1. **South of Scotland Enterprise Bill**: The Committee will take evidence on the Bill at Stage 1 from—
   - Garry Clark, Development Management, East of Scotland, Federation of Small Businesses;
   - Matt Lancashire, Director of Policy and Public Affairs, Scottish Council for Development and Industry;
   - Margaret Simpson, Director, Scottish Borders Social Enterprise Chamber;
   - Norma Austin Hart, Chief Executive Officer, Third Sector Dumfries and Galloway.

2. **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 Common Fisheries Policy (Amendment) (EU Exit) Regulations 2018;
   - The Rural Development (EU Exit) (Amendment) Regulations 2018;
   - The Rural Development (Implementing and Delegated Acts) (Amendment) (EU Exit) Regulations 2018;
   - The Common Provisions (EU Exit) (Amendment) Regulations 2018;
   - The Common Agricultural Policy (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2018;
The Common Agricultural Policy (Rules for Direct Payments) (Miscellaneous Amendments) (EU Exit) Regulations 2018; and

The Trade in Animals and Related Products (Amendment) (EU Exit) Regulations 2018.

3. **Public petitions:** The Committee will consider the following petition—

PE1598 by Guy Linley-Adams on behalf of Salmon & Trout Conservation Scotland on Protecting wild salmonids from sea lice from Scottish salmon farms

4. **South of Scotland Enterprise Bill:** The Committee will review the evidence it has heard on the South of Scotland Enterprise Bill at today's meeting.

Steve Farrell
Clerk to the Rural Economy and Connectivity Committee
Room T3.40
The Scottish Parliament
Edinburgh
Tel: 0131 348 5211
Email: steve.farrell@parliament.scot
The papers for this meeting are as follows—

**Agenda Item 1**

Paper by the clerk

PRIVATE PAPER

**Agenda Item 2**

Paper by the clerk

**Agenda Item 3**

Paper by the clerk
Background

1. The Bill was introduced to the Parliament by Fergus Ewing, Cabinet Secretary for the Rural Economy on 24 October 2018. The Rural Economy and Connectivity Committee was designated as lead committee at stage 1.

2. The establishment of an enterprise body for the South of Scotland was announced in October 2016 as part of the Scottish Government’s enterprise and skills review. Phase 2 of that review set out in more detail proposals for the new agency.

Purpose of the Bill

3. The Bill establishes a South of Scotland Enterprise (SSE) agency. Scotland has two existing enterprise agencies: Scottish Enterprise and Highlands and Islands Enterprise (both established by the Enterprise and New Towns (Scotland) Act 1990).

4. This Bill is a technical, enabling Bill which provides for:
   - The establishment of the agency,
   - its objectives and powers,
   - operational matters,
   - accountability and ministerial powers,
   - the transfer of property and liabilities, and
   - governance and staff

5. Further information on the Bill can be found on the Parliament’s website.

Committee scrutiny

6. The Committee plans to take evidence from the Scottish Government Bill team and Cabinet Secretary as well as economic development, business, local authority and community interests.
Introduction

1. This paper supports the Committee’s consideration of consent notifications sent by the Scottish Government relating to the following UK statutory instruments (SIs)—

Common Fisheries Policy (CFP)
- Common Fisheries Policy (Amendment) (EU Exit) Regulations 2018

Common Agricultural Payments (CAP)
- The Rural Development (EU Exit) (Amendment) Regulations 2018
- The Rural Development (Implementing and Delegated Acts) (Amendment) (EU Exit) Regulations 2018
- The Common Provisions (EU Exit) (Amendment) Regulations 2018
- The Common Agricultural Policy (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2018
- The Common Agricultural Policy (Rules for Direct Payments) (Miscellaneous Amendments) (EU Exit) Regulations 2018

Trade in Animals and Related Products
- The Trade in Animals and Related Products (Amendment) (EU Exit) Regulations 2018

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 Annexe A 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.

5. 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.

**INSTRUMENTS**

6. This table is intended to give a brief overview only. The notification letters and documentation for the instruments are included in annexes to this paper.

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<th>Instrument</th>
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<td>Common Fisheries Policy (Amendment) (EU Exit) Regulations 2018</td>
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COMMON FISHERIES POLICY

- Date notification received: 21 November 2018
- Deadline for consideration: 18 December 2018
- Categorisation: A and B
- Detailed content: Set out in Annexe B.

7. This SI would amend directly applicable EU legislation which makes up the common fisheries policy (CFP); the CFP is a common approach to the sustainable management of fisheries across the EU. The SI amends key elements of the CFP, or revoke redundant elements of the—

- Basic Regulation: contains the basic provisions;
- Control Regulations: rules for compliance;
- regulations around illegal, unregulated and unreported (IUU) fishing;
- multi-annual plans around fish stocks;
- data collection frameworks;
- regulations around the Common Organisation of the Markets;
- Protection of vulnerable marine ecosystems and fish stocks;
- technical conservation measures; and
- regulations for the European Maritime and Fisheries Fund (EMFF).

8. Other exit-related SIs will be laid at a later date to amend other regulations which makes up the CFP.
9. The notification states that most of the amendments are “technical operability changes”. References to ‘members states’ is replaced by ‘fisheries administration’ and powers are transferred after exit to the relevant fisheries administration. The notification states the Scottish Government is “confident that the use and definition of ‘fisheries administration’ provides adequate safeguards to ensure the devolution settlement is respected.

