RURAL ECONOMY AND CONNECTIVITY COMMITTEE

AGENDA

23rd Meeting, 2018 (Session 5)

Wednesday 19 September 2018

The Committee will meet at 8.45 am in the Mary Fairfax Somerville Room (CR2).

1. **Salmon farming in Scotland (in private):** The Committee will consider a draft report.

2. **Transport (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

   Gordon MacKay, Chair, and Charlie Hoskins, Member, Society of Chief Officers of Transportation in Scotland;

   Jim Grieve, Head of Programmes, SESTRANS;

   Bruce Kiloh, Head of Policy and Planning, Strathclyde Partnership for Transport;

   Paul Lawerence, Executive Director of Place, City of Edinburgh Council;

   David Summers, Principal Passenger Transport Officer, Highland Council.

3. **UK Statutory Instruments:** The Committee will consider recent correspondence from the Scottish Government on the Environment, Food and Rural Affairs (Miscellaneous Amendments and Revocations) Regulations 2018 and the Sea Fishing (Enforcement) Regulations 2018.

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   Clerk to the Rural Economy and Connectivity Committee
   Room T3.40
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The papers for this meeting are as follows—

**Agenda Item 1**

PRIVATE PAPER

**Agenda Item 2**

Cover note

PRIVATE PAPER

**Agenda Item 3**

UK SI cover note
Rural Economy and Connectivity Committee
23rd Meeting, 2018 (Session 5), Wednesday, 19 September 2018
Transport (Scotland) Bill

Background

1. The Transport (Scotland) Bill ("the Bill") was introduced in the Scottish Parliament by the Cabinet Secretary for Finance and Constitution, Derek Mackay MSP, on 8 June 2018. The Rural Economy and Connectivity Committee has been designated as the lead committee for Stage 1 consideration of the Bill.

2. On 19 September the Committee will take evidence from local authorities, their representatives and Regional Transport Partnerships.

Purpose and content of the Bill

3. The Bill covers a wide range of different transport topics in six parts:

   - Part 1 of the Bill enables the creation of low emission zones in Scotland which can be enforced, with the aim of improving air quality and reducing greenhouse gas emissions. This would restrict driving in certain areas by road vehicles which fail to meet emission standards.

   - Part 2 of the Bill - bus services. This Part is intended to provide local transport authorities with options to improve bus services in their areas. This could include partnership working with operators, local franchising or running their own buses. Part 2 also aims to improve the information given to passengers.

   - Part 3 of the Bill - smart ticketing. This Part would create a national technological standard for smart ticketing to assist the spread of smart ticketing across public transport in Scotland, and provide local transport authorities with further powers for smart ticketing arrangements and schemes.

   - Part 4 of the Bill - responsible parking. This Part proposes to improve safety for roads users and pedestrians by prohibiting double parking and parking on pavements.

   - Part 5 of the Bill – road works. This Part would strengthen the role of the Scottish Road Works Commissioner (SRWC) and improve the regulation of road works.

   - Part 6 of the Bill – Regional Transport Partnerships and Scotland’s canals. This Part gives Regional Transport Partnerships (Transport Partnerships) more financial flexibility. It also allows Scottish Ministers to vary the membership and structure of the Scottish Canals Board.

4. Further information on the Bill can be found on the Parliament’s website:
http://www.scottish.parliament.uk/parliamentarybusiness/Bills/108683.aspx

Committee's evidence gathering

5. This is the Committee’s second formal evidence session on the Bill. Details of other evidence gathering activities can be found on the Committee’s website:


REC Committee Clerking Team
September 2018
1. Correspondence has been received from the Scottish Government about two UK Statutory Instruments. It notifies the Committee that the Scottish Government has given its permission to allow the UK Government to make the regulations on its behalf.

   a. Environment, food and rural affairs (miscellaneous amendments and revocations) regulations 2018
   b. Sea Fishing (enforcement) regulations 2018

2. While a protocol has been established to deal with legislative consent directly in relation to the UK Withdrawal Bill these instruments fall outside of that process. As such the Committee is asked to simply note the correspondence from the UK Government.

