RURAL ECONOMY AND CONNECTIVITY COMMITTEE

AGENDA

33rd Meeting, 2020 (Session 5)

Wednesday 9 December 2020

The Committee will meet at 9.30 am in a hybrid meeting in the Robert Burns Room (CR1) and be broadcast on www.scottishparliament.tv

1. **Subordinate legislation:** The Committee will take evidence on the Island Communities Impact Assessments (Publication and Review of Decisions) (Scotland) Regulations 2020 [draft] from—

   Paul Wheelhouse, Minister for Energy, Connectivity and the Islands, Erica Clarkson, Head of Islands and Rural Communities, Directorate for Agriculture and Rural Economy, Paul Maxton, Islands Community Impact Assessments, Lead Directorate for Agriculture and Rural Economy, and Jill Turnbull, Legal Directorate, Scottish Government.

2. **Subordinate legislation:** Paul Wheelhouse (Minister for Energy, Connectivity and the Islands) to move—

   Motion S5M-23257—That the Rural Economy and Connectivity Committee recommends that the Island Communities Impact Assessments (Publication and Review of Decisions) (Scotland) Regulations 2020 [draft] be approved.

3. **European Union (Withdrawal) Act 2018:** The Committee will consider whether the following instrument has been laid under the appropriate procedure-

   The Fisheries (Technical Conservation Measures) (EU Exit) (Scotland) (Amendment etc.) Regulations 2020

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

   The Common Agricultural Policy (Simplifications and Improvements) (Miscellaneous Amendments) (Scotland) Regulations 2020.
The Fisheries (Technical Conservation Measures) (EU Exit) (Scotland) (Amendment etc.) Regulations 2020.

The Islands (Scotland) Act 2018 (Commencement No. 3) Regulations 2020.

5. **Women in Agriculture:** The Committee will take evidence from—

Sarah-Jane Laing, Chief Executive, Scottish Land & Estates;

Professor Sally Shortall, Duke of Northumberland Chair of Rural Economy, Newcastle University;

Anne Rae MacDonald, Partner of an arable farming business in Easter Ross and Director of Highland Business Services Co-operative.

6. **Dogs (Protection of Livestock) (Amendment) (Scotland) Bill (in private):**

The Committee will consider a draft Stage 1 report.
The papers for this meeting are as follows—

**Agenda Items 1 to 4**

Note by Clerk  
REC/S5/20/33/1

Note by Clerk  
REC/S5/20/33/2

PRIVATE PAPER  
REC/S5/20/33/3 (P)

**Agenda Item 5**

Note by Clerk  
REC/S5/20/33/4

PRIVATE PAPER  
REC/S5/20/33/5 (P)

**Agenda Item 6**

PRIVATE PAPER  
REC/S5/20/33/6 (P)
The Committee will consider the following instruments:

**AFFIRMATIVE INSTRUMENT**

**Draft SSI: The Island Communities Impact Assessments (Publication and Review of Decisions) (Scotland) Regulations 2020 (Annexe A)**

**Purpose**

These regulations make provision under section 9(1) of the Islands (Scotland) Act 2018 (“the Act”) about reviews of decisions of relevant authorities relating to island communities impact assessments under section 8(1) of the Act. They also introduce a requirement for publication of island communities impact assessments by relevant authorities under section 30(1) of the Act which gives Scottish Ministers power by regulations to make supplementary provisions they consider appropriate for the purpose of giving full effect to the Act.

**Points to note**

No points are highlighted for members attention in relation to this instrument.

**NEGATIVE INSTRUMENTS**

**SSI 2020/349: Common Agricultural Policy (Simplifications and Improvements) (Miscellaneous Amendments) (Scotland) Regulations 2020 (Annexe B)**

**Purpose**

The amendments made by this instrument will simplify and improve the operation of the provisions of the Common Agricultural Policy (“CAP”) retained EU legislation.

In particular the amendments will simplify and improve the operation of the provisions for (a) cross border applications, (b) the Greening rules relating to crop diversification and (c) inspections that are undertaken for direct payment and rural development schemes.

**Points to note**

No points are highlighted for members attention in relation to this instrument.
### SSI 2020/367 Fisheries (Technical Conservation Measures) (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (Annexe C)

**Purpose**

The Fisheries (Technical Conservation Measures) (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (“the Regulations”) amend domestic legislation concerning technical conservation measures relating to sea fisheries. These Regulations make miscellaneous amendments to subordinate legislation to reflect the coming into force of Regulation (EU) 2019/1241 of the European Parliament and of the Council (“the Technical Conservation Regulation”). Regulations 2 to 6 make minor amendments to subordinate legislation to replace, amend or remove out of date references to, and in respect of, Council Regulation (EC) No. 850/98 which was repealed and replaced by the Technical Conservation Regulation. Regulation 7 revokes certain provisions in the Fisheries (EU Exit) (Scotland) (Amendment) (No.2) Regulations 2019 which are redundant as a result of these Regulations, and Regulation 8 revokes subordinate legislation which is redundant and makes saving provision.

**Points to note**

No points are highlighted for members attention in relation to this instrument

---

### SSI 2020/346 (C. 29): The Islands (Scotland) Act 2018 (Commencement No. 3) Regulations 2020 (Annexe D)

**Purpose**

The instrument commences Sections 7 to 10, 11(1) and 12 to 14 of the Islands (Scotland) Act 2018 (“the Act”) into force on 23 December 2020.

The instrument is laid but not subject to any parliamentary procedure in terms of section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. It comes into force on 23 December 2020.

**Points to note**

Members are invited to note this instrument only as it is not subject to any parliamentary procedure.
Annexe A

**Title of instrument:** Island Communities Impact Assessments (Publication and Review of Decisions) (Scotland) Regulations 2020 (SSI 2020/draft)

**Type of Instrument:** Affirmative

**Laid Date:** 3 November 2020

**Coming into force:** 23 December 2020

**Minister to attend the meeting:** Yes

**Procedure**

1. The Rural Economy and Connectivity (REC) Committee is lead committee for this instrument and is required to report to the Parliament on its considerations.

2. Under Rule 10.6.1, these regulations are subject to affirmative resolution before they can be made. It is for the REC Committee to recommend to the Parliament whether these draft regulations should be approved.

3. The Minister for Energy, Connectivity and the Islands has, by motion (Motion S5M-23257) as set out in the agenda), proposed that the Committee should recommend the approval of this instrument.

4. The Minister will attend to explain the purpose and policy objective of the instrument and to answer any questions from members. He will then (under a subsequent agenda item) be invited to speak to and move the motion seeking approval.

5. At the end of the debate, the Committee must decide whether it agrees or disagrees with the motion, and then report to Parliament accordingly. Such a report need only be a short statement of the Committee’s recommendation

**Policy Objectives and Background**

6. The Policy Note describes the policy objectives as follows:

   “Section 9(1) of the Islands (Scotland) Act 2018 (“the Act”) requires that the Scottish Ministers establish by regulations, provision for reviews of decisions of relevant authorities relating to island communities impact assessments under section 8(1) of the Act. The regulations are subject to affirmative procedure in accordance with section 29(2)(b) of the Act.” These Regulations satisfy that requirement.

7. An island communities impact assessment prepared by a relevant authority is to be published on a website. Previously, in terms of the Act, a relevant authority was only obliged to publish its reasons for not carrying out an island communities impact assessment. Now, all island community impact assessments are to be published in the interests of transparency. This provision is introduced as a supplementary provision considered appropriate for the purpose of giving full effect to the Act.

Consideration by the Delegated Powers and Law Reform Committee
8. The Delegated Powers and Law Reform Committee considered this SSI at their meeting of Tuesday 10 November. No issues were raised for reporting.

Points to note

9. No points are highlighted for members attention in relation to this instrument.

Recommendation

10. The Committee is invited to consider any issues that it wishes to raise in relation to this instrument.

Rural Economy and Connectivity Committee Clerks
December 2020
2020 No.

LOCAL GOVERNMENT

The Island Communities Impact Assessments (Publication and Review of Decisions) (Scotland) Regulations 2020

Made - - - - 2020
Coming into force - - 23rd December 2020

The Scottish Ministers make the following Regulations in exercise of the powers conferred on them by sections 9(1) and 30(1) of the Islands (Scotland) Act 2018 and all other powers enabling them to do so.

In accordance with section 29(2)(b) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

PART 1
Preliminary

Citation and commencement

1. These Regulations may be cited as the Island Communities Impact Assessments (Publication and Review of Decisions) (Scotland) Regulations 2020 and come into force on 23 December 2020.

Interpretation

2. In these Regulations—
   “the Act” means the Islands (Scotland) Act 2018,
   “applicant” means—
   (a) an individual who is a resident of an island community at the time of the decision, or
   (b) a community controlled body, or
   (c) a relevant local authority,

(a) 2018 asp 12.
“decision” means—
(a) a published decision, or
(b) the decision of the relevant authority following review of a policy, strategy or service (as the case may be)—
   (i) not to prepare an island communities impact assessment for that policy, strategy or service (as the case may be), and
   (ii) not to publish an explanation for not preparing an island communities impact assessment,

“community controlled body” means a body (whether corporate or unincorporated) having a written constitution that includes the following—
(a) a definition of the island community to which the body relates,
(b) provision that the majority of the members of the body is to consist of members of that island community,
(c) provision that the members of the body who consist of members of that island community have control of the body,
(d) provision that membership of the body is open to any member of that island community,
(e) a statement of the body’s aims and purposes, including a promotion for the benefit of that island community, and
(f) provision that any surplus funds or assets of the body are to be applied for the benefit of that island community,

“publication date” means—
(a) the publication date of the island communities impact assessment, or
(b) the publication date of the explanation by the relevant authority for not preparing an island communities impact assessment,

“published decision” means—
(a) the published island communities impact assessment,
(b) the published explanation by the relevant authority for not preparing an island communities impact assessment,

“relevant local authority” has the meaning given by section 21(2)(a) of the Act,

“review documents” means—
(a) the application for review,
(b) all documents accompanying the application for review in accordance with regulation 5(1)(b), and
(c) all representations or comments received by the relevant authority by virtue of regulations 7(3) or 8(2).

“validation date” has the meaning given by regulation 6(6),

“working day” means every day except—
(a) Saturday and Sunday,
(b) 1 and 2 January, and
(c) 25 and 26 December.
PART 2
Publication of Island Communities Impact Assessments

Publication of Island Communities Impact Assessments

3. An island communities impact assessment prepared by a relevant authority is to be published on a website of the relevant authority.

