RURAL ECONOMY AND CONNECTIVITY COMMITTEE

AGENDA

29th Meeting, 2018 (Session 5)

Wednesday 14 November 2018

The Committee will meet at 8.30 am in the Mary Fairfax Somerville Room (CR2).

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

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

3. **Rail services in Scotland:** The Committee will take evidence from—

   Alex Hynes, Managing Director, and Angus Thom, Chief Operating Officer, Scotrail Alliance.

4. **European Union (Withdrawal) Act 2018:** The Committee will consider proposals by the Scottish Government to consent to the UK Government legislating using the powers under the Act in relation to the following UK statutory instrument proposals—

   The Exotic Disease (Amendment etc.) (EU Exit) Regulations 2018

   The Aquatic Animal Health and Alien and Locally Absent Species in Aquaculture (Amendment) (EU Exit) Regulations 2018

   The Fisheries (Amendment) (EU Exit) Regulations 2019.

5. **Ferry Services in Scotland:** Members will report back from a recent visit to Ferguson Marine Engineering Limited.
The papers for this meeting are as follows—

**Agenda Item 1**

PRIVATE PAPER

**Agenda Item 3**

Cover note

PRIVATE PAPER

**Agenda Item 4**

UK SI cover note

**Agenda Item 5**

Note by the Clerk
Rail services in Scotland

Background

1. The Committee will take evidence from Scotrail Alliance. This forms part of a series of regular updates the Committee receives to allow it to monitor rail network and rail service performance issues.

2. Scotrail Alliance is a formal alliance between Abellio Scotrail and Network Rail and is designed to make the industry in Scotland more responsive to customers’ needs. Both organisations remain separate companies, led by Scotrail Alliance managing director Alex Hynes.

3. The Committee last heard from Scotrail Alliance on 9 May 2018, on general matters, where they updated the Committee on various improvement projects (e.g. Edinburgh-Glasgow Improvements Programme (EGIP) and the Highland mainline project), Scotrail performance and funding.

4. The Committee will discuss Scotrail Alliance’s progress towards meeting its objectives focussing on performance, development and improvement projects.

Rural Economy and Connectivity Committee Clerks
November 2018
Rural Economy and Connectivity Committee
29th Meeting, 2018 (Session 5) Wednesday 14 November 2018

Notification of intention to consent – UK Statutory Instruments

1. The Committee has received notification from the Scottish Government of its intent to consent to UK Ministers making regulations on its behalf in relation to the following UK Statutory Instruments:

   - THE EXOTIC DISEASE (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2018

   And, in a group:

   - THE AQUATIC ANIMAL HEALTH AND ALIEN AND LOCALLY ABSENT SPECIES IN AQUACULTURE (AMENDMENT) (EU EXIT) REGULATIONS 2018
   - THE FISHERIES (AMENDMENT) (EU EXIT) REGULATIONS 2019

2. These regulations are being laid in relation to the European Union (Withdrawal) Act 2018 (‘the Act’). In order to assist in the consideration of such instruments, a new protocol has been put in place between the Scottish Government and Scottish Parliament. Further detail on this protocol is available in a letter from the Cabinet Secretary for Government Business and Constitutional Relations as well as in the annexe to this paper.

Reporting

3. Under the protocol referred to above, the Committee has the following two options following its consideration of the UK SIs—

   a. Write to the Scottish Government to confirm it is content for consent for a UK SI to be given.
   b. Consider the matter further, take evidence if appropriate and make a report to parliament.

4. If it chooses to report it may make one of the following three recommendations—

   a. it is content for consent to be given for a UK SI to be made in the UK Parliament only.
   b. it is not content with the Scottish Government granting its consent and that the proposals should be made by an SSI; or
   c. it is not content with the Scottish Government granting its consent and that the proposals should be included as a UK SI in both parliaments made under the joint procedure.
The Instruments

5. The notification letters and documentation for the instruments are included in an annexe to this paper. Under the categorisation proposals set out in the protocol, they have both been categorised by the Scottish Government as A – minor or technical amendment.

6. The Committee’s role in the protocol is to decide whether it agrees to the Scottish Government offering its consent to the UK Government to make regulations on its behalf. However, there are broader policy issues which may arise in future, not as a direct consequence of the notification, but due to Brexit itself. The Committee may wish to note these issues in its response to the Scottish Government and request that it be kept up to date on any developments on these matters. These broader policy issues have been identified in relation to each instrument where appropriate.

The Exotic Disease (Amendment etc) (EU Exit) Regulations

7. According to the notification the changes are necessary to ensure that, post-EU exit, legislation remains effective to enable Scottish Government (and the other UK administrations) to respond to outbreaks of exotic, notifiable disease as outlined in the Scottish Government’s Exotic Animal Diseases Contingency Framework Plan to protect public health, animal health and international trade.

8. As the UK will no longer be a Member State of the EU references to EU institutions will be replaced. In most cases, where administrative functions are exercised by the Commission, provisions are made for these functions to be exercised by Scottish Ministers. However, in some cases provision is made for functions to be exercised by the Secretary of State with consent of, in relation to Scotland, the Scottish Ministers. Such an approach is taken in relation to meat markings, authorising laboratories and diagnostic testing standards. Those functions provide reassurances to international trading partners that a single recognised standard applies across the UK in particular that one set of diagnostic tests are being applied and that testing laboratories operate to a single standard.

9. These are areas where there would be no divergence in policy (as they are governed by internationally agreed standards) and where third countries and trading partners will be looking for one consistent approach, therefore the Scottish government believes it is sensible to maintain one single authority whilst still respecting the devolution settlement.

Broader policy issues

10. In responding to the Scottish Government, the Committee may wish to inquire as to whether, outside the EU, the UK laboratories and testing standards as mentioned within the notification will be accepted as valid by
international trading partners or whether an additional accreditation process will be needed.

MARINE GROUPING

The Aquatic Health and Alien and Local Absent Species in Aquaculture (Amendment) (EU exit) Regulations 2018

11. The majority of EU aquatic animal health legislation is transposed by the Aquatic Animal Health Regulations (Scotland) 2009 in Scotland. However, there are several directly applicable Commission Decisions and Regulations which will become retained EU law as result of the European Union (Withdrawal) Act 2018.

12. According to the notification the Regulations are necessary to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. These deficiencies require to be fixed to allow the continued operation of fish health legislation on exit day, assist the continuation of trade and ensure that aquatic animal health continues to be protected by minimum standards within the United Kingdom. See the notification attached in the annex for more detail.