10. In relation to the EMFF, the SI would allow the current funding provisions to continue – provided by the UK Government – until 2020.

11. In relation to the categorisation, the notification states that—

“The majority of the amendments are technical in nature, and none represents a significant change in policy. However, the nature of the policy area means that a number of significant functions of the Commission or European institutions are transferred to the Scottish Ministers, other devolved administrations, the Secretary of State and the Marine Maritime Organisation, in order to ensure sustainable and effective management of sea fisheries. Given the significance of the provisions we consider that it is appropriate that these are classed as category B.”

12. Further information was sought from the Scottish Government to clarify a number of points. The Scottish Government’s response is provided in Annex C.

Wider policy issues

13. No wider legal or policy issues have been identified.

COMMON AGRICULTURAL POLICY

- Date notification received: 21 November 2018
- Deadline for consideration: 18 December 2018
- Categorisation: A and B
- Detailed content: Set out in Annex D.

14. There are a number of SIs which have, or will, amend aspects of both the common agricultural policy (CAP) and the common provisions regulations (CAP funding is governed by common provisions regulations).

Rural Development

15. The Rural Development (EU Exit) (Amendment) Regulations 2018 and the Rural Development (Implementing and Delegated Acts) (Amendment) (EU Exit) Regulations 2018 would apply across the UK and would amend a number of regulations relating to support for rural development. These regulations are listed on page 2 of the notification.
16. These instruments seek to ensure that existing programmes in the UK currently funded by the European Agricultural Fund for Rural Development (EAFRD), including the Scottish Rural Development Programme (SRDP), will continue operating in the same way for the remainder of the 2014-2020 programme.

Common Agricultural Policy

17. The Common Provisions (EU Exit) (Amendment) Regulations 2018 would apply across the UK and would amend Regulation (EU) No 1303/2013 which sets a common framework for a number of funds to ensure the effectiveness and coordination with each other.

18. The Common Agricultural Policy (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2018 and the Common Agricultural Policy (Rules for Direct Payments) (Miscellaneous Amendments) (EU Exit) Regulations 2018 would apply across the UK and amend the rules necessary for the implementation and monitoring of direct payments.

19. The Committee may wish to note that regulation 1307/2013 is a crucial regulation for farmers. It allows the payment of millions of pounds to Scottish farmers each year and will be of vital importance in terms of continuing payments to farmers once the UK leaves the EU. As the notification states -

   “the instruments propose to amend the relevant EU legislation to create a functioning direct payments framework for the UK. In turn, this framework will ensure that current CAP Direct Payments scheme recipients will continue to be paid following EU-Exit on the basis of the existing EU CAP Regulations as retained EU law and as modified by these proposed instruments.”

20. This relates to basic payments, greening, young farmer payments, and voluntary coupled support. This notification also relates to the rules needed to implement and monitor these payments to farmers.

21. In relation to the categorisation, the notification states that—

   “the proposed instruments fall within Category A, as the changes are minor and technical in nature and notwithstanding the changes, policy change is being avoided to preserve in so far as possible the current status quo. However, they could be considered Category B to the extent that the transition from an EU to a UK framework would be a major and significant development.”

22. Further information was sought from the Scottish Government to clarify a number of points. The Scottish Government’s response is provided in Annexe E.
Wider policy issues

23. In relation to the development of common frameworks the notification states that –

“...some notification and reporting requirements will also be removed from the retained EU legislation and, instead, the collection and sharing of key information will form part of an administrative joint-working agreement that will be developed between the UK administrations, for example through a Memorandum of Understanding. This approach will help lessen the legislative reporting burden upon UK administrations.”

24. Committee may wish to be kept updated on progress regarding the development of common frameworks.

25. In relation to the options for creating new legal powers which Scotland will need following the exit from the EU the notification states:

“Separately, following the Scottish Government’s “Stability and Simplicity” consultation earlier this year (discussed further in section 7 below), the Scottish Government is continuing to explore all the necessary adjustments and any other options for creating new legal powers which Scotland will need to amend, improve and, in due course, replace the current schemes at a suitable point after exit day.”

26. The committee may wish to be kept updated on what options the Scottish Government is exploring, when they will be developed, and what role there will be for parliamentary scrutiny.

27. In relation to future governance arrangements the notification states:

“Following finalisation of the instruments, the Scottish Government will work with UK Government and other devolved administrations to put in place sound governance arrangements to ensure transparency and accountability for decision making. This work will be designed within the context of the principles, agreed by the UK Government, the Scottish Government and the Welsh Government on 16 October 2017, to apply to common frameworks.”

28. The committee may be keen to know when these arrangements will be in place. How they will work and what role parliamentary scrutiny will have.