PART 3
Review of decisions of relevant authorities relating to island communities impact assessments: procedure

Grounds of review

4. An applicant may request a review of a decision where the applicant can demonstrate that the applicant has been or is likely to be directly affected by the policy, strategy or service which is the subject matter of that decision and—

(a) the applicant disagrees with the published explanation of the relevant authority under section 8(4) of the Act for not preparing an island communities impact assessment,

(b) the applicant considers that the relevant authority, in making its decision, has failed in its duty under section 8(3)(a) of the Act to describe the likely significantly different effect of the policy, strategy or service (as the case may be),

(c) the applicant considers that the relevant authority, in making its decision, has failed in its duty under section 8(3)(b) of the Act to assess the extent to which the relevant authority considers that the policy, strategy or service (as the case may be) can be developed or delivered in such a manner as to improve or mitigate, for island communities, the outcomes resulting from it, or

(d) the relevant authority has reviewed a policy, strategy or service (as the case may be) and has decided not to prepare an island communities impact assessment for that policy, strategy or service and has not published an explanation for not preparing an island communities impact assessment and the applicant considers that policy, strategy or service has an effect on an island community which is significantly different from its effect on other communities (including other island communities) in the area in which the relevant authority exercises its functions.

Form and timing of application for review

5.—(1) An application for review under these Regulations must—

(a) be made in the form specified in the schedule, and

(b) include or be accompanied by any information specified in that schedule.

(2) An application for review made under regulation 4(a), (b) or (c) must be made to the relevant authority within the period of 3 months beginning with the publication date.

(3) An application for review made under regulation 4(d) may be made at any time after the decision is made.

Validation of application

6.—(1) Subject to paragraphs (2) and (7), a relevant authority must, within 10 working days following receipt of an application for review, send a written acknowledgement to the applicant informing the applicant of the website on which documents submitted in connection with the review will be published.
(2) Subject to paragraph (7), where the relevant authority receives an application for review and—

(a) the application form is incomplete, or

(b) documentation listed on the application form as being submitted with the application has not been submitted,

the relevant authority may, within 10 working days following receipt of the application, issue a notice to the applicant.

(3) A notice issued under paragraph (2) must, as the case may be, identify—

(a) the information the applicant must provide in order to complete the application form,

(b) the documentation listed on the application form which was not submitted by the applicant.

(4) The applicant must provide any information or documentation listed in a notice under paragraph (2) to the relevant authority within 10 working days following the second working day after the date the notice was issued.

(5) Where the relevant authority receives all of the information or documentation identified in a notice issued under paragraph (2) within the time limit specified in paragraph (4), the relevant authority must within 10 working days following the expiry of that time limit send a written acknowledgement to the applicant in the same manner as an acknowledgement issued under paragraph (1).

(6) An application for review is taken to have been validated on the date on which the acknowledgement is issued under paragraph (1) or (5) (“the validation date”).

(7) A relevant authority may decline to consider an application for review—

(a) which relates to a decision for which an application has already been received and validated in accordance with paragraph (6), or

(b) where the relevant authority has issued a notice under paragraph (2) and the applicant has failed to submit all of the information or documentation required to comply with that notice within the time limit specified in paragraph (4).

(8) Where a relevant authority declines to consider an application under paragraph (7), the relevant authority must give notice in writing to the applicant confirming whether the application was declined under paragraph (7)(a) or (b).

Notification of Review

7.—(1) Within 7 working days following the validation date, the relevant authority must publish a notice with details of the review on the website of the relevant authority.

(2) A notice under paragraph (1) must—

(a) state the decision to which the review relates,

(b) state the grounds under regulation 4 on which the application is made,

(c) provide details of where the application for review and any other documents submitted in connection with it may be accessed by the public, and

(d) state that written representations may be made by any person to the relevant authority and include information as to how any representations may be made, by which date they must be made (being a date not less than 14 working days following the date of publication of the notice), that the written representations must include the name and contact details of the person making the written representations, and that a copy of the written representations will be sent to the applicant for comment.

(3) A person may within the period of 14 working days following the date on which the notice is published under paragraph (1) make written representations in respect of the review to the relevant authority.
(4) A person may, in addition to any representations made by virtue of paragraph (3), raise matters and submit further documents, materials or evidence only in accordance with a request made under regulation 12.

**Opportunity for applicant to comment on representations**

8.—(1) Within 10 working days following the date referred to in regulation 7(2)(d), the relevant authority must send a copy of any representations received under regulation 7(3) to the applicant and must inform the applicant how and by what date (being a date not less than 14 working days following the date on which such copy is sent under this paragraph) the applicant may make comments to the relevant authority on such representations.

(2) The applicant may, within the time limit specified by the relevant authority under paragraph (1), make comments in writing on such representations.

**Publication of representations and comments**

9.—(1) As soon as practicable following receipt, the relevant authority must make copies of-

(a) any representations or comments received under regulations 7(3) or 8(2),

(b) any additional material received under regulation 12(3), and

(c) any comments received under regulation 12(4),

available for inspection on the website of the relevant authority, until such time as the relevant authority publish a decision notice in accordance with regulation 15.

(2) Any review documents published on the website of a relevant authority must not include the name, contact details and signature of the applicant or those who have made comments or representations.

(3) In addition to paragraph (2), a relevant authority may further redact information from the review documents prior to publication on the relevant authority’s website to the extent they are, in the relevant authority’s reasonable opinion, defamatory or obscene.

**Determination without further procedure**

10. Where the relevant authority considers that the review documents provide sufficient information to enable it to determine the review, it may determine the review without further procedure.

**Further procedure**

11.—(1) The relevant authority may determine at any stage of the review that further representations should be made or further information should be provided to enable the review to be determined.

(2) Where the relevant authority considers that further representations should be made or further information should be provided, regulation 12 applies.

(3) Notices given under regulation 12(1)—

(a) may be given separately or combined into a single notice, and

(b) must include an address to which any written communication may be sent.

**Written submissions**

12.—(1) Where the relevant authority has determined that further representations should be made or further information should be provided, by means of written submissions, the relevant authority may request such further representations or information and must do so by giving written notice to that effect to—

(a) the applicant, and
(b) any other person from whom the relevant authority wishes to receive further representations or information.

(2) The notice given under paragraph (1) must—

(a) set out the matters on which such further representations or information is requested,

(b) specify the date by which such further representations or information are to be received by the relevant authority, and

(c) specify the name and address of any person to whom the notice is given.

(3) Any further representations made or information provided in response to a notice given under paragraph (1) (“additional material”) must be received by the relevant authority on or before the date specified for that purpose in the notice and a copy of that additional material must be sent to any other person to whom the notice was given to be received on or before that same date.

(4) Any person to whom a notice under paragraph (1) was given may send comments to the relevant authority in respect of the additional material to be received by the relevant authority on or before the date 10 working days following the date specified under paragraph (3) and must, when doing so, send a copy of such comments to any other person to whom the notice was given under paragraph (1).

(5) A copy of any additional material or any comments required to be sent to a person under this regulation is to be sent to the person at the address stated for that person in the notice given under paragraph (1).

New evidence

13.—(1) If, after the conclusion of any further procedure conducted by virtue of regulation 11, the relevant authority proposes to take into consideration any new evidence which is material to the determination of the review, the relevant authority must not reach a decision on the review without first affording the applicant and any other relevant party an opportunity of making representations on such new evidence.

(2) In this regulation “relevant party” means any person to whom notice was sent under regulation 12(1)(b).

Time periods for determination

14.—(1) The relevant authority must, within the period mentioned in paragraph (2)—

(a) issue a decision notice to the applicant,

(b) issue a copy of the decision notice to any person who—

(i) made written representations under regulation 7(3), or

(ii) who received notice under regulation 12(1)(b), and

(c) make a copy of the decision notice available for inspection on the website of the relevant authority.

(2) The period referred to in paragraph (1) is 6 months beginning on the validation date.

Decision Notice

15. The decision notice must—

(a) describe the decision that was the subject of the review,

(b) state the relevant authority’s determination of the review and the reasons for that determination,

(c) state—

(i) the further action under regulation 16, if any, that the relevant authority will take and the time period within which that further action will be taken, or

(ii) that no further action under regulation 16 will be taken.
Further action

16. The further action that may be taken by a relevant authority is—
   (a) an island community impact assessment being carried out where one has not previously
       been done,
   (b) variations being made to part (or parts) of an island community impact assessment, or
   (c) a new island community impact assessment being carried out and substituted where one
       has previously been done.

PART 4

General

Electronic Communications

17.—(1) Where the criteria in paragraph (2) are met, any document required or authorised to be
sent by these Regulations may be sent by electronic communication and any requirement in these
Regulations that any document is to be in writing is fulfilled in that case.

(2) The criteria are—
   (a) the recipient consents, or is deemed to have agreed under paragraph (3), to receive the
       document electronically, and
   (b) the document when transmitted by electronic communication will be—
      (i) capable of being accessed by the recipient,
      (ii) legible in all material respects, and
      (iii) sufficiently permanent to be used for subsequent reference.

(3) Any person sending a document using electronic communication is to be taken to have
agreed—
   (a) to the use of such communication for all purposes relating to the review which are
       capable of being carried out electronically, and
   (b) that the address for the purpose of such communication is the address incorporated into,
       or otherwise logically associated with, that communication.

(4) Deemed agreement under paragraph (3) subsists until that person gives notice to revoke the
agreement.

(5) Notice of withdrawal of consent to the use of electronic communication or of revocation of
agreement under paragraph (4) takes effect on the later of—
   (a) the date specified by the person in the notice, or
   (b) the expiry of the period of 5 working days beginning with the date on which the notice is
       sent.

(6) In this regulation—
   “address” includes any number or address used for the purpose of such communication or
   storage,
   “document” includes any notice, consent, agreement, decision, representation, statement,
   report or other information or communication,
   “electronic communication” has the meaning given in section 15(1) of the Electronic
   Communications Act 2000(a),

(a) 2000 c.7. Section 15 was amended by the Communications Act 2003 (c.21), schedule 17, paragraph 158.
“legible in all material respects” means that the information contained in the document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form, and “sent” includes served, submitted or given and cognate expressions are to be construed accordingly.

Contact address

18.—(1) In relation to a review to which these Regulations apply, the “contact address” is the address (including any address for the purposes of electronic communication within the meaning of regulation 17) to which the applicant making the application for review wishes any document relating to the review to be sent.

(2) The contact address is as stated in the application for review unless the applicant has subsequently informed the relevant authority of a change to the contact address, in which case the contact address is the address most recently provided to the relevant authority by the applicant as the contact address

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers
SCHEDULE

APPLICATION FOR REVIEW OF DECISION RELATING TO
ISLAND COMMUNITY IMPACT ASSESSMENT

REGULATION 5 OF THE ISLAND COMMUNITIES IMPACT ASSESSMENTS
(PUBLICATION AND REVIEW OF DECISIONS) (SCOTLAND) REGULATIONS 2020

Notes:

1. This form is to be used by an applicant applying for a review of a decision relating to an
island community impact assessment (“ICIA”) under regulation 5 of the Island Communities

2. You may download this form and complete it manually or electronically.

3. If you complete the form manually, please do so using black or blue ink and capital letters.

4. Whether you complete the form manually or electronically, you may continue any answer on
a separate sheet of paper. If you do this, please—
   - indicate on the form where any answer is given or continued on a separate sheet,
   - indicate on each separate sheet the question number(s) to which it relates.

5. This form must be submitted directly to the relevant authority identified in Section 3. For
details of where to send this form and attached documents, please visit www.gov.scot and
search for “empowering our island communities”.