13. There will also be further UK regulations required to amend deficiencies not addressed in these regulations, in particular relating to transfer of functions. Separate to the UK Regulations, each Devolved Administration will also be required to amend applicable domestic legislation. The legislation in respect of Scotland is: The Aquatic Animal Health (Scotland) Regulations 2009; and the Alien and Locally Absent Species in Aquaculture (Scotland) Regulations 2015. These amendments will be brought forward in a Scottish Statutory Instrument.

Broader policy issues

14. Brexit will mean that there are a number of EU regimes / bodies that the UK will no longer have access to. This gap will need to be addressed in some way. For example, the notification references:

- an agreement to establish a UK version of Standing Committee on Plants, Animals, Food and Feed (ScoPAFF) which plays a key role in ensuring that Union measures on food and feed safety, animal health & welfare as well as plant health are practical and effective.
- a replacement TRACES service whereby the United Kingdom can be notified of imports and exports - a “UK Imported Notification System”. (TRACES is the European Commission's multilingual online management tool for all sanitary requirements on intra-EU trade and importation of animals, semen and embryo, food, feed and plants.)
- aquatic animal health certification
15. In responding to the Scottish Government, the Committee may wish to ask to be kept up to date on the creation of these UK replacement bodies. In addition, under financial costs, it states “some of the policy fixes to amend inoperable legislation will have financial costs for devolved administrations.” The Committee may wish to inquire as to what these costs may be.

THE FISHERIES (AMENDMENT) (EU EXIT) REGULATIONS 2019

16. The Fisheries (Amendment) (EU Exit) Regulations 2019 (“the Regulations”) provides technical corrections to primary and secondary domestic legislation consisting of minor textual omissions or changes in order to ensure that the legislation will continue to be effective after the UK leaves the EU. Details of which are set out in the notification. The legislation being amended by these Regulations have only limited impact or indirect impact on Scottish fisheries management, and maintain equivalent environmental protections.

17. The UKSI is heavily linked to an upcoming SI on Common Fisheries Policy regulation which is the most significant EU Exit SI in relation to the management of sea fisheries. The regulations are proceeding to different timetables and so will be subject to separate notifications.

Broader policy issues

18. There are currently no broader policy issues identified by SPICe or OSSP in relation to this instrument.

Recommendation

19. The Committee is asked to consider the instruments and determine whether to:

   a. write to the Scottish Government to confirm it is content for consent for the UK SIs referred to in this paper to be given;
   b. to note and request a response from the Scottish Government on the related policy matters identified which will require to be addressed in future;

or

   c. consider the matter further, take evidence if appropriate and make a report to parliament.

ANNEXE A – Background to protocol

ANNEXE B – UKSI consent notifications

Clerking team
Rural Economy and Connectivity Committee
September 2018
ANNEXE A – BACKGROUND TO PROTOCOL

20. The Scottish Parliament has power to legislate for matters within devolved competence (as defined in paragraphs 8 and 17 of Schedule 2 of the Act). However, where appropriate Scottish Ministers may consent to the UK exercising this power on Scotland’s behalf using a Statutory Instrument (SI).

21. Both the Scottish Parliament and the Scottish Government recognise that, as a matter of principle, the Scottish Parliament should have the opportunity to consider in advance whether it is content for the matter to be taken forward by a UK Statutory Instrument (SI) rather than a Scottish Statutory Instrument (SSI). This protocol is an agreement between the Scottish Parliament and the Scottish Government as the Act makes no provision for scrutiny by the Scottish Parliament.

Timing

22. The Scottish Parliament will normally have 28 days to consider the notification (not including any time in which the Parliament is dissolved or in recess for more than 14 days). The Scottish Government will seek to ensure that the UK Government is aware of Scottish Parliament recess periods and take them into account in its own legislative programming.

Categorisation

23. The protocol contains proposals for how to categorise the instruments. A, being minor or technical amendments and B being more significant policy decisions. C, covers matters which should be subject to the joint procedure (an SI laid in both the UK and Scottish Parliaments). Category C is included in the protocol for reference as it is an existing procedure which the Committee can choose to recommend while reporting. Further detail on what may constitute a category A or B instrument is contained in a letter from the Cabinet Secretary for Government Business and Constitutional Relations outlining this protocol.

Reporting

24. The Committee has two options.

   d. Write to the Scottish Government to confirm it is content for consent for a UK SI to be given.

   e. Consider the matter further, take evidence if appropriate and make a report to parliament.

25. If it chooses to report it may make one of three recommendations:

   f. That it is content for consent to be given for a UK SI to be made in the UK Parliament only.
g. That it’s not content with the Scottish Government granting its consent and that the proposals should be made by an SSI.

h. That it’s not content with the Scottish Government granting its consent and that the proposals should be included as a UK SI made under the joint procedure.

26. The Scottish Government will have 7 days to respond to a Committee report. If the Scottish Government does not agree with the recommendation of the Committee then a Parliamentary Bureau motion will be laid in the Chamber. The debate on the motion should take place within 14 days of the expiry of the 28 day period. If the motion is agreed to it is anticipated that the Scottish Government should normally follow the Committee’s recommendations.

27. Finally, if a consent notification is agreed to, the Scottish Government will track the relevant UK SI and advise the Scottish Parliament:

   I. that the SI is consistent with the consent granted;
   II. that the SI varies from the original proposals but not to the extent of needing additional parliamentary consent; or
   III. that the SI varies significantly from the original proposals and that it is withdrawing consent (if such cases the Scottish Government will either use an SSI or the joint procedure).
Dear Edward

THE EXOTIC DISEASE (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2018
POLICY AREA: ANIMAL HEALTH
EU EXIT LEGISLATION - PROTOCOL WITH SCOTTISH PARLIAMENT

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to the exercise of powers by UK Ministers under the European Union (Withdrawal) Act 2018 in relation to proposals within the legislative competence of the Scottish Parliament.

As you know, the Cabinet Secretary for Government Business and Constitutional Relations, Mike Russell wrote to the Conveners of the Finance & Constitution and Delegated Powers and Legislative Reform Committees on 11 September setting out the Scottish Government’s views on EU withdrawal. That letter also said that we must respond to the UK Government’s preparations for a No-Deal scenario as best we can, despite the inevitable widespread damage and disruption that would cause. It is our unwelcome responsibility to ensure that devolved law continues to function on and after EU withdrawal.

I attach a notification which sets out the details of the SI which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in this SI. Please note, we are yet to have sight of the final SI and it is not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

The changes are necessary technical and administrative amendments to ensure that, post-EU exit, legislation remains effective to enable Scottish Government (and the other UK administrations) to respond to outbreaks of exotic, notifiable disease as outlined in the Scottish Government’s Exotic Animal Diseases Contingency Framework Plan to protect...
public health, animal health and international trade. The SI makes no significant changes to current policy and respects the devolution settlement.

