framework satisfies all interested parties. In this we must acknowledge that SNH has had to balance competing interests and that the task has not been easy.

8. This process has been difficult from NFU Scotland’s point of view. Part of the problem has undoubtedly been that this is a novel situation and that everyone has been learning as they go. The feedback from our members is that it has taken quite a long time for SNH to properly appreciate the issues from the farmers’ point of view, such as the problems associated with the blocking of drainage ditches. Today we
believe that those closely involved in the discussions do fully understand the issues and are willing to take a pragmatic approach. This is progress, but it will be important that as more SNH staff are involved in dealing with beaver management and licencing that they also fully understand the issues that they are dealing with.

9. Another reason that this process of developing the management framework has been difficult relates to a high level of distrust of SNH from the people on the ground. From their perspective, we are only in this position—where the land manager is going to have to apply for licences to manage their land as they would wish—because SNH did not deal with the problem properly in the first place. From their perspective SNH actually wanted beavers to remain and so created their problems and it is now SNH that are going to police the licencing regime. So there is a high degree of suspicion that SNH is likely to administer the licencing regime in a way that makes things difficult for the farmer.

10. We believe that key SNH staff recognise this issue and are keen to make efforts to build trust with the land management community. But only time will tell and progress in this area will depend on how the management framework is administered and the approach that SNH takes in its decision making. NFU Scotland would encourage the Committee to keep the operation of the management framework under close scrutiny to ensure that it operates in a way that works for farmers as well as beavers.

11. NFU Scotland has usefully received assurances from the Cabinet Secretary for the Environment, Climate Change and Land Reform that the government intends to adopt a flexible approach to licencing, to issue licences to those that need them—especially on prime agricultural land—in advance of beavers gaining protected status, to fund mitigation works and to provide training prior to the legislation coming into force. The Cabinet Secretary also emphasised that the protection of beavers should not compromise farming.

12. This is very welcome and we acknowledge that the Scottish Government and SNH have listened to our concerns and sought to address them as far as they can.

13. With this process in mind, and with the assurances we have received from the government, NFU Scotland does not wish to oppose the protection of beavers. Our focus is now turning to keeping the implementation of the new regime under close scrutiny and making sure that it works for farmers.

14. Key issues that we will wish to keep an eye on, and encourage the Committee to scrutinise, are:

- **Preparedness for 1st May 2019 (licences)** – We have been assured that all those that need a licence in advance of the 1st May will be able to get one. This is important because it will allow a continuation of management and prevent anyone from encountering problems due to a gap between beavers becoming protected and a licence being issued.
• **Preparedness for 1st May 2019 (training)** – We have been assured that training will be provided ahead of protection being granted and understand that events are being planned. This is encouraging and NFUS will help advertise the events with members where it can. But there is an unknown in terms of demand and it will be important that everyone that needs training is able to access it.

• **Mitigation** – A Beaver Mitigation Scheme is being established. This is a scheme that will be run by SNH and provide land managers with a range of government-funded options to minimise the impacts of beavers on their land. NFU Scotland believes that this mitigation scheme is very important and wants to ensure that it is comprehensively funded.

Our worry is that the mitigation scheme will not be adequately funded to start with and that over time it will dwindle as the focus settles on the licencing regime allowing management (potentially including lethal control) by farmers. This would be to transfer the cost of allowing an illegally re-introduced species to shift form the government to the farmer, the very person that is effectively the victim of someone breaking the law.

Ideally, SNH should be identifying areas where beaver impacts are not currently felt, but are imminent, and developing mitigation options and implementing them. This would allow land managers and beavers to co-exist much more successfully. Without this sort of pre-emptive work it is likely that the land manager will be forced to undertake management (including lethal control) under licence. A fully funded mitigation scheme is therefore vital.

The Cabinet Secretary has assured us that the government will fund mitigation work and this is welcome, but what remains unclear is how much funding is available and whether additional funds will be forthcoming if it can be shown that it is required.

15. NFU Scotland would encourage the ECCLR Committee to keep the operation of the management framework under close scrutiny to ensure that the government and SNH take a pragmatic and flexible approach that works for both farmers and beavers.