6. Failure to supply all relevant information could invalidate your application.

SECTION 1 - WHO IS APPLYING

1.1 Please put an “X” in the relevant box:—

   Applicant is an individual     ☐

   Applicant is a community controlled body  ☐

   Applicant is a relevant local authority  ☐

1.2 Please state who is applying for the review:
SECTION 2 – DETAILS OF WHO IS APPLYING

2.1 Please supply the contact details of the applicant:

Postal Address:

Postcode:

E-mail:

2.2 Please confirm if you agree to all correspondence regarding your application being sent by e-mail (put an X in the box)?

Yes ☐  No ☐

SECTION 3 – DETAILS OF RELEVANT AUTHORITY

3.1 Please provide the name of the relevant authority who made the decision which you are applying to have reviewed:

SECTION 4 – GROUNDS FOR REVIEW

4.1 Please mark an “X” in the relevant box to confirm which ground applies to this application (tick one box only, unless both grounds (ii) and (iii) apply):

(i) the applicant disagrees with the published explanation of the relevant authority for not preparing an island communities impact assessment, ☐

(ii) the applicant considers that the relevant authority, in making its decision, has failed to describe the likely significantly different effect of the policy, strategy or service (as the case may be), ☐

(iii) the applicant considers that the relevant authority, in making its decision, has failed to assess the extent to which the relevant authority considers that the policy, strategy or service (as the case may be) can be developed or delivered in such a manner as to improve or mitigate, for island communities, the outcomes resulting from it, or ☐

(iv) the relevant authority has reviewed a policy, strategy or service and has decided not to prepare an island communities impact assessment for that policy, strategy or service and has not published an explanation for not preparing an island communities impact assessment and the applicant considers that policy, strategy or service has an effect on an island community which is significantly different from its effect on other communities (including other island communities) in the area in which the relevant authority exercises its functions. ☐
SECTION 5 – DETAILS OF DECISION TO WHICH THE APPLICATION RELATES

5.1 Please supply the following details about the decision:

Has an ICIA been prepared? (put an X in the box)?
Yes□ No□

If Yes, date of publication of ICIA:

If No, has the relevant authority published reasons for not preparing an ICIA? (put an X in the box)
Yes□ No□

If Yes, date of publication of reasons:

If No, please provide details of the policy, strategy or service to which this application relates:

SECTION 6 - STATEMENT OF REASONS

6.1 You MUST state, in full, why you are applying for a review of the relevant authority’s decision. Your statement must set out all matters you consider require to be taken into account in determining the review.

Note: you might not have a further opportunity to add to your statement of reasons at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account. You will though be entitled to comment on (i) any additional matter which may be raised by the relevant authority in its response to your application, or (ii) any representations the relevant authority might receive from any other person or body.

State the reasons for your application and all matters you wish to raise here. (If necessary, this can be continued or provided in full on a separate document.)
SECTION 7 - STATEMENT DEMONSTRATING DIRECT EFFECT

7.1 You MUST state, in full, how you have been, or are likely to be, directly affected by the policy, strategy or service to which the decision relates.

SECTION 8 - LIST OF DOCUMENTS / EVIDENCE

8.1 Please provide a list of all documents, materials and evidence which you have provided with your application and intend to rely on in support of your application and ensure that the documents are clearly numbered (if necessary, this can be continued or provided in full on a separate document).

The relevant authority will publish all documents relating to the review on its website.

If you take part in the review process or use the website of the relevant authority, the relevant authority may collect certain information about you. If the relevant authority is the Scottish Ministers, to find out more about what information is collected and how the information is used and managed, please read the Scottish Government island community impact assessments review of decisions procedure privacy notice on the Scottish Government Website www.gov.scot. For any other relevant authority, please see the website of that relevant authority for details of their privacy notice.

DECLARATION

I apply to the Relevant Authority as set out on this form and supporting documents.

Signed Date

This form and all supporting documents should be sent to the relevant authority identified in Section 3. Details of the contact addresses for each relevant authority can be found on the Scottish Government Website www.gov.scot.
EXPLANATORY NOTE
(This note is not part of the Regulations)

These regulations make provision under sections 9(1) and 30(1) of the Islands Scotland Act 2018 (“the Act”) about reviews of decisions of relevant authorities relating to island community impact assessments under section 8(1) of the Act. They also introduce a requirement for publication of island communities impact assessments by relevant authorities.

Part 1 of the Regulations sets out how the Regulations apply and are to be interpreted.

Part 2 of the Regulations sets out the requirement for relevant authorities to publish island communities impact assessments.

Part 3 of the Regulations sets out the procedure for the review process.

Regulation 4 sets out the grounds on which an applicant can request a review of a decision relating to an islands community impact assessment.

Regulation 5 sets out the time period within which an application for review may be made and that the application should be made using the form set out in the schedule.

Regulation 6 sets out how a relevant authority is to acknowledge an application, the time period within which an applicant must provide any missing information following a notification from the relevant authority, how an application is validated and the circumstances in which a relevant authority can decline to consider an application.

Regulation 7 requires a relevant authority to publish a notice with details about the review once an application has been validated. It sets out the information that must be included in the notice. The notice must contain details about how any representations in respect of the review can be made.

Regulation 8 requires that the relevant authority must send a copy of any representations received to the applicant and inform them how and when they can comment on representations.

Regulation 9 requires that the relevant authority makes copies of representations and comments received under regulations 7, 8 or 12 available for inspection on a website and sets out what information should or can be removed prior to publication.

Regulations 10 and 11 make provision for the procedure, if any is considered to be required, to be followed by the relevant authority when determining the review.

Regulation 12 sets out the procedure for how written submissions are to be sought, to whom these must be sent and how comments can be made on any additional material.

Regulation 13 sets out the procedure to be followed by the relevant authority if new evidence is to be taken into account following the conclusion of any procedure under regulation 11.

Regulation 14 sets out the time period in which the relevant authority must issue their decision notice, who is to be issued with a copy of the notice and that the notice must be made available for inspection.

Regulation 15 sets out the information that must be included in the decision notice. The notice must state the relevant authority’s determination of the review and the reasons for that determination. The notice must state whether or not further action will be taken by the relevant authority.

Regulation 16 sets out what further actions may be taken by a relevant authority following a review.

Part 4 of the Regulations makes general provision in relation to the use of electronic communications (regulation 17) and about the definition of ‘contact address’ (regulation 18).

(“DPIA”) and Island Communities Impact Assessment (“ICIA”) have been prepared in relation to these Regulations and placed in the Scottish Parliament Information Centre. Copies of the BRIA, EIA, FSDIA, DPIA and ICIA are available from Scottish Government, Victoria Quay, Leith, Edinburgh EH6 6QQ and online at www.legislation.gov.uk
POLICY NOTE

The Island Communities Impact Assessments (Publication and Review of Decisions) (Scotland) Regulations 2020

SSI 2020/XXX

The above instrument is made in exercise of the powers conferred by sections 9(1) and 30(1) of the Islands (Scotland) Act 2018. The instrument is subject to the affirmative procedure.

These regulations make provision under section 9(1) of the Islands (Scotland) Act 2018 (“the Act”) about reviews of decisions of relevant authorities relating to island communities impact assessments under section 8(1) of the Act. They also introduce a requirement for publication of island communities impact assessments by relevant authorities under section 30(1) of the Act which gives Scottish Ministers power by regulations to make supplementary provisions they consider appropriate for the purpose of giving full effect to the Act.

1. Policy Objectives

Section 9(1) of the Islands (Scotland) Act 2018 (“the Act”) requires that the Scottish Ministers establish by regulations, provision for reviews of decisions of relevant authorities relating to island communities impact assessments under section 8(1) of the Act. The regulations are subject to affirmative procedure in accordance with section 29(2)(b) of the Act.

Section 30(1) of the Act which gives Scottish Ministers power by regulations to make supplementary provisions they consider appropriate for the purpose of giving full effect to the Act are subject to negative procedure in accordance with section 30(3)(b) of the Act. Through the application of section 33 of the Interpretation and Legislative Reform (Scotland) Act 2010 (combining of certain powers), the exercise of powers are being combined in one instrument.

Section 9(2) of the Act sets out the specific features that may be included in the review provisions.

These Regulations create provision for reviews that satisfies the requirements of section 9 of the Act.

Under the provisions, an applicant can request that a relevant authority, listed in the schedule to the Act, carry out a review of a decision relating to an island communities impact decision.

2. The key features of the provisions are as follows:
An island communities impact assessment prepared by a relevant authority is to be published on a website. Previously, in terms of the Act, a relevant authority was only obliged to publish its reasons for not carrying out an island communities impact assessment. Now, all island community impact assessments are to be published in the interests of transparency. This provision is introduced as a supplementary provision considered appropriate for the purpose of giving full effect to the Act.

**What can be reviewed and who can apply:**

- A review can be requested in respect of decisions relating to both existing and future policies, strategies or services. The review process also applies to policies, strategies and services of the Scottish Ministers to be implemented by legislation.
- A review of a decision can be requested by an individual who is a resident of an island community at the time of the decision, or a community controlled body, or a relevant local authority listed in the Act.
- An applicant can request a review where the applicant can demonstrate having been or likely to be directly affected by the policy, strategy or service which is the subject matter of that decision.

**Grounds for review:**

- The grounds for requesting a review are that:
  
  (i) the applicant disagrees with the published explanation of the relevant authority for not preparing an island communities impact assessment,

  (ii) the applicant considers that the relevant authority, in making its decision, has failed to properly describe the likely significant different effect of the policy, strategy or service,

  (iii) the applicant considers that the relevant authority, in making its decision, has failed to properly assess the extent to which the relevant authority considers that the policy, strategy or service can be developed or delivered in such a manner as to improve or mitigate, for island communities, the outcomes resulting from it,

  (iv) the relevant authority has reviewed a policy, strategy or service and has decided not to prepare an island communities impact assessment and has not published an explanation for not preparing an island communities impact assessment and the applicant considers that the policy, strategy or service has an effect on an island community which is significantly different from its effect on other communities (including other island communities) in the area in which the relevant authority exercises its functions.

- The application must be made using an application form which forms part of the Regulations and must be accompanied by all supporting documentation.

**Application Process:**

- An application for review under grounds (i), (ii) or (iii) must be made to the relevant authority within 3 months of the publication date of the decision. Where the relevant
authority has decided not to prepare an island communities impact assessment and has not published an explanation (ground (iv), then an application can be made at any time after the decision. In the latter case, there is no time limit so as not to prejudice an applicant where there is no published decision.

- An application for review is validated if all relevant information is received by the relevant authority. Where an application is incomplete, the relevant authority must afford the applicant one further opportunity to supply the required information by giving notice to the applicant. If the application is validated, the relevant authority notifies the applicant. The validation date is the date of the written notice.

- A relevant authority can decline to consider an application on two grounds: if it pertains to a decision for which an application has already been received and validated; and where an applicant has received a notice from the relevant authority to supply outstanding information and the applicant has failed to submit this. The first ground was considered essential to avoid unnecessary duplication of applications. A relevant authority must publish a notice with details of the review on its website.