I am copying this letter to the Convenor of the Delegated Powers and Law Reform Committee.

I look forward to hearing from you in due course.

MAIRI GOUGEON
NOTIFICATION TO THE SCOTTISH PARLIAMENT

Name of the SI(s) (if known) or a title describing the policy area

EXITING THE EUROPEAN UNION
ANIMAL HEALTH
The Exotic Disease (Amendment etc.) (EU Exit) Regulations 2018

A brief explanation of law that the proposals amend

The above instrument is being made using powers in the European Union (Withdrawal) Act 2018 in order to correct deficiencies in what will become retained EU law relating to exotic notifiable animal diseases, to allow that to continue to operate effectively in the event of a ‘no deal’ UK exit from the EU on 29 March 2019. A notifiable disease is one where owners and their veterinarians are obliged to notify Government of suspicion of the relevant disease.

This instrument will amend the following direct EU legislation becoming retained EU law:

- Commission Decision 88/397/EEC in regards to the application of Article 6 of Council Directive 85/511/EEC for measures to control foot-and-mouth disease (which provides for waiver from slaughter and destruction of all the animals where animal holdings consist of two or more production units)
- Commission Decision 93/52/EC recording the compliance by certain Member States or regions with the requirements relating to brucellosis (B. melitensis) and according them the status of a Member State or region officially free of the disease
- Commission Decision 1993/152/EC laying down the criteria for vaccines to be used against Newcastle disease in the context of routine vaccination programmes
- Commission Decision 2000/258/EC designating a specific institute responsible for establishing the criteria necessary for standardising the serological tests to monitor the effectiveness of rabies vaccines
- Commission Decision 2000/428/EC establishing diagnostic procedures, sampling methods and criteria for the evaluation of the results of laboratory tests for the confirmation and differential diagnosis of swine vesicular disease
- Commission Decision 2002/106/EC approving a Diagnostic Manual establishing diagnostic procedures, sampling methods and criteria for evaluation of the laboratory tests for the confirmation of classical swine fever
- Commission Decision 2003/422/EC approving a Diagnostic Manual establishing diagnostic procedures, sampling methods and criteria for evaluation of the laboratory tests for the confirmation of African swine fever
- Commission Decision 2003/467/EC establishing the official tuberculosis, brucellosis, and enzootic-bovine-leukosis-free status as regards bovine herds
• Commission Decision 2006/415/EC lays down certain protection measures to be applied in cases of highly pathogenic avian influenza A virus of subtype H5N1, in order to prevent the spread of the disease by controlling movement of poultry, other birds as well as products.

• Commission Decision 2006/437/EC approving a Diagnostic Manual for avian influenza establishing guidelines and diagnostic procedures, sampling methods and criteria for the evaluation of the laboratory tests to confirm avian influenza.

• Commission Decision 2006/563/EC concerning certain protection measures, principally the establishment of control and monitoring areas, in relation to highly pathogenic avian influenza of subtype H5N1 in wild bird.


• Commission Decision 2007/598/EC concerning measures (preventative vaccination) to prevent the spread of highly pathogenic avian influenza to other captive birds kept in zoos and approved bodies, institutes or centres.


• Commission Implementing Decision 2018/1136 on risk mitigating and reinforced biosecurity measures and early detection systems in relation to the risks posed by wild birds for the transmission of highly pathogenic avian influenza viruses to poultry.

The instrument will also amend GB wide statutory instrument i.e. the Diseases of Swine Regulations 2014 (S.I. 2014/1894), EU derived domestic legislation becoming retained EU law. These Regulations implement EU provisions for the control of swine vesicular disease, classical swine fever and African swine fever.
Summary of the proposals and how these correct deficiencies

The amendments made by this instrument do not change existing policy, but are necessary to ensure that Governments in the UK can respond to outbreaks of exotic notifiable disease in the same way after the UK’s withdrawal from the European Union as they can now.

As the UK will no longer be a Member State of the EU, there are various amendments made by this instrument to references to, for example, ‘Member States’, ‘Member State competent authority’, the ‘Commission’, ‘Community’ and to ‘intra-community trade’, and where necessary to replace those with appropriate references to, for example, the UK or the territories of Scotland, England, Wales and Northern Ireland, to appropriate Ministers (in relation to Scotland, the Scottish Ministers) and to trade with the EU.

In most cases, where administrative functions are exercised by the Commission, provisions are made for these functions to be exercised by Scottish Ministers.

However, in some cases provision is made for functions to be exercised not by the appropriate Minister but rather by the Secretary of State with consent of, in relation to Scotland, the Scottish Ministers. This is considered to be sensible and proportionate. Such an approach is taken in relation to meat markings, authorising laboratories and diagnostic testing standards. Those functions provide reassurances to international trading partners that a single recognised standard applies across the UK in particular that one set of diagnostic tests are being applied and that testing laboratories operate to a single standard. These are areas where there would be no divergence in policy (as they are governed by internationally agreed standards) and where third countries and trading partners will be looking for one consistent approach, therefore it is sensible to maintain one single authority whilst still respecting the devolution settlement.

In some cases the law being amended by the instrument contains EU related cross-references in the legislation which is amended, including references to European Directives. To address this, the instrument makes technical amendments to EU related references. In particular, the regulations modify the way the cross references to particular Directives are to be read, to ensure that those references continue to operate effectively after EU Exit.

In the diagnostic manual Decisions covering swine vesicular disease (Commission Decision 2000/428/EC), classical swine fever (Commission Decision 2002/106/EC), African swine fever (Commission Decision 2003/422/EC) and avian influenza (Commission Decision 2006/437/EC), all references to the Community reference laboratories, their duties and responsibilities are replaced with references to the appropriate UK national reference laboratory for each disease. These reference laboratories provide an internationally agreed and recognised set of standardised testing on behalf of Scottish Government and the other relevant competent authorities.

Certain obligations that will no longer have effect after the withdrawal of the UK from the EU have also been amended or removed such as the requirement to
notify, inform or report to the Commission. Where applicable these have been replaced with obligations to make information available to the public such as in cases where the presence of highly pathogenic avian influenza of the subtype H5N1 is confirmed in poultry (i.e. Commission Decision 2006/415/EC) or when bluetongue restricted zones are in force (ie. Commission Regulation 1266/2007).

**An explanation of why the change is considered necessary**

The changes are necessary to ensure that, post-EU exit, legislation remains effective to enable Scottish Government (and the other UK administrations) to respond to outbreaks of exotic, notifiable disease as outlined in the Scottish Government’s Exotic Animal Diseases Contingency Framework Plan to protect public health, animal health and international trade.