TRADE IN ANIMALS AND RELATED PRODUCTS

- Date notification received: 22 November 2018
- Deadline for consideration: 18 December 2018
- Categorisation: A
- Detailed content: Set out in Annexe F.
29. The proposed SI concerns trade in animals and related products and will amend two instruments that will apply to England-only and five GB-wide instruments. The notification only addresses the five GB-wide instruments; these are—

- Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974;
- Artificial Insemination of Pigs (EEC) Regulations 1992;
- The Animals (Post-Import Control) Order 1995;
- The Bovine Embryo (Collection, Production and Transfer) Regulations 1995; and

30. NB, the Environment, Climate Change and Land Reform Committee is also being asked to consider a consent notification in relation to the Non-Commercial Movement of Pet Animals Order 2011 only. The ECCLR Committee will consider this notification at its meeting on 18 December.

Wider policy issues

22. The Committee may wish to ask the Scottish Government for confirmation whether – in relation to the two England-only instruments – the Scottish Government intends to amend corresponding SSIs to reflect these changes.

DECISION

31. The Committee is asked to consider the consent notifications referred to in this paper and determine whether to:

   a. write to the Scottish Government to confirm it is content for consent for the UK SIs referred to in the notifications to be given;

   b. to note and request a response from the Scottish Government on the wider policy matters identified which may require to be addressed in future;

   or

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

Committee clerks
December 2018

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1 The two England-only instruments are the Bovine Semen (England) Regulations 2007 and the Trade in Animals and Related Products Regulations 2011.
BACKGROUND TO PROTOCOL

32. 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).

33. 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

34. 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

35. 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

36. The Committee has two options.

   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.

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

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

38. 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.

39. 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).
Title of Instrument:

Instrument and Summary of Proposal
The Common Fisheries Policy (Amendment) (EU Exit) Regulations 2018 (the "Regulations") amend directly applicable EU legislation that will form part of domestic law after exit day. The amendments correct deficiencies in the legislation resulting from the withdrawal of the United Kingdom from the European Union and will ensure that the directly applicable EU legislation being amended by these Regulations is operable in the event that the UK leaves the EU without a withdrawal agreement or deal.

The EU legislation being amended by these Regulations forms part of the body of legislation known as the Common Fisheries Policy. The rest of the directly applicable EU legislation forming the Common Fisheries Policy will be amended in other Exit SIs to be notified at a later date. The Exit SI amending UK-wide domestic fisheries legislation, the Fisheries (Amendment) (EU Exit) Regulations 2019, was notified to the Scottish Parliament on 2 November 2018.

Together, the fisheries Exit SIs will ensure that the UK Government and the devolved administrations are able to continue to manage UK sea fisheries in a coherent and sustainable way. Scottish legislation will be amended by SSIs.

The legislation being amended
The Common Fisheries Policy ("CFP") comprises around 100 regulations and other instruments and ensures a common approach to the sustainable management of fisheries across the European Union and its waters. These Regulations cover some key elements of the CFP, including:

- The Basic Regulation, which contains the basic provisions for the CFP, including objectives and definitions.
- The Control Regulations, which set out the rules for compliance with the CFP legislation, including those around control, inspection and enforcement. This section also covers the Sustainable Management of External Fishing Fleets, a framework for authorising EU vessels to operate outside EU waters, and non-EU vessels to operate in EU waters.
- The regulations around Illegal, Unregulated and Unreported fishing ("IUU fishing"), which aim to prevent, deter and eliminate illegal fishing activities.
- The multi-annual plans and effort regimes, which set out long-term plans for the recovery, preservation or management of fish stocks,
including managing how much time fleets can spend at sea so as to achieve these goals.

- The data collection frameworks, which set out rules for the collection, management and use of data.
- The regulations around the Common Organisation of the Markets ("CMO"), which legislate for: the collective management of producer organisations, common marketing standards, rules on consumer information, competition rules and the transparency and efficiency of the market as a whole.
- Measures relating to the protection of vulnerable marine ecosystems and fish stocks in the deep seas and high seas.
- The technical conservation measures that set out rules governing gear size and design, minimum mesh sizes, by-catch limits, and other measures for the conservation of resources and ecosystems.
- The regulations of the European Maritime and Fisheries Fund ("EMFF"), a funding scheme to support the implementation of the CFP and CMO.

These Regulations amend these elements of the CFP (or part thereof). Please see Annex A for a full list of the CFP legislation being amended by these Regulations. More detail on the amendments being made to these elements of CFP are set out below.

The Regulations also revoke elements of the CFP that would otherwise become part of domestic law on exit day but are no longer required or are not relevant to the UK. For example, regulations giving effect to an agreement between the European Union and Morocco are being revoked because the United Kingdom will not be party to that agreement after exit day. Please see Annex B for a full list of the CFP legislation being revoked by these Regulations.

**The amendments**

Many of the amendments are technical operability changes, for example replacing EU-specific terms, such as “Union vessels” or “Union waters”, with an equivalent term (e.g. “United Kingdom vessels” and “United Kingdom waters”). References to Member States (in the context that obligations are put on Member States to do something) are, generally speaking, changed to “a fisheries administration”, which is a new defined term that applies to all the CFP regulations being retained in domestic law. The definition of “fisheries administration” is therefore of critical importance in ensuring that devolution is being respected and the definition does indeed respect devolution.

The definition ensures that “fisheries administration” means the Scottish Ministers in relation to any powers or obligations that it would be within the legislative competence of the Scottish Parliament to include in Act of the Scottish Parliament. “Fisheries Administration” means the Secretary of State or the Marine Maritime Organisation in relation to reserved matters.