- Written representations may be made by any person to the relevant authority. A copy of the written representations will be sent to the applicant for comment.

- The process allows the relevant authority to determine the review without further procedure. Alternatively, it can decide that further representations or information is required by way of written representations.

- The relevant authority may request such further representations or information by giving written notice to the applicant, and any other person from whom the relevant authority wishes to receive further representations or information. Copies of further representations or information will be sent to the applicant and other parties on whom notice was given and they will have the opportunity to make comments. The relevant authority must make copies of any representations or comments received by them available for inspection on a website. Where any new evidence has arisen as a result of further procedure, the relevant authority, if it wishes to consider this, must afford the applicant and any other relevant party an opportunity to make representations.

**Decision Process:**

- The relevant authority has 6 months from the validation date to issue a decision notice. The decision notice, amongst other things, must state what further action that the relevant authority will take and the timeframe within which it will be taken. Alternatively, the decision notice can state that no further action will be taken.

- The further actions that can be taken by a relevant authority are: that an island community impact assessment will be carried out where one has not previously been prepared; that variations are made to part (or parts) of an island community impact assessment; or that a new island community impact assessment will be carried out where one has previously been prepared.

- There is no ability to appeal the decision as the Act does not give any scope for an appeal process.
3. Consultation

The Scottish Ministers have consulted with the relevant authorities listed in the schedule of the Act. A policy proposals paper was circulated to relevant authorities. An analysis of responses was completed. As a result of the consultation, the policy proposals were adjusted to reflect stakeholder comments and concerns. In particular, the feedback from the consultation helped shape consideration of who can make an application for review, the grounds for review of a relevant authority’s decision; the time for a relevant authority to make a decision from the date of validation of the application; and the timeframe for making an application, particularly where there is no published decision of an ICIA.

4. Impact Assessments

These Regulations create a scheme for the review of decisions taken by relevant authorities in respect of island communities impact assessments.

Screening under the Child Rights and Wellbeing Impact Assessment (CRWIA), and Strategic Environment Assessment (SEA) concluded that no impact assessments are required, as these Regulations have no effect on children’s rights and welfare, or the environment.

The Scottish Government considers that the Regulations and the scheme they establish do not give rise to any human rights concerns and comply with the European Convention on Human Rights (ECHR). It is anticipated that any improvements to outcomes for island communities as a result will be positive with respect to human rights.

An Equality Impact Assessment (EQIA) was carried out. There is very little data about protected characteristics at an islands level. Notwithstanding this, the evidence gathered was sufficient to conclude that the review mechanism will only have a positive impact in addressing inequality in island communities.

In consideration of the Fairer Scotland Duty (FSD), it is anticipated that the implications of the review of a decision by a relevant local authority will have a positive effect, including on outcomes in island communities. The scheme created by these Regulations does not affect socioeconomic outcomes.

While there is no formal Digital Impact Assessment, it is appropriate to consider how the Regulations can be future-proofed in light of upcoming changes to technology. Where the Regulations require publication of notices or documents, this is in the form of publishing a notice on a website or by other electronic means. Part 4 of the Regulations concerns electronic communication.

A Data Protection Impact Assessment (DPIA) was carried out. An Article 36(4) Enquiry Form was completed for the purpose of consulting with the Information Commissioner’s Office in respect of the General Data Protection Regulation (GDPR). The ICO confirmed they did not wish to provide any further input following the review of the Data Protection Officer. The Data Protection Officer’s review of the DPIA did not reveal any impact on personal data and privacy provided safeguards were put in place.
Accordingly, Regulation 9(2) which refers to the publication of representations and comments, provides safeguards in respect of anonymising private data. The application form in the Schedule to these Regulations also refers to a Scottish Government Privacy Notice which notifies applicants and those making written representations how their data will be dealt with.

An Island Communities Impact Assessment (ICIA) was carried out. The assessment did not identify any potential barriers or wider impacts to island communities. The Regulations will have a positive impact on inequalities of outcome experienced by island communities. It is considered that the Regulations are not likely to have an effect on an island community which is significantly different from their effect on other communities (including other island communities). The Regulations will be monitored and consideration will be given to guidance with the aim of giving clarity to stakeholders where required.

5. Financial Effects

A Business and Regulatory Impact Assessment was carried out and concluded that the Regulations will have no impact on businesses across Scotland. A copy is attached to this note.

The Minister for Energy, Connectivity and the Islands has confirmed that he is satisfied with the BRIA carried out.

Scottish Government
Directorate for Agriculture and Rural Economy (D:ARE) | Rural Economy and Communities Division.

October 2020
Annexe B

Title of instrument: **Common Agricultural Policy (Simplifications and Improvements) (Miscellaneous Amendments) (Scotland) Regulations 2020 SSI 2020/349**

Type of Instrument: Negative

Laid Date: 5 November

Coming into force: 1 January 2021

Minister to attend the meeting: No

Procedure

1. Under the **negative procedure**, an instrument comes into force on the date specified on it (the "coming into force date") unless a motion to annul is agreed to by the Parliament within the 40-day period. Lead committees are not obliged to report to the Parliament on negative instruments, except where a motion recommending annulment has been lodged.

Policy Objectives and Background

**Cross border applications:**
2. The 2020 Regulations aim to simplify and improve the operation of the EU CAP provisions for cross border applications to provide for those changes necessary to enable applications to be processed separately by each UK administration, given agriculture is devolved to Scottish Ministers and the other devolved administrations, following the exit of the UK from the EU.

**Crop diversification Greening rules:**
3. The 2020 Regulations aim to simplify and improve the operation of the CAP Greening provisions for the benefit of the environment by revoking the crop diversification requirements. Crop diversification was introduced across Europe in recognition of the growing of large areas of cereals in other member states, however it does not benefit Scotland in the same way. Not only is there little, if any, evidence of environmental benefit to support the requirement in Scotland, it also imposes burdens on Scottish arable units by reducing efficiency. The adherence to crop diversification is also complex, with crops being grown to specific areas rather than to field sizes, all contributing to the frustration of applicants. It poses a risk of hindering mitigation of climate change due to the introduction of inefficiencies in crop production.

**Inspections:**
4. The 2020 Regulations aim to simplify and improve the operation of inspections for direct payment and rural development schemes in order to reduce the demand on Scottish Government resource, increase focus on outcomes rather than bare compliance, and repurpose area office resources to increase proactive engagement
with customers to better increase awareness of the scheme requirements and to help reduce potential stress of the claimants being inspected.

**Consideration by the Delegated Powers and Law Reform Committee**

5. The Delegated Powers and Law Reform Committee considered this at their meeting on 17 November and made no points.

**Points to note**

6. No points are highlighted for members attention in relation to this instrument.

**Recommendation**

7. The Committee is invited to consider any issues that it wishes to raise in relation to this instrument.

*Rural Economy and Connectivity Committee Clerks*

*December 2020*
The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2 of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020(a), and all other powers enabling them to do so.

Citation and commencement

1. These regulations may be cited as the Common Agricultural Policy (Simplifications and Improvements) (Miscellaneous Amendments) (Scotland) Regulations 2020 and come into force on 1 January 2021.

Amendment of Regulation (EU) 1307/2013


(2) In Article 4 (definitions and related provisions), in paragraphs 1(a) and 1(b), for “the United Kingdom” substitute “Scotland”.

(3) In Article 43 (payment for agricultural practices beneficial for the climate and environment: general rules)—

(a) in paragraph 2, omit point (a),
(b) in paragraph 9, omit “44,”.

(4) Omit Article 44 (crop diversification).

(a) 2020 asp 17.
(b) EUR 2013/1307. Relevantly amended by S.I. 2020/91 and S.I. 2020/576. This Regulation was incorporated into domestic law on exit day by section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c.2). It was also relevantly prospectively amended with effect from IP completion day by S.I. 2019/207 (paragraph 1 of schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c.1) means that this instrument would have come into force on IP completion day rather than on exit day as drafted) but it is to be prospectively revoked by the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 immediately before IP completion day.
Amendment of Regulation (EU) 1306/2013


(2) In Article 59 (general principles of checks), in paragraph 5, omit “,” and shall increase that minimum level where necessary”.

(3) In Article 62 (powers as regards checks), in paragraph 2(b), omit “on the obligation to increase it or”.

(4) In Article 91 (cross compliance: general principle), in paragraph 3(a), for “the United Kingdom” substitute “Scotland”.

Amendment of Commission Delegated Regulation (EU) 639/2014


(2) Omit Article 40 (calculation of shares of different crops for crop diversification).

Amendment of the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015

5.—(1) The Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015(c) are amended as follows.

(2) In regulation 15A (obligations to comply with agricultural practices beneficial for the climate and environment), omit paragraph (2)(a).

(3) Omit regulation 16 (crop diversification).

Amendment of the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014

6.—(1) The Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014(d) are amended as follows.

(2) In regulation 2 (interpretation), in the definition of “competent authority” omit “,” except as otherwise provided by regulation 3,”.

(3) In regulation 3 (competent authority)—

(a) omit paragraphs (2) to (3A),

---

(a) EUR 2013/1306. This Regulation was incorporated into domestic law on exit day, insofar as it relates to direct payment schemes, by section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c.2). The remainder of this Regulation, insofar as it relates to rural development and common market organisation, is incorporated into domestic law on IP completion day by section 3 of the European Union (Withdrawal) Act 2018 (c.16). The Regulation was relevantly amended, in relation to direct payments, by S.I. 2020/90. The Regulation, in relation to rural development and common market organisation, is relevantly amended prospectively with effect from IP completion day by S.I. 2019/748, S.I. 2019/763, and S.I. 2019/1402 (paragraph 1 of schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c.1) means that this instrument would have come into force on IP completion day rather than on exit day as drafted).

(b) EUR 2014/639, relevantly amended by S.I. 2020/91. This Regulation was incorporated into domestic law on exit day by section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c.2). EUR 2014/639 is relevantly prospectively amended with effect from IP completion day by S.I. 2019/208 (para 1 of schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c.1) means that this instrument would have come into force on IP completion day rather than on exit day as drafted), but those amendments are prospectively revoked by the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 immediately before IP completion day.


(b) for paragraph (4) substitute—

“(4) In this regulation “holding” has the meaning given by Article 4(1)(b) of the Direct Payments Regulation.”.

Amendment of Commission Implementing Regulation (EU) 809/2014


(2) In Article 25 (announcement of on-the-spot checks)—

(a) in paragraph 1—

(i) in the first sentence omit “provided that it does not interfere with their purpose or effectiveness”,

(ii) in the second sentence omit “strictly” and after “days” insert “, except in duly justified cases”;

(b) in paragraph 2 omit from “for” to “Furthermore,”.

(3) In Article 30 (control rate for area-related aid schemes other than the payment for agricultural practices beneficial for the climate and environment)—

(a) in point (a)—

(i) in the first sentence for “5%” substitute “3%”,

(ii) omit the second sentence,

(b) in point (d)—

(i) for “5%” substitute “3%”.