**Scottish Government categorisation of significance of proposals**

This instrument has been categorised as Category A. This instrument makes amendments to ensure the continued operation of arrangements for control and eradication of certain exotic notifiable animal diseases after the UK leaves the EU. The instrument does not significantly change the current policy and protects Scottish Ministers interests under the devolution settlement.

**Impact on devolved areas**

Exotic disease control as an element of animal health is a fully devolved area. In making provision to address deficiencies the instrument respects the devolution settlement. In particular provision is made for exercise of functions by the Scottish Ministers (and in some cases to the Secretary of State with consent of the Scottish Ministers).

**Summary of stakeholder engagement/consultation**

The Scottish Government meets frequently with a very broad range of stakeholders to discuss animal health and welfare related matters. The technical amendments to legislation made by this instrument will continue to ensure that the Scottish Government’s policy is aligned to the views of its key stakeholders and is able to respond to outbreaks of exotic notifiable disease in the same way after the UK’s withdrawal from the European Union as they do now to meet the needs of stakeholders.

**A note of other impact assessments, (if available)**

N/A

**Summary of reasons for Scottish Ministers’ proposing to consent to UK Ministers legislation**

The Scottish Ministers believe that the changes to exotic disease legislation to be made by this instrument are necessary to ensure that Scottish Ministers can
respond to outbreaks of exotic notifiable disease in the same way after the UK’s withdrawal from the European Union as they can now.

In the current circumstances where there is existing directly applicable EU law having effect throughout the UK and in the case of the Diseases of Swine Regulations 2014 domestic legislation applying on a GB wide basis which requires to be amended to prepare for a “no-deal” UK exit from the EU, the Scottish Ministers consider that it is appropriate for fixing legislation be made on a UK-wide basis by the UK Government. This is particularly in circumstances where the instrument protects Scottish Ministers interests under the devolution settlement.

Where relevant – detail how Scottish Ministers’ have had regard to the guiding principles on animal welfare and the environment

The amendments made by this instrument do not significantly change existing policy and will make modifications needed to generally preserve the application of existing EU law based arrangements in relation to exotic disease control as retained EU law within the UK after EU exit. The relevant EU law and domestic implementing provision has been made with the guiding principles on animal welfare and the environment in mind. In these circumstances what will become retained EU law will continue to give sufficient regard to the guiding principles, in particular that regard must be had to the welfare requirements of animals as sentient beings. In part the legislation amended by this instrument is in place to protect animal welfare though detection control and prevention of disease in animals.

Intended laying date (if known) of instruments likely to arise

The UK Government intend to lay the instrument for sift on 7 November 2018. The UK Government has agreed not to formally lay the instrument until after the 28 day period for the Scottish Parliament to scrutinise Scottish Ministers’ proposal to consent or, if earlier, the Scottish Parliament has completed its consideration of the proposal.

If the Scottish Parliament does not have 28 days to scrutinise Scottish Ministers’ proposal to consent, why not?

N/A – The Scottish Parliament will have 28 days to scrutinise.

Information about any time dependency associated with the proposal

N/A

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

There are no anticipated broader governance issues anticipated with this instrument. These are technical amendments to ensure the continued operation of the current regime for exotic disease control in the event of a ‘no deal’ UK exit from the EU on 29 March 2019.
Any significant financial implications?

These Regulations are not expected to have any financial implications for Scottish Government or for stakeholders in Scotland.
Rùnaire a' Chaibinedit airson h-Eaonomaidh Dhùthchail

Cabinet Secretary for the Rural Economy

Fergus Ewing BPA/MSP

Edward Mountain MSP
Convener of Rural Economy and Connectivity Committee
Scottish Parliament
Edinburgh
EH99 1SP

2 November 2018

Dear Mr. Mountain,

THE AQUATIC ANIMAL HEALTH AND ALIEN AND LOCALLY ABSENT SPECIES IN AQUACULTURE (AMENDMENT) (EU EXIT) REGULATIONS 2018 AND THE FISHERIES (AMENDMENT) (EU EXIT) REGULATIONS 2019

EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to the exercise of powers by UK Ministers under the European Union (Withdrawal) Act 2018 in relation to proposals within the legislative competence of the Scottish Parliament.

As you know, Mike Russell wrote to the Conveners of the Finance & Constitution and Delegated Powers and Legislative Reform Committees on 11 September setting out the Scottish Government’s views on EU withdrawal. That letter also said that we must respond to the UK Government’s preparations for a No-Deal scenario as best we can, despite the inevitable widespread damage and disruption that would cause. It is our unwelcome responsibility to ensure that devolved law continues to function on and after EU withdrawal.

I attach two notifications which set out the details of SIs which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in these SIs. The two SIs are the Aquatic Animal Health and Alien and Locally Absent Species in Aquaculture (Amendment) (EU Exit) Regulations 2018 and the Fisheries (Amendment) (EU Exit) Regulations 2019. Please note, we are yet to have sight of the final SIs and they are not available in the public domain at this stage. We will, in accordance with

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Mairéannach fo chumhachan Achd Còiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

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

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REC/S5/18/29/4
the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

In each case these regulations provide technical corrections to legislation in respect of the sustainable management of sea fisheries, and the management of aquatic animal health and alien species in aquaculture respectively. Further details are of course contained within the notifications. You will note that the Fisheries (Amendment) (EU Exit) Regulations 2019 are heavily interlinked with further forthcoming EU Exit instruments which will be legislated separately. In each case I am satisfied that the regulations will be effective in addressing the deficiencies that will arise after the UK leaves the EU, furthermore I can assure the committee that in neither case is there any substantial change in policy, that current principles in relation to environmental and animal welfare protection are upheld, and that the current devolved settlement is maintained.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

I look forward to hearing from you within 28 days from the date of this letter.

FERGUS EWING
The Aquatic Animal Health and Alien and Locally Absent Species in Aquaculture (Amendment) (EU Exit) Regulations 2018

Notification to the Scottish Parliament of Scottish Ministers’ intention to consent to UK legislative proposals on areas of devolved competence

Title of instrument:

Instrument and summary of proposal:
The Aquatic Animal Health and Alien and Locally Absent Species in Aquaculture (Amendment) (EU Exit) Regulations 2018 (“the Regulations”) address failures of the EU law that will become domestic law after the UK leaves the EU, to operate effectively and other deficiencies arising from the withdrawal of Scotland as part of the United Kingdom from the European Union. These amendments will ensure that EU legislation in this field continues to be operable after the UK leaves the EU.

The Regulations amend retained directly applicable EU legislation on aquatic animal health and on alien and locally absent species in aquaculture.