The definition of fisheries administration provides that in applying the legislative competence test there is provision equivalent to article 5 of the Scotland Act 1998 (Functions Exercisable in or as regards Scotland) Order 1999 (SI 1999/1748). This means that when determining the meaning of
“fisheries administration” the element of the legislative competence test which considers whether a function is exercisable “in or as regards Scotland” extends to the Scottish zone in relation to fishing and aquaculture in the Scottish zone and to Scottish fishing boats where there are.

In relation to fishing there are a number of functions which both the Scottish Ministers and the SoS can exercise concurrently (set out in the Scotland Act 1998 (Concurrent Functions) Order 1999 (SI 1999/1592)). The definition of “fisheries administration” takes account of this and provides that the Secretary of State as well as the Scottish Ministers may be the “fisheries administration” in relation to concurrent functions. Where the definition of “fisheries administration” in relation to an obligation means both the Scottish Ministers and the Secretary of State then if the Scottish Ministers meet that the obligation then the Secretary of State does not need to and vice versa.

Functions of the European Commission or other EU entities are also transferred to the relevant fisheries administration.

Please note that the transfers of legislative functions for the CFP elements covered by these Regulations are contained in other (affirmative) SIs and will be notified separately.

However, there are some functions which, if transferred to devolved administrations, would cause practical difficulties or additional costs. For example, at present the European Commission maintains a list of vessels that are known to carry out IUU fishing and therefore not permitted in Union waters. Administratively and practically would be very difficult to maintain and enforce four separate lists of IUU vessels, i.e. a list for each of the four UK fisheries administrations in relation to their part of UK waters, and it is advantageous for the administrations to cooperate in preventing IUU fishing. Additional costs would also be incurred through the four fisheries administrations maintaining separate IUU vessel lists. It has been agreed that there will only be one IUU vessel list for the UK, which will be amended by the Secretary of State with consent from the devolved administrations.

Thus, in the limited situations where a pragmatic approach would be for a UK-wide approach to be taken, steps have been taken to ensure that the devolution settlement is protected by requiring consent from the devolved administrations to the Secretary of State acting on their behalf.

Whilst ideally each separate reference to “European Commission”, other EU entities or “Member States” should be considered on a case by case basis, with regards to whether a function is devolved or reserved, the sheer volume of legislation and the time limits imposed by a potential exit from the EU in March 2019 make such an approach inoperable. However, we are confident that the use and definition of “fisheries administration” provides adequate safeguards to ensure the devolution settlement is respected.

In relation to the current European Maritime and Fisheries Fund (EMFF), the Regulations are amending the EMFF Regulation (No 508/2014) to allow the continuation of the current routes for financial assistance after exit day, with funding being provided by the UK Government (HM Treasury) until 2020.
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 27 November 2018. Under the terms of the Withdrawal Act the Regulations will not come into force until exit day.

What is to be amended?

A full list of all EU instruments being amended is provided at Annex A. The key regulations and measures are listed below:

The Basic Regulation (Common Fisheries Regulation – Regulation (EU) No 1380/2013)

The Basic Regulation sets the objectives and principles of EU fisheries management and establishes the framework for European sea fisheries, including the principle of mutual access to Member States’ waters for all EU member state vessels and the system for allocation of fishing opportunities.

The amendments to the Basic Regulation made by these Regulations are technical amendments to ensure operability of the legislation after exit day. The amendments are of the nature set out above, such as changing “Member States” to “fisheries administration”. The new definition of “fisheries administration” is inserted into the Basic Regulation and applies to all legislation that forms part of the CFP (as it was before exit day).

Alongside these changes the UK Fisheries Bill contains the following amendments to the Basic Regulation:

- Article 2 concerning fisheries objectives is revoked;
- Article 5 dealing with the principle of mutual access to EU waters by Member States’ fishing vessels is revoked;
- Article 16 dealing with allocation of fishing opportunities is revoked;
- Article 17 dealing with criteria for distribution of fishing opportunities is amended.

The Control and Access Regulations

The Control Regulation (1380/2013) establishes a system to ensure that the requirements under the Basic Regulation are adhered to. The Control Regulation achieves this through:

- The establishment of monitoring systems in Member States to ensure quantities of fish caught are within established limits.
- Ensuring that Member States collect data required for managing fishing opportunities
- Ensure harmonized application of rules and sanctions across the EU
- Enabling the tracing and checking of fisheries products throughout the supply chain.

The Control Regulation is supported by implementing regulations and detailed fisheries specific regulations, also amended by these Regulations.
The amendments to the Control Regulation and supporting regulations ensure that the fisheries administrations can maintain the same standards of control and enforcement over fishing vessels in UK waters, maintain the same standards of management of fishing opportunities and maintain the same standards of regulation of fisheries products in the supply chain, after exit day.

Also amended in this part of the Regulations is the Sustainable Management of the External Fishing Fleet Regulation, which concerns access of foreign vessels. It is amended to provide that foreign vessels can access UK waters provided they have a relevant authorisation which may take the form of a licence.