(4) In Article 31(1) (control rate for the greening payment)—

(a) in point (a), for “5%”, in both places it occurs, substitute “3%”,

(b) in points (b)(i) and (ii)—

(i) omit “both the crop diversification and”,

(ii) for “Articles 44 and” substitute “Article”.

(5) In Article 32(1) (control rate for rural development measures)—

(a) in the first sentence for “5%” substitute “3%”,

(b) omit the second sentence,

(c) omit the third sentence.

(6) In Article 33(1) (control rate for animal aid schemes)—

(a) in the first sentence for “5%” substitute “3%”,

(b) omit the second sentence,

(c) in the third sentence for “5%” substitute “3%”.

(a) EUR 2014/809. This Regulation was incorporated into domestic law on exit day, insofar as it relates to direct payment schemes, by section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c.2). The remainder of this Regulation, insofar as it relates to rural development and common market organisation, is incorporated into domestic law on IP completion day by section 3 of the European Union (Withdrawal) Act 2018 (c.16). The Regulation was relevantly amended, in relation to direct payments, by S.I. 2020/90 and S.S.I 2020/244. The Regulation, in relation to rural development and common market organisation, is relevantly amended prospectively with effect from IP completion day by S.I. 2019/765 (as amended by the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations). Paragraph 1 of schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c.1) means that S.I. 2019/765 comes into force on IP completion day rather than on exit day as drafted. Some provisions that apply to both direct payments and rural development have been amended differently and two versions of the same provision exist in the Regulation.
(7) In Article 34 (selection of the control sample)—
   (a) in paragraph 2—
      (i) in point (a) for “between 1 % and 1,25 % of the control population referred to in”
          substitute “between 20% and 25% of the minimum number of beneficiaries subject
          to on-the-spot checks in accordance with”;
      (ii) in point (b) for “between 0,6 % and 0,75 % of the control population referred to in”
          substitute “between 20% and 25% of the minimum number of beneficiaries subject
          to on-the-spot checks in accordance with”,
   (b) in paragraph 5, omit point (d).

(8) Omit Article 35 (increase of the control rate).

(9) Omit Article 36 (reduction of the control rate).

(10) In Article 37 (elements of on-the-spot checks), in paragraph 3, for “Articles 44 and”
     substitute “Article”.

(11) In Article 38 (area measurement), omit paragraph 6.

(12) In Article 48 (administrative checks), omit paragraph 5.

(13) In Article 50 (control rate and sampling of on-the-spot checks)—
     (a) in paragraph 1 for “5%” substitute “3%”,
     (b) omit paragraph 5,
     (c) omit paragraph 6.

Amendment of Commission Implementing Regulation (EU) 2020/532

8.—(1) Commission Implementing Regulation (EU) No 2020/532 of 16 April 2020 derogating
     in respect of the year 2020 from Implementing Regulations (EU) No 809/2014, (EU) No
     (EU) 2015/1368 and (EU) 2016/1240 as regards certain administrative and on-the-spot checks
     applicable within the common agricultural policy(a), is amended as follows.

     (2) In Article 4 (coronavirus derogations for on-the-spot checks), in paragraph 4, omit the
     second sentence.

Amendment of Commission Delegated Regulation (EU) 640/2014

     Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the
     integrated administration and control system and conditions for refusal or withdrawal of payments
     and administrative penalties applicable to direct payments, rural development support and cross
     compliance(b), is amended as follows.

     (2) In Article 2(1)(22) (Definitions)—
      (a) omit “type of crop as referred to in Article 44(4) of Regulation (EU) No 1307/2013,”,
      (b) for “that Regulation” substitute “Regulation (EU) No 1307/2013”.

---

(a) EUR 2020/532. This Regulation is incorporated into domestic law on IP completion day by section 3 of the European Union (Withdrawal) Act 2018.

(b) EUR 2014/640. This Regulation was incorporated into domestic law on exit day, insofar as it relates to direct payment schemes, by section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c.2). The remainder of this Regulation, insofar as it relates to rural development and common market organisation, is incorporated into domestic law on IP completion day by section 3 of the European Union (Withdrawal) Act 2018 (c.16). The Regulation was amended, in relation to direct payments, by S.I. 2020/90. The Regulation, in relation to rural development and common market organisation, is amended prospectively with effect from IP completion day by S.I. 2019/765 (as amended by the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations). Paragraph 1 of schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c.1) means that S.I. 2019/765 comes into force on IP completion day rather than on exit day as drafted.
(3) In Article 6 (quality assessment of the identification system for agricultural parcels)—
   (a) in paragraph 1, subparagraph 3, point (b) for “declared” substitute “claimed”,
   (b) in paragraph 3 for “2021” substitute “following the calendar year in question”.
(4) Omit Article 24 (reduction of the greening payment in case of non-compliance with crop
diversification).
(5) In Article 27 (maximum reduction of the greening payment)—
   (a) in paragraph 1, for “Articles 24 and” substitute “Article”,
   (b) in paragraph 2, for “Articles 24 to” substitute “Articles 25 and”.
(6) In Article 28 (administrative penalties as regards the greening payment)—
   (a) in paragraph 1, for “24”, in each place it occurs, substitute “25”,
   (b) in paragraph 2—
      (i) omit “44,”,
      (ii) for “24” substitute “25”.

MAIRI GOUGEON
Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
3rd November 2020
EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations make simplifications and improvements to the retained EU law relating to the operation of Common Agricultural Policy (CAP) schemes in Scotland from 2021 onwards.

EU legislation governing the 2020 CAP direct payment schemes became part of domestic law in the UK on exit day (31 January 2020) under section 1 of the Direct Payments to Farmers (Legislative Continuity) Act 2020 (c.2) (“the 2020 Act”).

All other EU legislation governing CAP schemes will become domestic law on IP completion day under the European Union (Withdrawal) Act 2018 (c.16) (“the 2018 Act”). “IP completion day” means 31 December 2020 at 11.00pm (see section 1A(6) of the 2018 Act and section 39(1) to (5) of the European Union (Withdrawal Agreement) Act 2020 (c.1)).

The law that became domestic law on exit day included EU ‘horizontal’ rules that apply to a range of CAP schemes, so far as those rules related to that domestic law. EU rules require to be modified, or deficiency fixed, in order to be effective as domestic law. Direct payment rules have been modified under the 2020 Act, and all other CAP rules are prospectively modified with effect from IP completion day under the 2018 Act.

It follows that there will be two versions of (for example) Commission Implementing Regulation (EU) No 809/2014; a ‘direct payments’ version as currently in force, and a ‘rural development’ version that will have effect from IP completion day. The changes in this instrument from IP completion day will affect both versions.

Regulation 2(2) amends the definition of “farmer” and “holding” under Regulation (EU) No 1307/2013 (the “Direct Payments Regulation”) so that the definitions extend only to those operating in Scotland, rather than the United Kingdom. This simplifies CAP schemes by removing the concept of cross border applications within the United Kingdom after EU Exit such that the Scottish Government’s Rural Payments and Inspections Division will only be responsible for processing applications related to agricultural activities taking place in Scotland. Regulation 3(4) amends the definition of “holding” in Regulation (EU) No 1306/2013 (the “Horizontal Regulation”) for the same purpose. Regulation 6 amends the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 to remove related domestic provisions that enable cross border applications.

Regulations 2(3) and (4) simplify and improve the Direct Payments Regulation by removing crop diversification as one of the agricultural practices deemed as beneficial for the climate and the environment (known as “greening”) under the Basic Payment Scheme, the main system of direct payments operating in Scotland. Regulation 4 amends Commission Delegated Regulation (EU) No 639/2014, regulation 5 amends the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015, regulations 7(4)(b), (10) and (11) amend Regulation (EU) No 809/2014, and regulations 9(2), (4) to (6) amend Regulation (EU) No 640/2014 to remove related provisions that flow from the crop diversification requirement.

Regulations 3(2) and (3) amend the Horizontal Regulation, regulations 7(2) to (4)(a), (5) to (9), (12) and (13) amend Regulation (EU) No 809/2014, and regulation 8 amends Regulation (EU) No 2020/532, to simplify and improve the operation of on-the-spot checks that are undertaken as part of CAP schemes.

Regulation 9(3) makes minor amendments to Regulation (EU) No 640/2014 with regard to quality assessment of the land parcel identification system.

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

The removal of the crop diversification requirement was subject to a Strategic Environmental Assessment pre-screening report. These Regulations will have no significant impact on the environment.
POLICY NOTE

The Common Agricultural Policy (Simplifications and Improvements) (Miscellaneous Amendments) (Scotland) Regulations 2020

SSI 2020/349

The Common Agricultural Policy (Simplifications and Improvements) (Miscellaneous Amendments) (Scotland) Regulations 2020 (the “2020 Regulations”) are made in exercise of the powers conferred by section 2 of the Agriculture (Retained EU Law and Data) 2020 Act\(^1\).

Section 2(3) of the Agriculture (Retained EU Law and Data) 2020 Act provides that “Regulations under this section are (if they have not been subject to the affirmative procedure) subject to the negative procedure”.

The 2020 Regulations are subject to the negative procedure because they simplify and improve existing policy, remove provisions which are no longer appropriate or workable for Scotland, and do not introduce any new policy.

In particular, all UK administrations have agreed to remove the concept of cross border applications after EU exit as they will no longer be workable due to potential divergence in policy among the UK nations and we are therefore removing those provisions. Although we are removing the crop diversification requirement because it is not appropriate or effective for Scotland, we are retaining the Greening policy with the remaining Greening provisions and payments which will continue. Finally, an effective regulatory inspection regime will continue with the benefit of our simplifications and improvements.

In addition, the 2020 Regulations do not have those criteria that would normally make an instrument subject to affirmative procedure. In particular: 1. They do not create or amend a criminal offence. 2. They do not amend an Act of Scottish Parliament or primary legislation just retained EU law and 3. They do not contain any matter with material financial impact or financial implications.

The 2020 Regulations will apply to the whole of Scotland and come into force on 1 January 2021 with effect from the 2021 claim year.

**Purpose of the Instrument**

The amendments made by this instrument will simplify and improve the operation of the provisions of the Common Agricultural Policy (“CAP”) retained EU legislation.

In particular the amendments will simplify and improve the operation of the provisions for (a) cross border applications, (b) the Greening rules relating to crop diversification and (c) inspections that are undertaken for direct payment and rural development schemes.

---

\(^1\) The Agriculture (Retained EU Law and Data) 2020 Act of Scottish Parliament number 17.
● **Policy Objectives**

**Cross border applications:**

The 2020 Regulations aim to simplify and improve the operation of the EU CAP provisions for cross border applications to provide for those changes necessary to enable applications to be processed separately by each UK administration, given agriculture is devolved to Scottish Ministers and the other devolved administrations, following the exit of the UK from the EU.

6. **Crop diversification Greening rules:**

The 2020 Regulations aim to simplify and improve the operation of the CAP Greening provisions for the benefit of the environment by revoking the crop diversification requirements. Crop diversification was introduced across Europe in recognition of the growing of large areas of cereals in other member states, however it does not benefit Scotland in the same way. Not only is there little, if any, evidence of environmental benefit to support the requirement in Scotland, it also imposes burdens on Scottish arable units by reducing efficiency. The adherence to crop diversification is also complex, with crops being grown to specific areas rather than to field sizes, all contributing to the frustration of applicants. It poses a risk of hindering mitigation of climate change due to the introduction of inefficiencies in crop production.