3. The environment regulation outlines a number of technical updates to amend out of date references to UK and EU legislation in UK instruments. Some of which apply in both reserved and devolved areas. The fishing regulation seeks to extend the existing powers of the Inshore Fisheries and Conservation Authorities (IFCA) Officers to include powers to enforce EU measures. The regulations would allow the IFCA to pursue vessels into Scottish waters.

4. Further detail on the regulations is contained in the correspondence which is available in the annexe.
9 August 2018

Dear Edward & John,

THE ENVIRONMENT, FOOD AND RURAL AFFAIRS (MISCELLANEOUS AMENDMENTS AND REVOCATIONS) REGULATIONS 2018

I am writing to inform you of Scottish Ministers’ intention to consent to the Environment, Food and Rural Affairs (Miscellaneous Amendments and Revocations) Regulations 2018, which UK Ministers propose to lay on 13 August.

These regulations will amend a number of out of date references to UK and EU legislation in UK instruments with UK or GB application in both reserved and devolved areas. A list of the instruments impacted in devolved areas is attached in the Annex. These references require to be updated to ensure the most recent EU legislation is referred to on the statute book. These technical updates will make the process of fixing deficiencies caused by EU exit more straightforward, and we will be updating the Scottish Parliament on our plans to fix legislative deficiencies shortly.

Whilst it would be possible for Scottish Ministers to update these references through a Scottish Statutory Instrument, we have agreed that the Secretary of State will make the required amendments in these Regulations. This is because the amendments are technical and also, in part, involve a complex mix of reserved and devolved competencies which it would be difficult to deal with separately.

As you will be aware, under s57(1) of the Scotland Act, UK Ministers may use their powers to implement EU obligations in respect of Scotland, even if the subject matter is devolved. However, the Memorandum of Understanding between our administrations requires that the UK Government may exercise this power only with our agreement. As such, I have written today to Dr Thérèse Coffey MP, Parliamentary Under Secretary of State for the Environment to formally provide our consent to the necessary amendments being made to the instruments in the Annex, insofar as these relate to devolved areas.
Whilst our position is that the best option for Scotland is to remain within the EU, we recognise the necessity of planning for EU exit to ensure we protect what matters to the people of Scotland. This consent has been provided without prejudice to the Scottish Government’s wider position that consent should be required for UK Government legislation affecting devolved areas. Exiting the EU presents significant implications for the UK’s constitutional arrangements and it is vital that these implications continue to be worked through in the proper way and in a manner that respects devolution.

I have copied this letter to Joan McAlpine MSP, Convener of the Culture, Tourism, Europe and External Relations Committee.

Yours,

Roseanna Cunningham
ANNEX - INSTRUMENTS WITH UK OR GB APPLICATION IN DEVOLVED AREAS

1. The Pollution Prevention and Control Act 1999
2. The Control of Pesticides Regulations 1986
3. The End-of-Life Vehicles Regulations 2003
4. The End-of-Life Vehicles (Producer Responsibility) Regulations 2005
5. The Batteries and Accumulators (Placing on the Market) Regulations 2008
7. The Marine Strategy Regulations 2010
8. The Plant Protection Products Regulations 2011
9. The Plant Protection Products (Sustainable Use) Regulations 2012
10. The Waste Electronic and Electrical Equipment Regulations 2013
11. The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012
13. The Scotch Whisky Regulations 2009
15. The Hops Certification Regulations 1979
16. The Bovine Embryo (Collection, Production and Transfer) Regulations 1995
17. The Seeds (National Lists of Varieties) Regulations 2001
18. The Plant Breeders’ Rights (Naming and Fees) Regulations 2006
20. Butter Subsidy (Protection of Community Arrangements) Regulations 1984
22. The Shrimp Fishing Nets Order 2002
THE SEA FISHING (ENFORCEMENT) REGULATIONS 2018

I am writing to inform you of a forthcoming UK Statutory Instrument, the Sea Fishing (Enforcement) Regulations 2018. The UK Government is proposing to make a statutory Instrument which seeks to extend the existing powers of Inshore Fisheries and Conservation Authorities (IFCA) Officers to include powers to enforce EU measures. The Regulations include provisions that allow IFCAS to pursue vessels from their English fisheries district into Scottish waters. To this limited degree it extends and applies to Scotland relying on section 57 (1) of the Scotland Act 1998. It is therefore considered appropriate, subject to Scottish Ministers’ agreement, for the UK government to make the regulations for Scotland in this particular instance.