Most other amendments are technical in nature, amending terminology to ensure that the legislation is operable and enforceable after exit day. For example, references to fishing vessels flying the flag of their member state are amended to refer to United Kingdom fishing vessels, which is defined as a fishing vessel registered in the United Kingdom.

Illegal, Unreported and Unregulated (IUU) Fishing Regulation (EC) No 1005/2008 and associated regulations

The IUU Regulation provides a mechanism by which vessels and states which undertake IUU fishing can be identified and penalised. The key policies within the regulation are the EU Catch Certification and Designated Ports schemes. The main IUU regulation is supported by implementing regulations and more detailed regulations on specific geographic areas or aspects of controlling IUU fishing.

These Regulations amend the IUU Regulation and associated regulations to ensure that the United Kingdom maintains the catch certification and designated ports schemes. The amendments ensure that there is no relaxation in the regulation of IUU fishing.

Amendments are again of a technical nature, amending EU-specific terms so that the legislation is operable and enforceable after exit day. For example, “Community” is changed to “United Kingdom” and “Member States” is changed to “fisheries administration”.

Multi Annual Plans (MAPs) and Effort regimes

The Regulations amend the MAP concerning the recovery of eel stocks and the regulation of fishing effort in western waters. The amendments address technical deficiencies, for example specifying that the western waters regulation applies only to the western waters (an ICES convention term) that form part of UK waters.

The Data Collection Framework Regulation (DCF) and associated legislation

The DCF regulation promotes cooperation and data sharing between Member States and establishes standards for the collection, storage and use of data. The DCF is supported by implementing decisions providing further specifics on data collection, including from the aquaculture sector.

The Regulation amends this legislation to ensure that fisheries administrations continue to collect, store and use data appropriately and for the same purposes
at present. The Regulations omit (i.e. remove) obligations to report this data to the European Commission.

**Common Organisation of the Market (CMO) Regulation and associated legislation**

The main CMO regulation covers both seafood and aquaculture products. It provides the legal basis for the establishment of fisheries and aquaculture Producer Organisations, their form, objectives and reporting systems. The CMO also:

- Details rules on transparency and consumer information on seafood and aquaculture produce
- Establishes a sea food intelligence observatory to improve market transparency and efficiency.
- Provides exemptions for sea food producers from certain aspects of EU Competition law to ensure the sector can operate effectively to meet CFP objectives.

The CMO regulation is supported by Commission implementing regulations and further Council regulations with regard to the marketing of specific products such as sardines and tuna. These will also be amended by the Regulations.

The Regulations ensure that the CMO legislation remains operable and effective, maintaining the same standard of regulation after the UK leaves the EU. Amendments include changes to the objectives for Producer Organisations of a technical nature to ensure that the objectives have application in a UK, rather than an EU, context. References to “Union” are changed to “United Kingdom”; “Member States” is amended to read “fisheries administration”; and references to competition rules contained in the Treaty on the Functioning of the EU are amended to the relevant provisions of domestic competition law.

**Measures relating to the protection of Vulnerable Marine Ecosystems (VMEs) in the Deep Seas and High Seas:**

(1) Council Regulation (EC) No 734/2008 on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears.

The regulation prohibits the use of bottom fishing gears on the high seas (in areas not regulated by RFMOs). By way of derogation, Member States may issue special fishing permits to flag vessels after undertaking adequate environmental assessment of any proposed fishing activity. A permit may only be issued where it is concluded that such activity would not have a significant adverse impact on the vulnerable marine ecosystems. There are also additional provisions for vessel monitoring, observers, and addressing unforeseen encounters with vulnerable marine ecosystems. Changes include that references to “Member States” and “competent authorities” are amended to read “fisheries administration”; and references to “special fishing permits” are amended to read “fishing authorisation”. (2) Regulation 2016/2336 of the European Parliament and of the Council establishing specific conditions for
fishing deep sea stocks in the north-east Atlantic and provisions for fishing in international waters in the north-east Atlantic.

The regulation prohibits the use of bottom towed fishing gears in water depths greater than 800m. It also establishes a restricted access authorisation system for sensitive deep-sea stocks meaning that any catches over 100kg can only be taken by authorised vessels. There are strict criteria to determine which vessel are allowed authorisation. The regulation also establishes a protocol for exploratory fisheries in deep waters and establishment of additional measures to protect Vulnerable Marine Ecosystems between 400m and 800m depth. Changes include that “Member States” is amended to read “fisheries administration”. Technical Conservation Measures

This section focuses on 2 regulations which support the main Technical Conservation Regulation (“TCR”). TCR is currently being revised by the EU and is expected to be agreed in or around early 2019. TCR and associated regulations will be amended to correct deficiencies in a later (but pre-exit) SI, which will be notified at a later date.

The two regulations addressed in these Regulations concern the defining of characteristics for fishing vessels (Regulation (EU) 2017/1130), and a technical regulation regarding the protocol when sampling catches in small mesh nets. (Commission regulation (EEC) No 954/87).

Changes include that “Member States” is amended to read “fisheries administration”, and references to “Union rules” are replaced with references to “relevant retained direct EU legislation.”