7. **Inspections:**

The 2020 Regulations aim to simplify and improve the operation of inspections for direct payment and rural development schemes in order to reduce the demand on Scottish Government resource, increase focus on outcomes rather than bare compliance, and repurpose area office resources to increase proactive engagement with customers to better increase awareness of the scheme requirements and to help reduce potential stress of the claimants being inspected.

● **Explanation of the law being amended by the 2020 Regulations Cross border applications:**

Regulation 2(2) amends the definition of “farmer” and “holding” under Regulation (EU) No 1307/2013 (the “Direct Payments Regulation”) in order to remove the concept of cross border applications under direct payment schemes. Regulation 3(2) amends the definition of “holding” in Regulation (EU) No 1306/2013 (the “Horizontal Regulation”) for the same purpose. Regulation 6 amends the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 to remove related domestic provisions that enable cross border applications.

8. **Crop diversification greening rules:**

Regulations 2(3) and (4) amend the Direct Payments Regulation to remove crop diversification as one of the agricultural practices deemed as beneficial for the environment (known as “greening”) under the basic payment scheme. Regulation 4 amends Commission Delegated Regulation (EU) No 639/2014, regulation 5 amends the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015, regulations 7(4), (10) and (11) amend Regulation (EU) No 809/2014, and regulations 9(2), (4) to (6) amend Regulation (EU) No 640/2014 to remove related provisions that flow from the crop diversification requirement.
9. Inspections:

Regulation 3(3) and (4) amends the Horizontal Regulation, regulation 7(2) to (3), (5) to (9) and (12) to (13) amends Regulation (EU) No 809/2014, and regulation 8 amends Regulation (EU) No 532/2020, to simplify and improve the operation of on-the-spot checks that are undertaken as part of CAP schemes. Regulation 9(3) makes minor amendments to Regulation (EU) No 640/2014 with regard to quality assessment of the land parcel identification system (“LPIS”). In particular, in article 6 “declared” is substituted by “claimed” in recognition of the fact that multiple businesses can declare the same land on the Single Application Form (“SAF”) but only one business will actually claim for it under the Basic Payment Scheme.

There is reference in the footnotes of the 2020 Regulations to the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020, which are prospectively amending, from the Implementation Period completion day, previous EU Exit SIs that amend the retained EU law that is being amended in the 2020 Regulations. The Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 were laid in draft in the UK Parliament on 5 October 2020 and were going through the necessary Parliamentary procedure when the 2020 Regulations were made.

- Reasons for and effect of the proposed change

Cross border applications:

Given that the UK has left the EU and agriculture is a devolved matter, agreement has been reached by all UK administrations to remove the concept of cross border applications for the 2021 and future claim years. All of the UK administrations have agreed to implement the changes for their respective territories that will remove current provisions for CAP cross border applications to enable separate applications to be submitted by applicants to the UK administration that administers the territory in which the land is situated.

10. Crop diversification Greening rules:

The crop diversification rules being one element of the Greening provisions of the basic payment scheme require that:
(a) on holdings with between 10 and 30 hectares of arable land at least two different crops must be grown on that land and the largest crop must not cover more than 75% of that arable land; and
(b) on holdings with more than 30 hectares of arable land, at least three different crops must be grown on that land, the largest crop must not cover more than 75% of that arable land and the two largest crops together must not cover more than 95% of that arable land.

The 2020 Regulations will simplify and improve the Greening provisions by removing all crop diversification requirements for the 2021 and subsequent claim years as it is an obligation on farmers and crofters that is not suited to Scotland, does not provide environmental benefits and poses a risk of hindering mitigation of climate change due to the introduction of inefficiencies in crop production.
However the remaining Greening elements of the basic payment scheme relating to permanent grassland and ecological focus areas will be retained and we can confirm the Greening scheme and payments will continue with these simplifications and improvements in 2021. Also in the period from 2021 to 2024, we will be considering making further improvements to these remaining Greening provisions.

11. Inspections:

The 2020 Regulations will simplify and improve the provisions for the operation of on-the-spot checks for direct payment and rural development schemes by implementing those changes which we explain as follows:

(a) As a result of the improvements in the maintenance of LPIS as demonstrated by the LPIS Quality Assessment it is clear that due to the SAF processing claimants cannot over claim. A SAF is required to support a claim for the Basic Payment Scheme, Agri Environment, Beef Calf Schemes, Scottish Upland Sheep Support Scheme and Less Favoured Area Support Scheme. Also for livestock and capital applications alternative administrative checks can validate numbers and additional supporting documentation can be used to validate claims. This enables us to reduce the number of on-the-spot inspections from 5% to 3%.

(b) Currently the regulations contain very detailed and prescriptive direction on the selection process. We are simplifying the selection process by changing the requirements for random selection of the control sample under the basic payment scheme and Greening to bring them in line with those used for rural development and voluntary coupled support. We are also removing rules that require an automatic increase or specified reduction in inspection rates. We are simplifying rules on inspections to provide us with flexibility to more effectively target claimants who are more likely to breach the rules. It is proposed to undertake 'intelligence gathering' utilising public service collaboration (including input from local RPID area offices) to feed into our risk analysis.

(c) In order to address claimants concerns, to maintain efficient use of resources and to accommodate a mutually convenient time, notification of inspections will be made informally with a view to arranging a suitable date. This will be within 14 days, with flexibility to extend this period if there are specific circumstances that warrant this, such as the absence of a key business member. Although the presumption will be against unannounced inspection, where for example we are considering criminality or validating activity that is specific such as to verify agri-environment proactive management such as stock exclusion, unannounced inspections will remain an option.

12. Further information Consultation

We conducted a full public consultation on our period of Stability and Simplicity to 2024 and continue to engage with stakeholders and delivery partners through the Agriculture and Rural Development Stakeholder Group and the Rural Development Operation Committee.

Engagement on the 2020 Regulations took place with NFU Scotland, National Sheep Association Scotland, Scottish Beef Association, Scottish Crofting Federation and Scottish Environmental Link and with groups including the Simplification Taskforce, and Farming and Food Production Future Policy Group. All have noted their support for the proposed changes and recognise that this is a step change towards further improvements in the future.
Further consultation took place in relation to the Agriculture (Retained EU Law and Data) (Scotland) Bill and the 2020 Regulations will be used to deliver on the stated objective of the Bill that “From 1 January 2021, to enable the continued operation of current CAP schemes and policies, but also to allow them to be progressively improved and simplified”.

Further engagement will take place on any future proposals for simplification and improvement from 2021.

13. Impact Assessments

The 2020 Regulations aim to simplify and improve the operation of the existing EU CAP and do not introduce new policy. The proposal is for the current CAP to continue until 2024.

The CAP was formally approved by the European Commission and the Pillar 2 Scottish Rural Development Programme was developed in conjunction with stakeholders, robustly consulted on and fully impact assessed. It is not considered appropriate or proportionate to undertake full impact assessments for the 2020 Regulations as they enact administrative changes to the delivery of the existing CAP.

In relation to the removal of the crop diversification requirement of Greening it makes the prior derogation permanent and was subject to a Strategic Environmental Assessment pre-screening (PRE01068).

The 2020 Regulations will not have a significant impact on the environment. No impact on business, charities or voluntary bodies is expected.

14. Financial Effects

The Cabinet Secretary for the Rural Economy and Tourism, Fergus Ewing, confirms that no BRIA is necessary as the 2020 Regulations have no financial effects on the Scottish Government, local government or on business.

Scottish Government
Agriculture and Rural Economy Directorate

November 2020
Annexe C

Title of instrument: **Fisheries (Technical Conservation Measures) (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 SSI 2020/367**

Type of Instrument: Negative

Laid Date: 11 November 2020

Coming into force: It comes into force on 21 December 2020, with the exception of regulation 7(3), which comes into force on IP completion day (i.e. 31 December at 11pm).

Minister to attend the meeting: No

Procedure

1. Under the **negative procedure**, an instrument comes into force on the date specified on it (the “coming into force date”) unless a motion to annul is agreed to by the Parliament within the 40-day period. Lead committees are not obliged to report to the Parliament on negative instruments, except where a motion recommending annulment has been lodged.

Policy Objectives and Background

2. The principal purpose of the miscellaneous amendments made by these Regulations is to ensure the operability of Scotland’s sea fisheries and the continuing conservation of certain species through technical measures. These Regulations amend subordinate legislation concerning technical conservation measures for sea fisheries to reflect the coming into force of the Technical Conservation Regulation as well as the consequential repeal and amendment of other EU instruments. The Aquaculture and Fisheries (Scotland) Act 2013 (“2013 Act”) introduced new general enforcement powers for British sea-fisheries officers to enforce sea fisheries legislation and made changes to the enforcement regime for directly applicable EU restrictions and obligations. These Regulations revoke provision in subordinate legislation which are redundant as a result of the repeal of certain EU instruments by the Technical Conservation Regulation or the changes introduced by the 2013 Act.

3. Deficiency fixes previously made to subordinate legislation, which are no longer required as a result of these Regulations, are omitted.

4. This instrument does not introduce any policy changes.

Consideration by the Delegated Powers and Law Reform Committee

5. The Delegated Powers and Law Reform Committee considered this at their meeting on 17 November and made no points.

Points to note

6. No points are highlighted for members attention in relation to this instrument.
7. The Committee is invited to consider any issues that it wishes to raise in relation to this instrument.

Rural Economy and Connectivity Committee Clerks
December 2020
SCOTTISH STATUTORY INSTRUMENTS

2020 No. 367

EXITING THE EUROPEAN UNION

FISHERIES

The Fisheries (Technical Conservation Measures) (EU Exit) (Scotland) (Amendment etc.) Regulations 2020

Made - - - - 10th November 2020
Laid before the Scottish Parliament 11th November 2020
Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and paragraph 1(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018(b) and all other powers enabling them to do so.

In accordance with paragraph 4 of schedule 2 of the European Union (Withdrawal) Act 2018, they have consulted with the Secretary of State.

Citation and commencement

1.—(1) These Regulations may be cited as the Fisheries (Technical Conservation Measures) (EU Exit) (Scotland) (Amendment etc.) Regulations 2020.

(2) Subject to paragraph (3), these Regulations come into force on 21 December 2020.

(3) Regulation 7(3) comes into force immediately before IP completion day.

The Sea Fish (Specified Sea Areas) (Regulation of Nets and Other Fishing Gear) (Scotland) Order 2000

2.—(1) The Sea Fish (Specified Sea Areas) (Regulation of Nets and Other Fishing Gear) (Scotland) Order 2000(e) is amended as follows.

(a) 1972 c.68 (“the 1972 Act”). The 1972 Act was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c.16) (“the 2018 Act”) with effect from exit day (see section 20 of the 2018 Act), but saved, subject to modifications, until IP completion day by section 1A of that Act. Section 1A of the 2018 Act was inserted by the European Union (Withdrawal Agreement) Act 2020 (c.1) (“the 2020 Act”), and defines “IP completion day” by reference to section 39(1) to (5) of the 2020 Act. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”)). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7), section 3(3) and schedule 1, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) 2018 c.16.