There will also be further UK regulations required to amend deficiencies not addressed in these regulations, relating to transfer of functions in particular, where these issues are being grouped by the UK Government across a policy area. Separate to the UK Regulations, each Devolved Administration will also be required to amend applicable domestic legislation. The legislation in respect of Scotland is: the Aquatic Animal Health (Scotland) Regulations 2009; and the Alien and Locally Absent Species in Aquaculture (Scotland) Regulations 2015. These amendments will be brought forward in a Scottish Statutory Instrument.

The Regulations are made under the European Union (Withdrawal) Act 2018, are subject to the negative procedure in the UK Parliament and are expected to be laid before the sifting committee on 13 November. The regulations will not come into force until EU exit day.

What is to be amended?
A list of the EU Instruments which are amended by these Regulations are listed in ANNEX A.

Why is change necessary:
In the European Union, basic legal provision on animal health requirements for aquaculture and on prevention and control of diseases is provided across a range of legislative instruments. The legislation is important in order to protect the animal health status of EU Member States and to facilitate trade, whilst preventing and minimising the spread of economically damaging animal diseases within the Union. For example, controls are provided for minimum rules to control measures in the event of an actual or suspected outbreak of certain diseases in aquatic animals.

Minimum requirements are also applied for fish health surveillance and minimum health requirements apply for the placement of animals farmed through aquaculture on the market and for their certification. The majority of EU aquatic animal health legislation is transposed by the Aquatic Animal Health Regulations (Scotland) 2009 in Scotland. However there are several directly applicable Commission Decisions and Regulations which will become retained EU law as result of the European Union (Withdrawal) Act 2018. The Regulations are necessary to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. These deficiencies require to be fixed to allow the continued operation of fish
health legislation on exit day, assist the continuation of trade and ensure that aquatic animal health continues to be protected by minimum standards within the United Kingdom.

The amendments made by this instrument do not amount to a change in policy. The amendments include removing or replacing EU terminology, for example replacing references to Member States with references to the United Kingdom or the constituent nations of the United Kingdom, as appropriate, and replacing references to the European Commission with references to the Secretary of State or the appropriate devolved authority.

A number of provisions are redundant and are revoked, for example provisions with relevance only to certain other Member States. A number of references to EU legislative procedures are corrected. References the EU’s Trade Control and Export System (TRACES) are replaced by references to the UK’s replacement import notification system. Amendments are made to refer appropriately to movements of aquatic animals between EU Member States and the United Kingdom where previously these references were to movements from one EU Member State to another. A list of diseases subject to EU-wide controls in Directive 2006/88/CE is inserted in order that it can continue to be maintained and updated after the UK has left the EU. A deficient cross-reference to the definition of ‘aquaculture’ in Regulation 1198/2006 on the European Fisheries Fund, which will not be retained in domestic legislation when the UK leaves the EU, is corrected.

A number of cross-references to Directive 2006/88/EC, which will not be incorporated into UK law under the Withdrawal Act, are corrected. In most cases, this is achieved by providing that cross-references to Directive 2006/88/EC are accompanied with the appropriate explanation (for example, references to Member States being supplanted by references to the appropriate Minister, e.g. the Scottish Ministers).

Correction of these deficiencies will ensure that domestic legislation will continue to operate smoothly within Scotland on exit day. The amendments made do not amount to a change in policy and generally replace references to Member States. Instruments to be amended are included in Annex A.

Categorisation of significance of proposals:

Category A - The amendments made by this instrument do not amount to a change in policy.

Administrations are in agreement that in the fields of aquatic animal health and alien and locally absent species in aquaculture the current standards set out in EU legislation and EU-derived domestic legislation that protect aquatic animal health, protect native species, habitats and ecosystems from the harmful introduction of alien and locally absent species, and facilitate trade in aquatic animals and their products with the EU and other trading partners should be maintained.

Accordingly, the amendments made by this instrument do not amount to a change in policy but ensure that retained EU law continues to operate effectively after the UK leaves the EU.

EU law regarding aquatic animal health sets standards equivalent or higher than the international standards set by the World Organisation for Animal Health (Office International des Epizooties, OIE). Whilst the UK will be under no legal obligation to adhere to EU rules for aquatic animal health following EU exit, failure to do so would likely result in the UK being unable to trade in aquaculture animals and their products with EU member States and third countries.

Impact on environmental and animal welfare guiding principles

Addressing the deficiencies ensures continued adherence to the environmental principles established in EU and international law. In maintaining the current approach aquatic animal health,
and the management of aquaculture the Regulations maintain the existing level of environmental protection.

**Impact on Devolved Areas**

Aquaculture and aquatic animal health is a devolved policy area. As such the arrangements in the Regulations provide for agreement between devolved administrations and the UK Government where there is a requirement for cooperation in the interests of good aquatic health and management of alien or locally absent species in aquaculture.

**Amendment of directly applicable EU legislation on aquatic animal health that will become part of domestic law**

Amendments have been drafted to retain current policy, including the current devolved settlement. The Regulations define the appropriate Minister, in relation to Scotland, as the Scottish Ministers and there is no change in relation to powers which are currently devolved.

**Services and functions currently provided by the EU**

1. ScoPAFF

The EU currently provides a mechanism by which aquatic animal health law is influenced by all Member States. The Standing Committee on Plants, Animals, Food and Feed (ScoPAFF) plays a key role in ensuring that Union measures on food and feed safety, animal health & welfare as well as plant health are practical and effective. It delivers opinions on draft measures that the Commission intends to adopt. ScoPAFF is composed of representatives of all Member States and presided over by a European Commission representative.

The responsibility of ScoPAFF includes, for example, detailing procedures with regards to declaration of aquatic animal disease freedom and declaration of disease free zones and compartments. Declarations are important for trade purposes – enabling trade while protecting the import of exotic disease.

The UK will no longer be party to ScoPAFF. There is policy agreement to a process of mutual agreement whereby decisions will be made by mutual consent by the 4 UK administrations. Where the Commission would have previously issued decisions on the advice of ScoPAFF, the appropriate UK Minister is now referenced, which in relation to Scotland is the Scottish Ministers. However, the appropriate Minister will be the Secretary of State if consent is given by all devolved administrations.

In essence there is an agreement to establish a UK version of ScoPAFF to ensure that an overarching body of experts continues to feed into the decision making process regarding aquatic animal health across the United Kingdom. By this process mutual consent will be sought from the devolved administrations. Where consent cannot be reached the Secretary of State will have no powers to make legislation with regards to the territory of Scotland. In such cases Scottish Ministers will maintain the power to make their own legislation.

It is essential that collaboration in aquatic animal health continues as fish pathogens do not respect borders. We expect the formation of a UK ScoPAFF to be part of any future discussions regarding United Kingdom Frameworks.