Funding of the Marine sector


- Sea fisheries activity,
- the development of the aquaculture sector,
- the costs of compliance activity and the collection of Stock data,
- funding for coastal communities,
- assistance for the processing and marketing of fisheries and Aquaculture products,
- delivery on integrated maritime policy development and implementation of coordinated operations for different Union policies relating to marine environment

The Regulations revoke elements of the CFP that will become part of domestic law on exit day but are no longer required or are not relevant to the UK. These amendments are technical operability changes, for example replacing EU-specific terms, such as “Union vessels” or “Union waters”, with an equivalent term (e.g. “United Kingdom vessels” and “United Kingdom waters”).
The Regulations further make the EU EMFF Regulation, 508/2014, operable and respects the regulatory framework and the current approach toward the EMFF. The devolution settlement has been reflected throughout the UK Regulations with references to the fisheries administration. However, the EMFF programme is a UK-wide scheme and as such its management is not devolved except where this has already been specified. The roles of the UK wide bodies and the Devolved Administrations, as Intermediate Bodies, are defined and these have already been given legal status in UK law. The Regulations also makes clear that the EMFF is a UK-wide Structural Fund, and the applicable Operational Programme a UK-wide document.

What these Regulations do in practice is provide Scottish Ministers with the ability, once outside the EU, to continue to draw down funding under the Treasury Guarantee and consider applications for funding in the areas highlighted. Scottish Ministers will further have the power to award funding, deal with claims for that funding, monitor outcomes and recover funding where required. The policy intention is that these Regulations will cover the current funding period set out in the Treasury Guarantee and that a successor Scottish programme will be developed over that period.

Why are the amendments necessary?

These changes are required to ensure the continuity of the existing fisheries management regime and fisheries compliance powers within UK waters on withdrawal from the EU. The majority of fisheries management legislation is dependent on the CFP, and failure to address these deficiencies, including to resolve the particular devolution issues highlighted above, would render the legislation inoperable or ineffective on exit day. Inoperative or ineffective legislation would risk severe environmental damage and overfishing as there would be no effective means to control activities of fishermen. The UK would find itself in contravention of international obligations and risk its global reputation as sound managers of marine resources. Negative market impacts would also result as many export destinations for seafood would not accept produce from unsustainably managed fisheries.

The changes to the EMFF Regulation delivers continued assistance within the current structure therefore bringing a degree of assurance to applicants and providing the Scottish Government with funding to meet compliance and stock assessment obligations.

The Scottish Government hopes that an agreement will be reached between the UK and the EU which would allow for a two year transitional period. This would allow a sufficient time to consider the long term fisheries management regime in UK and Scottish waters. However the threat of a “No deal” Brexit leading to the UK’s departure from the EU as early as March next year means that arrangements need to be in place from after 29 March 2019. This is what the Regulations achieve, resulting in an operable system which replicates much of the EU fisheries system, but with the UK adopting an independent coastal state role and establishing control of access to UK waters, and the continued provision of financial assistance in the marine sector.
Categorisation of significance of proposals

The proposed amendments within the Regulations fall within categories A and B. The majority of the amendments are technical in nature, and none represents a significant change in policy. However, the nature of the policy area means that a number of significant functions of the Commission or European institutions are transferred to the Scottish Ministers, other devolved administrations, the Secretary of State and the Marine Maritime Organisation, in order to ensure sustainable and effective management of sea fisheries. Given the significance of the provisions we consider that it is appropriate that these are classed as category B.

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 we can effectively manage fisheries in Scottish waters and manage Scottish fishing boats wherever they are, which requires the devolution settlement to be respected across all amendments. The Regulations cover a wide range of functions some of which are devolved and some of which are reserved.

The Scottish Government has worked closely and constructively with DEFRA, who have recognised the expertise in fisheries management and legislation within the Scottish Government. Other devolved administrations, with a similar interest in protecting devolved interests, have also engaged in this dialogue.

The Regulations provide for the transfer of functions to fisheries administrations. As set out previously the definition of “fisheries administration” reflects the devolution settlement. Where there is an agreed need for a single UK system, the Secretary of State is given a power to exercise functions UK wide but with the consent of the devolved administrations.

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 substantive 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 those aspects of sea fisheries covered by these Regulations 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. It is the intention that Scottish Minister's will legislate and implement measures in the future to establish a world class fisheries management system in Scottish waters.

Reasons for Scottish Ministers' Consent

The Regulations cover numerous amendments to ensure the operability of sea fisheries management in a no deal scenario. The Scottish Government has successfully ensured that the devolution settlement has been respected throughout the proposed regulation. These regulations will:

- Ensure that a framework fisheries management system is in place at the point that the UK leaves the EU.
- Ensure the continuation of financial assistance to the marine sector and continuity in the approach.
- Facilitate activity of Scottish vessels and businesses operating in the rest of the UK.

Allowing the Secretary of State to make these Regulations including provisions which could be made by the Scottish Ministers in an SSI is appropriate to avoid considerable duplication of work by the Scottish Ministers and Parliament in replicating these changes through a SSI.

Consequently, Scottish Ministers are content for the Regulations to fix the relevant deficiencies with regard to devolved matters.

Intended laying Date

It is expected that this will be laid before the UK Parliament for sifting on 27 November 2018. We do not yet have a confirmed date for the Regulations to be made but we are working with Defra on the basis that 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.