Background
Marine Fisheries legislation is enforced in England by the Marine Management Organisation (MMO) and the ten IFCA. The MMO manage and monitor the entire English fishing fleet, ensuring compliance with all national and EU fisheries legislation. IFCA enforce legislation in the 0-6 nautical mile sea area of their designated districts. They manage their local fisheries through voluntary actions and district-wide byelaws and enforce national and EU technical conservation measures.

IFCA officers already have established powers of pursuit into Scotland and the Scottish zone under section 166(4) of the Marine and Coastal Access Act 2009 (MACCA) enabling them to enforce IFCA byelaws. The current proposed draft SI seeks to provide IFCA officers the same pursuit powers enabling them to enforce a number of EU technical measures which are listed in the Schedule of the SI. Without these powers, there is a potential enforcement

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùinair.
Maireannach fo chumhachan A chd Colteachaidh (Alba) 2016. Faicibh www.lobbying.scot

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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gap, e.g. in circumstances where the IFCA officers pursue a vessel into Scottish waters for breaches of both an IFCA byelaw and a specified EU measure, they can currently only take enforcement action against the byelaw provision.

IFCA officers previously had enforcement functions relating to EU technical measures, such as minimum conservation reference sizes, specified in the Sea Fishing (Enforcement of Community Conservation Measures) Order 2000. However this Order was revoked by the Sea Fishing (Enforcement and Miscellaneous Provisions) Order 2015 as part of the UK Governments Red Tape Challenge, due to a number of specified EU Measures being out of date. At that point, the IFCA officers lost their powers to directly enforce those EU measures.

To allow IFCA officers to continue to enforce relevant EU Fisheries measures directly in their districts, they have been temporarily appointed as Marine Enforcement Officers (MEOs) and cross-warranted by the MMO under section 235 of MACAA. However, this approach is not considered a viable long-term solution because of practical and operational issues with IFCA officers acting as MEOs under the control and authority of the MMO rather than their respective IFCA.

In March this year the UK Government conducted a four week public consultation seeking stakeholder views on the introduction of the Sea Fishing (Enforcement) Regulations 2018. Responses were received from relevant stakeholders, industry and members of the general public. Approximately 71% of respondents agreed with the introduction of the Regulations, specifically with the reinstatement of IFCA officers as direct enforcers of EU fisheries legislation.

The Regulations are being made under the Secretary of State’s designated powers under section 2(2) of the European Communities Act to implement EU obligations. The reference to section 57(1) of the Scotland Act 1998 appears in a footnote to the preamble. It is there to explain that, although the function of implementing EU obligations in relation to fisheries was transferred to the Scottish Ministers, the Secretary of State still retains power to exercise that function as regards Scotland. This is a standard footnote when powers under section 2(2) are being used by the UK Government in respect of devolved matters in Scotland.

**Effect of regulations**

These Regulations will allow IFCA officers to pursue a vessel into the Scottish zone provided certain conditions are met (not pursuit powers under Section 166(4) of MACAA) and; allow these officers to use their enforcement powers in relation to an offence that has been committed in English waters. The Scottish Government considers that the regulatory powers sought are appropriate, will only be used infrequently and do not affect the enforcement powers of fishery officers in Scotland as per current arrangements.

The provisions within these Regulations will close a potential enforcement gap in the management of the UK inshore fisheries sector and could also indirectly provide an aid to preventing the circumvention of Scottish regulations.
Consequently Scottish Ministers have agreed to the regulatory proposals being taken forward by the UK Government allowing the EU enforcement measures for IFCAs to be transposed on a UK-wide basis.

FERGUS EWING