Scottish Government supports the formation of a UK technical committee in the event the UK leaves the EU without a withdrawal agreement and termination of UK membership of the existing ScoPAFF Committee.

2. TRade Control and Expert System (TRACES)
Under current EU legislation EU Member States use the TRACES system. TRACES is the European Commission’s online management tool for all sanitary requirements on intra-EU trade and importation of animals, semen and embryo, food, feed and plant. It digitises the entire certification process through a harmonised export certification system.

When the United Kingdom leaves the EU it will no longer be able to access the TRACES system. The United Kingdom will require a replacement TRACES service whereby the United Kingdom can be notified of imports and exports. This amending SI replaces references to the TRACES system with reference to a “UK Imported Notification System” which is currently under development. It is essential that a notification system is in place to allow trade into and out of the United Kingdom. Trade is a reserved function and as such the UK Government will meet the financial requirements for creation of the UK Imported Notification System. The UK notification system is a priority readiness project for Defra.

3. Health Certificates, Disease Lists and Quarantine Facilities

All Member States currently use a single pro forma aquatic animal health certificate for exports, provided for and published by the European Commission. The European Commission also publish and update disease lists on behalf of the Member States through consultation with ScoPAFF and keeps a centralised list of acceptable quarantine facilities for aquatic animal health purposes. Third countries must notify the Commission of newly registered quarantine facilities. For functions such as this the Regulations establish the appropriate Minister as the responsible party for publication of common documents which in relation to Scotland is the Scottish Ministers. However the appropriate Minister will be the Secretary of State (SoS) where consent is granted by the devolved administrations.

The regulations includes a general transitional provision with regard to health certification.

Amendment of retained direct EU legislation on alien and locally absent species in aquaculture

Amendments have been drafted to retain current policy. The amendments being made include removing or replacing EU terminology such as replacing references to Member States with references to the appropriate Minister. The appropriate Minister, in relation to Scotland, is defined as the Scottish Ministers in the Regulation. However, the appropriate Minister will be the Secretary of State if consent is given by;

(a) in relation to Wales, the Welsh Ministers

(b) in relation to Scotland, the Scottish Ministers

(c) in relation to Northern Ireland, a Minister within the meaning of the Northern Ireland Act 1998 or a Northern Ireland Department.

Summary of stakeholder engagement/consultation

The Department for Environment, Food and Rural Affairs (DEFRA) has consulted with the devolved administrations of Scotland, Wales and Northern Ireland regarding this instrument. DEFRA has not carried out formal consultation external to government. The amendments made do not amount to a change in policy.

We are in regular contact with all our stakeholders regarding EU exit and any consequent legislative changes.
Any other impact assessments

We have discussed the need for an impact assessment with the UK Government and on the basis that this instrument does not infer any policy changes we have concluded there is not a requirement to undertake an impact assessment.

Reason for Scottish Ministers’ consent

Scottish Ministers should consent to UK Ministers laying the Regulations as they do not change current policy nor do they erode any devolved powers. The Regulations are written such that the Scottish Ministers are designated the appropriate Minister in relation to Scotland. However, it also allows a mechanism by which the Secretary of State may make regulations where there is consent from the devolved administrations to do so. The Regulations will lay the foundations for a future UK framework on aquatic animal health – an area where collaboration and joint working is essential for economic, health and trade purposes.

Intended Laying date of UK Instrument

It is expected that this will be laid before the UK Parliament for sifting on 13 November 2018. We do not yet have a confirmed date for the regulations to be made but Defra have agreed that all EU Exit SIs will not proceed to be made (for negative procedure SIs), or laid in draft (for affirmative SIs), until after they have been through the consent process as agreed with the Scottish Parliament.

Does the Scottish Parliament have 28 days to scrutinise?

Yes.

Time dependencies

It is essential that the Regulations are in force on the day we exit the EU in the event of a no deal scenario to ensure that legislation is operable and that there is a system in place to allow the continuation of aquatic animal trade.

Financial implications

Without this Regulation some aquatic animal health legislation will cease to operate. The Regulations amend rules governing minimum health requirements of aquatic animals and their entering into the market place. Without these amendments, Scotland will not have an appropriate system in place for the trade of aquatic animals. Therefore financial implications will arise if the amendments are not made, although they are difficult to quantify at this stage. For example, references to the TRACES notification system will become redundant and the UK import notification system would not be applicable in law. This means that there would be no notification mechanism (in law) by which imports of ova for use in the Scottish salmon industry from Norway could occur. In 2017 ova from Norway supported the production of fish in Scotland worth £1.05 billion.

Some of the policy fixes to amend inoperable legislation will have financial costs for devolved administrations.

This regulation will require continued cooperation between the four UK administrations. It is considered that the services currently provided by the ScoPAFF committee will be replicated by a UK committee and will have associated costs which are difficult to estimate. This includes the publication and maintenance of UK disease lists and aquatic animal health certificates, previously provided for by the Commission. This is a cost of Brexit itself, rather than specifically associated with these Regulations. Costs resulting directly from these amendments would be on the basis of needs from the new system as they arise. These are not yet apparent and will most likely be infrequent.
Separately, the UK already contributes staff resource to ScoPaFF which would be diverted to the new UK committee.

ANNEX A – LIST OF EU INSTRUMENTS AMENDED BY THE REGULATIONS

Aquatic Animal Health Legislation


Alien and Locally Absent Species Legislation

THE FISHERIES (AMENDMENT) (EU EXIT) REGULATIONS 2019

Notification to the Scottish Parliament of Scottish Ministers’ intention to consent to UK legislative proposals on areas of devolved competence.

Title of instrument:
The Fisheries (Amendment) (EU Exit) Regulations 2019.

Instrument and summary of proposal
The UK Government is making multiple sets of regulations relating to the management of sea fisheries to correct deficiencies which will arise as a result of the UK's exit from the EU. These deficiencies arise both in existing domestic legislation and in directly applicable EU legislation that will form part of domestic law after the UK’s exit from the EU. These regulations are:

- The Fisheries (Amendment) (EU Exit) Regulations 2019 which amend existing domestic law, including both primary and secondary legislation.
- The Common Fisheries Policy (UK) (EU Exit) (Miscellaneous Amendment) Regulations 2019 which will make changes to correct deficiencies in directly applicable EU legislation, and which we expect Scottish Ministers to be consulted on shortly.
- There will also be further regulations brought forward to amend other directly applicable EU law that are not included in the regulations above, for instance because of the possibility of EU law in certain areas being changed in the next few months.