(2) In article 2—
   (a) in paragraph (1)—
      (i) for the definition of “the Council Regulation”, substitute—
      (ii) omit the definition of “codend”,
      (iii) omit the definition of “equivalent Order”,
   (b) in paragraph (2), for “the Council Regulation” substitute “Regulation 2019/1241”.

(3) Omit article 6.

The Sea Fish (Specified Sea Areas) (Regulation of Nets and Other Fishing Gear) (Scotland) Amendment Order 2001

3. In the Sea Fish (Specified Sea Areas) (Regulation of Nets and Other Fishing Gear) (Scotland) Amendment Order 2001(b) omit article 2(a)(i).

The Shrimp Fishing Nets (Scotland) Order 2004

4.—(1) The Shrimp Fishing Nets (Scotland) Order 2004(c) is amended as follows.
   (2) For article 2(1) substitute—
      “(1) In this Order, “codend” has the meaning given in Article 6 of Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures(d).”.
   (3) In article 3(2)(d), omit “in accordance with Article 25 of Council Regulation (EC) No. 850/98”.
   (4) Omit article 4.

The Regulation of Scallop Fishing (Scotland) Order 2017

5. In article 3(4) of the Regulation of Scallop Fishing (Scotland) Order 2017(e), for the words from “Annex XIII” to the end, substitute “Annex 4 of Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures(f).”.

The Prohibition of Fishing with Multiple Trawls (Scotland) Order 2017

6.—(1) The Prohibition of Fishing with Multiple Trawls (Scotland) Order 2017(g) is amended as follows.