Time Dependencies

It is essential that the legislation being amended is operable in the event that the UK leaves the EU with no deal or no transition period in March 2019. 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 transfer of functions to UK and Scottish Ministers will have significant financial implications for governance and administration of sea fisheries. For example, costs will be incurred in enhanced representation on international fisheries negotiations, additional research, monitoring and compliance costs, and additional burdens on landing and export permits systems. The Scottish Government is working with the other fisheries administrations in the UK to consider means of optimising spend on new management requirements arising from the UK’s withdrawal from the EU.

Discussions have started with the UK Government on the shape of funding post 2020, for not only the sea fisheries sector but those additional areas included in the current EMFF model. Given the likely significant challenges all sectors could face post the UK leaving the European Union, internal work has also started on the priority areas financial support should focus on, what shape that could take (loans, grants, guarantees). Consultation will also take place with all parties who contribute to the marine economy and environment. Wider work has also started, looking at the options for cost recovery across the marine industries.
Amendment of the Basic Regulation


Amendment of the Control Regulations

- Council Regulation (EC) No 1224/2009 establishing a Union control systems for ensuring compliance with the rule of the Common Fisheries Policy.
- Council Regulation (EC) No 1936/2001 laying down control measures applicable to fishing for certain stocks of highly migratory fish.

Amendment of the Illegal, Unreported and Unregulated Fishing Regulations

- Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.
- Commission Regulation (EU) No 468/2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing.
- Council Implementing Decision 2014/170/EU establishing a list of non-cooperating third countries in fighting IUU fishing pursuant to Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.
Amendment of Multi-Annual Plans and Effort Regimes

- Council Regulation (EC) No 1954/2003 on the management of fishing effort relating to certain Community fishing areas and resources.

Amendment of the Data Collection Framework Measures


Amendment of the Common Organisation of the Markets Regulations

Amendment of the Measures relating to the protection of Vulnerable Marine Ecosystems in the high seas from adverse impacts of bottom fishing gears.

- Council Regulation (EC) No 734/2008 on the protection of vulnerable marine ecosystems in high seas from the adverse impacts of bottom fishing gears.

Amendment to the Technical Conservation Measures

- Commission Decision 95/84/EC concerning the implementation of the Annex to Council Regulation (EEC) No 2930/86 defining the characteristics of fishing vessels.
- Commission Regulation (EEC) No 954/87 on sampling of catches for the purpose of determining the percentage of target species and protected species when fishing with small meshed nets.

Amendment of the European Maritime and Fisheries Fund Regulations

- Commission Implementing Decision C(2015) 8628 on approving the operation programme “European Maritime and Fisheries Fund – Operational Programme for the United Kingdom” or support from the European Maritime and Fisheries Fund in the United Kingdom.
SECONDARY ANNEX B – LEGISLATION BEING REVOKED BY THE COMMON FISHERIES POLICY (AMENDMENT) (EU EXIT) REGULATIONS 2018

- Commission Regulation (EEC) No 2166/83 establishing a licencing system for certain fisheries in an area north of Scotland (Shetland area).
- Council Regulation (EC) No 847/96 introducing additional conditions for year-to-year management of TACs and quotas.
- Council Regulation (EC) No 1415/2004 fixing the maximum annual fishing effort for certain fishing areas and fisheries.
• Council Regulation (EU) No 1270/2013 on the allocation of fishing opportunities under the Protocol between the European Union and the Kingdom of Morocco.

• Commission Implementing Decision 2014/372/EU setting out the annual breakdown by Member State of the global resources of the European Maritime and Fisheries Fund available in the framework of shared management for the period 2014-2020.

• Commission Implementing Decision 2014/464/EU identifying the priorities of the Union for enforcement and control policy in the framework of the European Maritime and Fisheries Fund.


• Commission Implementing Regulation (EU) No 771/2014 laying down rules pursuant to Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regard to the model for operational programmes, the structure of the plans for compensation of additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the outermost regions, the model for the transmission of financial data, the content of the ex ante evaluation reports and the minimum requirements for the evaluation plan to be submitted under the European Maritime and Fisheries Fund.


Fund with regard to the presentation of relevant cumulative data on operations.

- **Commission Implementing Regulation (EU) No 1243/2014** laying down rules pursuant to Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regard to the information to be sent by Member States, as well as on data needs and synergies between potential data sources.

- **Commission Implementing Regulation (EU) No 1362/2014** laying down rules on a simplified procedure for the approval of certain amendments to operational programmes financed under the European Maritime and Fisheries Fund and rules concerning the format and presentation of the annual reports on the implementation of those programmes.

- **Commission Delegated Regulation (EU) 2015/852** supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council as regards the cases of non-compliance and the cases of serious non-compliance with the rules of the Common Fisheries Policy that may lead to an interruption of a payment deadline or suspension of payments under the European Maritime and Fisheries Fund.


- **Commission Implementing Decision (EU) 2016/1701** laying down rules on the format for the submission of work plans for data collection in the fisheries and aquaculture sectors.
Common Fisheries Policy (Amendment) (EU Exit) Regulations 2018

1. UK Fisheries Bill

**Q. How does this interact with the UK Fisheries Bill?** Some elements of the Bill apply to Scotland and others do not. Are these amendments consistent with the UK Bill and its application to Scotland?