All these regulations, plus the SSIs which will be brought forward will be taken together to ensure that the UK Government and the devolved administrations are able to continue to manage sea fisheries in a coherent and sustainable way in the event that the UK leaves the EU without a withdrawal agreement or deal. The Fisheries (Amendment) and Common Fisheries Policy regulations are heavily interlinked with the latter being the most significant EU Exit SI in relation to the management of sea fisheries. The regulations are proceeding to different timetables and so will be subject to separate notifications.

The Fisheries (Amendment) (EU Exit) Regulations 2019 (“the Regulations”) provides technical corrections to primary and secondary domestic legislation consisting of minor textual omissions or changes in order to ensure that the legislation will continue to be effective after the UK leaves the EU. There are no substantive policy changes, or changes in how the legislation operates. For example, references in UK legislation to “an enforceable EU obligation” are replaced by reference to “a retained EU obligation”, a term which has been inserted into the Interpretation Act 1978 by the European Union (Withdrawal) Act 2018 (“EUWA”), and which ensures that the same obligations can be enforced.

The Regulations are made under the EUWA, are subject to the affirmative procedure in the UK Parliament and are expected to be laid in draft on 4 December 2018. Under the terms of the EUWA, the regulations will not come into force until exit day, and these Regulations have been drafted in preparation for the UK leaving the EU without a withdrawal agreement or deal.

What is to be amended?
A list of the legislative instruments covered by the Regulations is provided in Annex A.

Summary of Proposals and how these correct deficiencies
The Regulations amend a range of primary legislation, and not all of these amendments require consent from Scottish Ministers as they relate to reserved matters or amend aspects of the legislation which extend only to England, Wales or Northern Ireland. The changes highlighted below are examples of the changes that are relevant to devolved matters or apply to Scotland and therefore require consent.

**Primary Legislation**

*The Sea Fish (Conservation) Act 1967*

This Act establishes a range of provisions and Ministerial powers required to establish and manage commercial sea fisheries. The Act predates the UKs joining the EU, but has subsequently been amended to be consistent with EU law. The relevant parts relate to proceedings in Scotland for offences under provisions covering licensing requirements for fishing boats. A single amendment is required to replace the phrase “enforceable EU obligation” with “retained EU obligation”.

*The Fisheries Act 1981*

This Act established the Sea Fishing Industry Authority, amended certain fishing provisions within the 1967 Act and other related instruments, and introduced provisions regarding fish farming. Amendments include the substitution of “enforceable” with “retained” as above, and replacement of the term “Community Rules” with “Rules relating to sea fishing”.

Section 31(3), which allows grants to be made where grants can be made by EU institutions, is being omitted because it is no longer relevant once funding from EU institutions is no longer available to the UK.

*The Marine and Coastal Access Act 2009*

This Act provides the legal mechanism to achieve UK Government objectives to help ensure clean, healthy, safe, productive and biologically diverse seas and establishes a marine planning system for England and Wales. Only those parts of the Act relevant to fisheries are amended by the Regulations, other parts are being amended through other thematic instruments, being notified separately.

Although most of the Marine and Coastal Access Act 2009 extends only to England and Wales, the provisions being amended extend to Scotland too.

Amendments include changing “enforceable EU restrictions and enforceable EU obligations” to “retained EU restriction or retained EU obligation”, with a definition being inserted for “retained EU restriction” (“retained EU obligation” is defined in the Interpretation Act 1978), to ensure that existing obligations and restrictions remain enforceable after exit day.

**Subordinate legislation**

The Regulations amend a range of subordinate legislation, not all of which require consent from Scottish Ministers as they relate to reserved matters or extend only to England, Wales or Northern Ireland. The full list of legislation being amended is listed in the annex. Amongst the amendments made to the following subordinate legislation not all will require consent, if again they relate to reserved matters or amend aspects of the subordinate legislation which extends only to England, Wales or Northern Ireland. The changes highlighted below are examples of the changes that are relevant to devolved matters or apply to Scotland and therefore require consent.

*The Tope (Prohibition of Fishing) Order 2008*

The Regulations amend a reference to “other member states”.

*The Fish Labelling Regulations 2013*
These regulations almost entirely apply to England alone and seek to correct references to “EU” obligations, cross references to EU instruments and to replace a sales threshold value from a €50 figure to that of £45. Regulation 3, which designates the Secretary of State as the competent authority in the UK for the purposes of drawing up a list of commercial designations, is omitted.

The Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014

These regulations extend partially to Scotland in terms of notifications and sharing of information. The amendments are straightforward textual adjustments to remove or amend references to EU legislation and “other Member States”.

The Grants for Fishing and Aquaculture Industries Regulations 2015

The amendments correct for references to the European Maritime and Fisheries Fund and the associated Operational Programme, which will become redundant on exit from the EU. We continue to seek clear guarantees from the UK Government on the long term funding arrangements that will replace EMFF and other EU funding streams in the future. In doing so will robustly apply the “no detriment” principle to ensure that there is no impact on Scotland’s marine sectors and interests arising from EU Exit and the loss of access to relevant EU funding streams.

The Sea Fishing (Enforcement) Regulations 2018

These regulations extend to Scotland. Amendments remove or amend references to the EU and Member States. Redundant provisions relating to the transhipment of demersal species subject to a multi-annual plan are also deleted from the accompanying schedule as the relevant multi-annual plans are no longer in force around the UK.

Why are these amendments necessary?

The Regulations provide technical corrections to primary and secondary domestic legislation in order to ensure that the UK has an enforceable approach to maintaining the sustainability of fisheries management after Scotland as part of the UK leaves the EU.

A number of the amendments result from amendments that will be made to directly applicable EU legislation (the common fisheries policy and associated regulations), which will be notified at a later date, to ensure that the existing domestic law continues to function after EU exit.

Categories of Significance of Proposals

Category A. The amendments do not constitute a change of policy but are technical corrections ensuring operability, and which maintain the current devolution settlement.

Impact on environmental and animal welfare guiding principles

Addressing the deficiencies ensures continued adherence to the environmental principles established in EU and international law. In maintaining the current approach to sustainable sea fisheries management the Regulations maintain the existing level of environmental protection.

Impact on devolved areas

Our primary objective in analysis of the UK Government’s draft amendments has been to ensure that, in the event that the UK leaves the EU without a withdrawal agreement or deal, Scottish Ministers can continue to effectively manage sea fisheries activities in Scottish waters and that the devolution settlement is respected.

The legislation being amended by these Regulations have only limited impact or indirect impact on Scottish fisheries management, and maintain equivalent environmental protections. The
amendments are strictly technical amendments to ensure operability. We are satisfied that the devolution settlement is not affected or altered by the amendments being made by these Regulations.