---

(a) EUR 2019/1241.
(b) S.S.I. 2001/250.
(d) EUR 2019/1241.
(e) S.S.I. 2017/127.
(f) EUR 2019/1241.
(g) S.S.I. 2017/325.
(2) In article 2—
(a) in paragraph (1), for the definition of “the Council Regulation”, substitute—
`````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````````
EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 (c.68) and paragraph 1(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018 (c.16). These Regulations make miscellaneous amendments to legislation concerning technical conservation measures for sea fisheries to reflect the coming into force of Regulation (EU) 2019/1241 of the European Parliament and of the Council (OJ No. L 198, 25.7.2019, p.105) (“the Technical Conservation Regulation”) and the consequential repeal and amendment of other EU instruments. These Regulations also address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a) of the 2018 Act) arising from the withdrawal of the United Kingdom from the European Union.

Regulations 2 to 6 make minor amendments to the following subordinate legislation to replace, amend or remove out of date references to, and in respect of, Council Regulation (EC) No 850/98 (OJ No. L 125, 27.4.1998, p.1): the Sea Fish (Specified Sea Areas) (Regulation of Nets and Other Fishing Gear) (Scotland) Order 2000; the Sea Fish (Specified Sea Areas) (Regulation of Nets and Other Fishing Gear) (Scotland) Amendment Order 2001; the Shrimp Fishing Nets (Scotland) Order 2004; the Regulation of Scallop Fishing (Scotland) Order 2017; and the Prohibition of Fishing with Multiple Trawls (Scotland) Order 2017.

In addition, regulations 2 and 4 amend the definition of “codend” to have the same the meaning as in the Technical Conservation Regulation. Regulations 2 and 4 also revoke redundant powers of British sea-fishery officers, which are now provided for by the common enforcement powers in section 35(1) of the Aquaculture and Fisheries (Scotland) Act 2013 (asp 7).

Regulation 6 also amends the minimum mesh size requirement for fishing for redfish with trawls in the area described in the first sub-paragraph of paragraph 1(1) of Part C of Annex 12 of the Technical Conservation Regulation.

Regulation 7 revokes provisions in the Fisheries (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 which are redundant as a result of these Regulations.

Regulation 8 revokes subordinate legislation which is now redundant and makes saving provision.

A Business and Regulatory Impact Assessment has not been produced for this instrument as no significant impact upon business, charities or voluntary bodies is foreseen.
POLICY NOTE

THE FISHERIES (TECHNICAL CONSERVATION MEASURES) (EU EXIT) (SCOTLAND) (AMENDMENT ETC.) REGULATIONS 2020

SSI 2020/367

The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and paragraph 1(1) and (3) of Schedule 2 to the European Union (Withdrawal) Act 2018. The instrument is subject to the negative procedure.

**Purpose of the Regulations:** The Fisheries (Technical Conservation Measures) (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 ("the Regulations") amend domestic legislation concerning technical conservation measures relating to sea fisheries.

These Regulations make miscellaneous amendments to subordinate legislation to reflect the coming into force of Regulation (EU) 2019/1241 of the European Parliament and of the Council ("the Technical Conservation Regulation").

Regulations 2 to 6 make minor amendments to subordinate legislation to replace, amend or remove out of date references to, and in respect of, Council Regulation (EC) No. 850/98 which was repealed and replaced by the Technical Conservation Regulation.

Regulation 7 revokes certain provisions in the Fisheries (EU Exit) (Scotland) (Amendment) (No.2) Regulations 2019 which are redundant as a result of these Regulations, and Regulation 8 revokes subordinate legislation which is redundant and makes saving provision.

8. **Policy Objectives**

The principal purpose of the miscellaneous amendments made by these Regulations is to ensure the operability of Scotland’s sea fisheries and the continuing conservation of certain species through technical measures. These Regulations amend subordinate legislation concerning technical conservation measures for sea fisheries to reflect the coming into force of the Technical Conservation Regulation as well as the consequential repeal and amendment of other EU instruments. The Aquaculture and Fisheries (Scotland) Act 2013 ("2013 Act") introduced new general enforcement powers for British sea-fisheries officers to enforce sea fisheries legislation and made changes to the enforcement regime for directly applicable EU restrictions and obligations. These Regulations revoke provision in subordinate legislation which are redundant as a result of the repeal of certain EU instruments by the Technical Conservation Regulation or the changes introduced by the 2013 Act.

Deficiency fixes previously made to subordinate legislation, which are no longer required as a result of these Regulations, are omitted.

This instrument does not introduce any policy changes.
9. Explanation of the law being amended by the Regulations

1. **The Sea Fish (Specified Sea Areas) (Regulation of Nets and Other Fishing Gear (Scotland) Order 2000**

The Order regulates the use of certain nets and other fishing gear in specific areas. The Order is amended to replace an out of date reference to the repealed Council Regulation (EC) No. 850/98.

In addition, these Regulations amend the definition of “codend” to have the same meaning as in the Technical Conservation Regulation and revoke redundant powers of British sea-fishery officers, which are covered by the common enforcement powers provided for by section 35(1) of the 2013 Act.

2. **The Sea Fish (Specified Sea Areas) (Regulation of Nets and Other Fishing Gear) (Scotland) Amendment Order 2001**

The Order is amended to remove an out of date reference to the repealed Council Regulation (EC) No. 850/98 which is no longer required as a result of amendments made by these Regulations to the Sea Fish (Specified Sea Areas) (Regulation of Nets and Other Fishing Gear (Scotland) Order 2000 (see above).

- **The Shrimp Fishing Nets (Scotland) Order 2004**

The Order regulates the use of fishing nets within mesh size between 16 and 31 millimetres. The Order is amended to remove the out of date reference to the repealed Council Regulation (EC) No. 850/98.

In addition, these Regulations amend the definition of “codend” to have the same meaning as in the Technical Conservation Regulation and revoke redundant powers of British sea-fishery officers, which are covered by the common enforcement powers provided for by section 35(1) of the 2013 Act.

- **The Regulation of Scallop Fishing (Scotland) Order 2017**

The Order contains measures for the conservation of king scallops, including minimum size requirements for landing king scallops. These Regulations replace an out of date reference to repealed Council Regulation (EC) No. 850/98 with a reference to how scallops are measurable under the Technical Conservation Regulation.

- **The Prohibition of Fishing with Multiple Trawls (Scotland) Order 2017**

The Order prohibits fishing for sea fish with more than one trawl, except in two specified situations. These Regulations amend the Order to replace out of date references to the repealed Council Regulation (EC) No. 850/98 with references to the Technical Conservation Regulation. In accordance with the Technical Conservation Regulation, these Regulations also make provision for the minimum mesh size requirement for fishing for redfish with trawls in the area described in the first sub-paragraph of paragraph 1(1) of Part C of Annex 12 of the Technical Conservation Regulation.
The Fisheries (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019

In Part 3 of the 2019 Regulations provision is made to remedy deficiencies arising from the withdrawal of the United Kingdom from the European Union by updating, replacing or removing references to EU legislation in domestic legislation, which will become redundant or will no longer be appropriate after IP completion day. Certain of that provision is redundant given the Sea Fishing (Enforcement of Community Conservation Measures) (Scotland) Order 2000 and certain provision in the Sea Fish (Specified Sea Areas) (Regulation of Nets and Other Fishing Gear) (Scotland) Order 2000 are revoked. These Regulations revoke the redundant provisions.

Revocation and savings

These Regulations revoke Orders which contain provision in respect of the enforcement of the repealed Council Regulation (EC) No. 850/98 and other EU instruments which are redundant because they pre-date changes made to the enforcement powers of British sea- fishery officers and section 30(1) of the Fisheries Act 1981 (the enforcement of directly applicable EU restrictions and obligations) by the 2013 Act. The revoked Orders are:

(i) The Sea Fishing (Enforcement of Community Conservation Measures) (Scotland) Order 2000;
(ii) The Sea Fishing (Enforcement of Community Conservation Measures) (Scotland) Amendment Order 2002;
(iii) The Prevention and Monitoring of Cetacean Bycatch (Scotland) Order 2005; and

Savings provision is made in order that the revoked Orders will continue to have effect for the purposes of any investigation or legal proceedings relating to any acts or omissions which occurred before 21 December 2020 and which constitute an offence under those Orders.

10. Reasons for and effect of the proposed change

The amendments to subordinate legislation are made to reflect the coming into force of the Technical Conservation Regulation and the consequential repeal and amendment of other EU instruments. Out of date references in subordinate legislation to the repealed Council Regulation (EC) No 850/98 are removed or updated and provision inconsistent with the Technical Conservation Regulation is amended. The amendments also revoke legislation which is no longer required due to the coming into force of the Technical Conservation Regulation or the changes made to the enforcement of directly applicable EU restrictions and obligations by the 2013 Act.

Statements required by European Union (Withdrawal) Act 2018

Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate
The Cabinet Secretary for Rural Economy and Tourism, Mr Fergus Ewing, has made the following statement “In my view the Fisheries (Technical Conservation Measures) (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 do no more than is appropriate. This is the case because the amendments are not being made to introduce policy change. Powers under the European Union (Withdrawal) Act 2018 are only used to make Regulation 7(3) of this instrument. Regulation 7(3) revokes amendments made by the Fisheries (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 to remedy deficiencies arising from the withdrawal of the United Kingdom from the European Union.”

11. Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action

The Cabinet Secretary for Rural Economy and Tourism, Mr Fergus Ewing, has made the following statement “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. We must ensure that the relevant technical conservation measures relating to sea fisheries legislation continue to be effective and continue to operate after the UK leaves the EU, in order to protect Scotland’s fisheries status which is vital to our economy. The amendments are technical in nature to ensure legislative operability only.”

12. Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation

The Cabinet Secretary for Rural Economy and Tourism, Mr Fergus Ewing, has made the following statement “In my view the Fisheries (Technical Conservation Measures) (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

13. Statement that Scottish Ministers have, in preparing the regulations, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010

The Cabinet Secretary for Rural Economy and Tourism, Mr Fergus Ewing, has made the following statement “In my view the Fisheries (Technical Conservation Measures) (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the guidance principles on the environment and animal welfare

The Cabinet Secretary for Rural Economy and Tourism, Mr Fergus Ewing, has made the following statement “In my view the Fisheries (Technical Conservation Measures) (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 have had due regard to the need to the guiding principles on the environment and animal welfare as derived from the equivalent
principles provided for in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union.”

14. Statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)

This heading is not applicable.

15. An indication of how the regulations should be categorised in relation to the significance of the change proposed.

Low - The amendments made by these Regulations do not amount to a change in policy. Amendments are technical in nature to allow continuity of law.

16. Statement setting out the Scottish Ministers’ reasons for their choice of procedure

Negative procedure is considered appropriate as these are minor and technical amendments to sea fisheries legislation and do no more than is necessary to ensure that the legislation continues to operate effectively following the UK’s withdrawal from EU and they do not impose any additional financial burdens on local authorities or businesses. The Regulations do not include provision which falls within paragraph 1(2) of schedule 7 of the European Union (Withdrawal) Act 2018.

Further information

Consultation

There is a requirement to consult the UK Secretary of State under paragraph 4 of schedule 2 of the European Union (Withdrawal) Act 2018 as these Regulations contain provisions to remove redundant deficiency fixes to subordinate legislation which are due to come into force before IP completion day. The relevant UK Secretary of State was consulted before the Regulations were made.

No other consultation was considered necessary as the instrument does not amount to a change in policy.

17. Impact Assessments

Full impact assessments have not been prepared for this instrument because it relates to maintenance of existing regulatory standards and will not introduce any new policy. The amendments do not alter the Scottish Government’s current environmental policies and priorities and, therefore, do not have a significant impact on the environment. The impact on business, charities or voluntary bodies is expected to be minimal.

18. Financial Effects

The Cabinet Secretary for Rural Economy and Tourism, Mr Fergus Ewing, confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.
Annexe D

Title of instrument: SSI 2020/346 (C. 29): The Islands (Scotland) Act 2018 (Commencement No. 3) Regulations 2020

Type of Instrument: Laid

Laid Date: 3 November 2020

Coming into force: 23 December 2020

Minister to attend the meeting: No

Procedure

1. The lead committee is not required to report on these instruments. The lead Committee may however report on these instruments if it chooses to do so.

Policy Objectives and Background

2. The Bill for the Act received Royal Assent on 6 July 2018. Sections 1, 2 and 30 to 32 came into force the following day. Further sections came into force on 4 October 2018 and 18 April 2019 under earlier commencement regulations. The provisions commenced by this instrument are more specifically:

- section 7 (duty to have regard to island communities)
- section 8 (island communities impact assessment)
- section 9 (reviews of decisions relating to island communities impact assessments)
- section 10 (compliance with section 7 duty)
- section 11(1) (guidance about section 7 duty)
- section 12 (reporting regarding section 7 duty)
- section 13 (preparation of island communities impact assessment by Ministers), and
- section 14 (duty of the Scottish Ministers to have regard to request for retrospective island communities impact assessment).

3. The Act makes provision for duties of certain authorities in respect of policies, strategies and services, the requirement to report on compliance with duties, the preparation of island communities impact assessments, making regulations about reviews of decisions relating to island communities impact assessments and duties on the Scottish Ministers to have regard to requests for retrospective island communities impact assessments.

Consideration by the Delegated Powers and Law Reform Committee

4. The Delegated Powers and Law Reform Committee considered this SSI at their meeting on 10 November and no points were raised.
Points to note

5. There are no points to note.

Recommendation

6. The Committee is invited to consider any issues that it wishes to raise in relation to this instrument.

Rural Economy and Connectivity Committee Clerks
December 2020
The Scottish Ministers make the following Regulations in exercise of the power conferred by section 31(2) of the Islands (Scotland) Act 2018.

Citation and commencement

1. These Regulations may be cited as the Islands (Scotland) Act 2018 (Commencement No. 3) Regulations 2020 and come into force on 23 December 2020.

Appointed day

2.—(1) The day appointed for the coming into force of the provisions of the Islands (Scotland) Act 2018 specified in paragraph (2) is 23 December 2020.

(2) The provisions are—

(a) section 7 (duty to have regard to island communities),
(b) section 8 (island communities impact assessment),
(c) section 9 (reviews of decisions relating to island communities impact assessments),
(d) section 10 (compliance with section 7 duty),
(e) section 11(1) (guidance about section 7 duty),
(f) section 12 (reporting regarding section 7 duty),
(g) section 13 (preparation of island communities impact assessment by Ministers), and
(h) section 14 (duty of the Scottish Ministers to have regard to request for retrospective island communities impact assessment).

PAUL WHEELHOUSE
Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
30th October 2020

(a) 2018 asp 12.
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations bring sections 7 to 10, 11(1) and 12 to 14 of the Islands (Scotland) Act 2018 (“the Act”) into force on 23 December 2020. The Act makes provision for duties of certain authorities in respect of policies, strategies and services, the requirement to report on compliance with duties, the preparation of island communities impact assessments, making regulations about reviews of decisions relating to island communities impact assessments and duties on the Scottish Ministers to have regard to requests for retrospective island communities impact assessments.

The Bill for the Act received Royal Assent on 6 July 2018. Sections 1, 2 and 30 to 32 came into force the following day.

NOTE AS TO EARLIER COMMENCEMENT REGULATIONS

(This note is not part of the Regulations)

The following provisions of the Islands (Scotland) Act 2018 have been brought into force by commencement regulations made before the date of these Regulations.

<table>
<thead>
<tr>
<th>Provision</th>
<th>Date of Commencement</th>
<th>S.I. No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sections 3 to 6</td>
<td>4 October 2018</td>
<td>S.S.I. 2018/282</td>
</tr>
<tr>
<td>Sections 15 to 21</td>
<td>4 October 2018</td>
<td>S.S.I. 2018/282</td>
</tr>
<tr>
<td>Sections 27 to 29</td>
<td>4 October 2018</td>
<td>S.S.I. 2018/282</td>
</tr>
<tr>
<td>Section 11(2)</td>
<td>18 April 2019</td>
<td>S.S.I. 2019/134</td>
</tr>
<tr>
<td>Schedule</td>
<td>18 April 2019</td>
<td>S.S.I. 2019/134</td>
</tr>
</tbody>
</table>
Introduction

1. This paper provides background information on the following EU exit-related Scottish statutory instrument:

_Fisheries (Technical Conservation Measures) (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (SSI 2020/367)_

The Committee is invited to—

- consider whether it is content that the parliamentary procedure given to the instrument by the Scottish Government is appropriate; and, if so,
- to agree to consider the instrument at the relevant agenda item in the usual way.

Background

2. In anticipation of the UK leaving the EU, changes are required to devolved legislation by way of statutory instruments. Under the European Union (Withdrawal) Act 2018, and where the Scottish Government considered a UK-wide approach to the legislative changes would be appropriate, these have been made by UK statutory instruments (SIs) laid by the UK Government with Scottish Ministers’ consent. The Scottish Parliament has considered these legislative changes – notified to them by the Scottish Government – in advance of the Scottish Government giving consent.

3. Other legislative changes are being made through Scottish statutory instruments (SSIs).

4. SSIs related to EU exit will be considered in the same way that ‘domestic’ SSIs are considered except that the lead committee has the opportunity, in advance of its policy consideration, to recommend to the Scottish Government that the parliamentary procedure allocated to the instrument should be changed. This process is known as the sift.

5. A protocol has been agreed between the Scottish Government and Scottish Parliament on the process for considering SSIs laid under the 2018 Act. The protocol sets out further information about the sifting process.

6. This paper supports the Committee’s consideration of the sift.

7. The protocol also sets out an approach which categorises SSIs – high, medium or low – to assist committees’ prioritisation in terms of scrutiny and gives the Delegated Powers and Law Reform Committee (DPLRC) a role in
highlighting to a lead committee those SSIs where it disagrees with the Scottish Government about the categorisation.

**Consideration of the parliamentary procedure – the sift**

8. Scottish Ministers have discretion about whether instruments made under Schedule 2 of the 2018 Act should be subject to the affirmative or negative procedure, unless the instrument makes provision falling within one of the categories which requires the mandatory affirmative procedure to be used.

9. As set out above, the lead committee has the opportunity, in advance of its consideration, to recommend to the Scottish Government that the parliamentary procedure allocated to the instrument should be changed. Thus, the lead committee can recommend that an instrument laid under the negative procedure should be revoked and laid as an affirmative instrument and vice versa. The protocol states this “enables committees to recommend a change where they consider that the matter is of such significance that it requires active Parliamentary approval (or conversely is not so significant that it requires Parliamentary time to be allocated to its approval)”.

10. The DPLRC also consider the parliamentary procedure allocated to an instrument and make a recommendation to the lead committee where it agrees the procedure should be changed. The DPLRC considered these instruments on 17 November and 24 November and made no recommendation of procedural change for any of the above instruments.

_No recommendation to change the parliamentary procedure_

11. Where a lead committee agrees with the parliamentary procedure, the instrument is thereafter considered and disposed of in the same way as a ‘domestic’ SSI.

_Recommendation to change the parliamentary procedure_

12. Where a lead committee recommends the parliamentary procedure should be changed, it must report to the Parliament. The Scottish Government is expected to meet that recommendation as soon as possible.

13. A change of procedure does not, however, affect the timetable for Parliamentary consideration and the SSI should be considered under the procedure recommended by the lead committee.

_For decision_

14. The instrument has been categorised as being under the _negative_ procedure.

15. The Committee is invited to consider whether it is content that the parliamentary procedure allocated to the instrument by the Scottish Government is appropriate.

Rural Economy and Connectivity Committee Clerks
December 2020
Rural Economy and Connectivity Committee

33rd Meeting, 2020 (Session 5), Wednesday, 9 December 2020

Women in Agriculture

Background

1. The Rural Economy and Connectivity Committee has agreed to hold a one-off evidence session with members of the Women in Agriculture Task Force. The Taskforce was set up to make recommendations to strengthen opportunities for women in the agriculture sector. It published an interim report in June 2018, before publishing their final report in November 2019.

2. The aim of the Committee’s session will be to obtain information from members of the Task Force on how the recommendations in the report have been implemented to date.

Rural Economy and Connectivity Committee Clerks
December 2020