**Summary of stakeholder engagement**

The Department for Environment, Food and Rural Affairs (DEFRA) has consulted with the devolved administrations of Scotland, Wales and Northern Ireland regarding this instrument. DEFRA has not carried out formal consultation external to government. The amendments do not amount to a change in policy. Defra have carried out a ten-week consultation in relation to their Fisheries Bill white paper.

The Regulations ensure that good management of sea fisheries as currently undertaken can continue uninterrupted in the event of EU Exit in March 2019 without a transitional period. As such Scottish Government has not undertaken any separate stakeholder engagement. Engagement with stakeholders over the long term future of fisheries management in Scotland is ongoing with a view to Scottish Ministers legislating in future.

**Other impact assessments**

We have discussed the need for an impact assessment with the UK Government and on the basis that these amendments do not infer any policy changes we have concluded that there is not a requirement to undertake an impact assessment.

**Reason for Scottish Ministers’ consent**

Scottish Ministers recognise the requirement for amendments to correct deficiencies in UK domestic legislation which have arisen as a consequence of exit from the EU and will be bringing forward SSIs to ensure Scottish legislation continues to be operable after exit day.

Scottish Ministers are content that the current draft of these Regulations fully respects the current devolution settlement. However this situation is considered only a temporary fix necessary to allow sustainable management of commercial sea fishing to continue in the UK in the event that UK leaves the EU in March 2019. The Scottish Government is currently engaged in a dialogue with fisheries stakeholders on the longer term future of fisheries management in Scotland. It is the intention that Scottish Ministers will legislate and implement measures in the future to establish an optimum fisheries management system in Scottish waters.

**Intended laying date**

4 December 2018.

**Does the Scottish Parliament have 28 days to scrutinise?**

Yes.

**Time dependencies**

Having these deficiencies corrected by exit day is essential should the UK leave the EU at the end of March 2019 without a subsequent transitional period. Consequently the Regulations must be introduced to the UK Parliament in good time in order to ensure they pass through UK parliamentary procedure by this date.

**Financial implications**

The effect of these amendments is to maintain existing policy. No significant financial impacts on private or voluntary sectors is foreseen.
ANNEX A – LIST OF LEGISLATION AMENDED BY THE REGULATIONS

Primary Legislation

- The Sea Fisheries (Conservation) Act 1967
- The Fisheries Act 1981
- The Marine and Coastal Access Act 2009

Secondary Legislation

- The Merchant Shipping (Registration of Ships) Regulations 1993
- The Sea Fisheries (Northern Ireland) Order 2002
- The Tope (Prohibition of Fishing) Order 2008
- The Eels (England and Wales) Regulation 2009
- The Fish Labelling Regulations 2013
- The Sea Fishing (Points for Masters of Fishing Boats) Regulation 2014
- The Sea Fishing (Enforcement and Miscellaneous Provisions) Order 2015
- The Grants for Fishing and Aquaculture Industries Regulation 2015
- The Sea Fishing (Enforcement) Regulations 2018
Rural Economy and Connectivity Committee

29th Meeting, 2018 (Session 5), Wednesday, 14 November 2018

Visit to Ferguson Marine

Background

1. Several Committee members recently visited Ferguson Marine Engineering Limited on Monday 29 October. The focus of the visit was to discuss the new ferries that are being built at the yard for Caledonian Maritime Assets Ltd (CMAL) as well as the regeneration of commercial shipbuilding on the River Clyde.

2. The attached note in the Annexe gives an overview of key points raised in discussions.

Clerking team
Rural Economy and Connectivity Committee
November 2018
Annexe

Rural Economy and Connectivity Committee

Visit to Ferguson Marine Engineering Limited

Monday 29 October 2018, 2pm

Present:

REC Committee
Edward Mountain MSP (Convener)
John Mason MSP
Colin Smyth MSP
Steve Farrell (Committee Clerk)

Ferguson Marine Engineering Limited (FMEL)
Jim McColl, Clydeblowers Capital;
Gerry Marshall, Chief Executive Officer
Chris Dunn, Senior Naval Architect
Tom Cousins, Finance Officer
Ian Kelso, Head of Supply Chain

Summary of key points made at the meeting—

Ferguson Marine – general

- £25m invested to upgrade the yard and office facilities
- Work force has increased from 47 in 2014 to current level of 376. Hope to increase to 500+ by 2020.
- Average age of employees has been reduced from 58 in 2014 to 46 in 2018.
- It also has an increasing number of young people in the workforce and is encouraging gender balance
- In addition to the ferries build, other shipbuilding work includes bidding for defence (Type 31e frigates); the company is also putting itself forward for submarine work;
• There are only 2 other yards (Cammell Laird in Liverpool and A&P on Tyneside) in the UK capable of delivering this type of defence work outwith BAE & Babcock
• In addition to new build, the company carries out a wide range of business including: supplying engineering solutions for other vessels and engineering requirements; inspection and repair work; major fabrication and currently reviewing opportunities re decommissioning work.
• Technical services are also a growing part of the business (design and technical solutions), FMEL have already secured £205k of orders
• In terms of innovation, company is a leading part of a European consortium HySeas 111 which is looking to build the world’s first hydrogen hybrid sea-going ferry
• Company accounts are expected to be signed off during November

Current CMAL order for two LNG ferries

• Company is concerned at some of the statements made by CMAL in evidence to the Committee concerning the management and cost of the contract
• It disagrees with the CMAL statement that no changes to the design have been made. FMEL estimate that around 600 GA (General Arrangement) changes have been made to design since contract was signed. Concern that not enough work was done by CMAL in developing specification at the concept stage.
• One significant issue was the time taken by CMAL to decide on the propulsion system which had a major impact on stern design and led to a lengthy delay in construction
• It also disagrees with the CMAL statement that no additional costs are likely to be incurred. Huge amount of work being done by the company to assess the level and costs of design changes and potential claims that may emerge as a consequence of these
• The company has found them difficult to work with, an example being its refusal to consider the appointment of an independent adviser or expert to assist in resolving current disputes on specification changes
• FMEL is of the view that standardisation of ferries is the way to go in Scotland – coupled with provision of appropriate port infrastructure and a 30 year strategy for replacement
• FMEL estimate that standardised ferries could be 40% cheaper that one-off bespoke designs. They have design variants of different vessel sizes – 30m, 50m and 80m.
• FMEL have concerns about the efficiency and value for money of the use of LNG as power source for the current ferry builds given that they will be used on short routes. There will also be an issue in refuelling these vessels as fuel needs to be delivered in trucks from England.

The Committee members also met briefly with trades union shop stewards at Ferguson Marine - Alex Logan and John McMunagle