These Regulations amend retained direct EU legislation, being part of the legislation which forms the Common Fisheries Policy (“CFP”) at present. The principal piece of CFP legislation is the “Basic Regulation”, which is the overarching regulation setting out the key features of the CFP. The Basic Regulation is amended by these Regulations (in Part 2), with the exception of four articles that are instead amended in the UK Fisheries Bill:

- Article 2 concerning fisheries objectives is revoked;
- Article 5 dealing with the principle of mutual access to EU waters by Member States’ fishing vessels is revoked;
- Article 16 dealing with allocation of fishing opportunities is revoked; and
- Article 17 dealing with criteria for distribution of fishing opportunities is amended.

These Regulations are otherwise not interlinked with the Bill. With the exception of the above four provisions, the Bill is intended to deal with the longer term plan for UK fisheries. The Bill and these Regulations are intended to be complementary thus there is no question of inconsistency.

2. “Fisheries Administrations”

**Q. Is there going to be any change in the way that the functions and obligations on the UK as a member state are going to be distributed out between the new fisheries administrations after exit from the EU? What functions and obligations will the Scottish Ministers have as the ‘fisheries administration’ that they do not have under the current system?**

In terms of the functions and obligations on the UK as a Member State, at present these are generally carried out by the four fisheries administrations in accordance with the devolution settlements. The intention behind the “fisheries administration” term used in the Regulations is that the Scottish Ministers will continue to exercise the functions and fulfil the obligations as they do currently, reflecting their devolved competences.

There are also functions and obligations that are currently exercised by the European Commission which are being transferred to fisheries...
administrations. The Commission has exclusive competence in the area of fisheries and so represents all EU Member States in any international organisations or relations with third countries.

After exit, the UK will represent itself in relation to international bodies and third countries and, in the case of functions in devolved areas, these will be the responsibility of the Scottish Ministers.

Such functions being transferred from the Commission to a fisheries administration, if devolved, will give the Scottish Ministers additional functions after exit. In this context, “functions” are non-legislative functions; the legislative functions being transferred are set out in a separate Exit SI and will be notified at a later date.

Q. The notification states that “we are confident that the use and definition of “fisheries administration” provides adequate safeguards to ensure the devolution settlement is respected.” Will this be kept under review? If so, The Committee may wish to be kept up to date on this.

The definition of the term ‘fisheries administration’ provides that the functions, powers and obligations of a member state continue to be carried out by the current UK or devolved body that carries out the function in question, or exercises it, we will continue to be vigilant about the devolution settlement and are happy to keep the Committee informed.

Q. The notification states that “steps have been taken to ensure that the devolution settlement is protected by requiring consent from the devolved administrations to the Secretary of State acting on their behalf”. Can you clarify what happens if the Scottish Ministers do not consent to the approach that the other fisheries administrations agree to take?

Without consent, the Secretary of State will be unable to proceed. In such circumstances, it will be up to the various administrations involved to negotiate and reach agreement on a suitable way forwards.

3. Joint working with other Devolved Administrations

Q. In some cases the notification states that, a pragmatic approach would be for a UK-wide approach. Could you give us any indication or examples of when that approach might be helpful?

There are very few examples where a UK-wide approach is adopted under these Regulations, although in practice there may be administrative arrangements among the fisheries administrations to enable cooperation or a joint approach to be taken.

For example, when sending information to international bodies in respect of UK fishing activity it would seem reasonable for one administration to
Further information provided by the Scottish Govt on CFP Annexe C

collate and send the information on behalf of all UK administrations rather than have each administration respond separately.

In the legislation, a UK-wide approach has been specifically adopted where it would be the most pragmatic approach and/or to do otherwise would cause practical difficulties.

For example, at present the European Commission maintains a list of vessels that are known to carry out illegal, unreported and unregulated ("IUU") fishing, thus not permitted to fish in Union waters.

After exit, administratively and practically it would be very difficult to maintain and enforce four separate lists of IUU vessels, i.e. a list for each of the four UK fisheries administrations in relation to their part of UK waters, and it is advantageous for the administrations to cooperate in preventing IUU fishing.

For these reasons it has been agreed that there will only be one IUU vessel list for the UK, which will be amended by the Secretary of State with consent from the devolved administrations. The specific provision giving the Secretary of State that power will be contained in another SI, to be notified at a later date.

4. Legislative Functions

Q. The notification states “Please note that the transfers of legislative functions for the CFP elements covered by these Regulations are contained in other (affirmative) SIs and will be notified separately.” Can you clarify, does this refer to the regulation which is the subject of the notification or does this refer to the EU legislation which will become retained EU law on exit from the EU? Does the SI covered by this notification confer any legislative function on Scottish Ministers/the Scottish fisheries administration?

The SI covered by this notification (referred to in these answers as the “Regulations”) does not transfer any legislative functions. Defra’s approach has been to ensure that these Regulations are subject to the negative procedure, which has involved putting the provisions which transfer legislative functions into a separate exit SI. That SI will be notified at a later date.

5. Non-Legislative Functions

Q. In terms of the points below - Could you provide any more information at this time on what functions or obligations will be placed on Scottish Ministers? Will Scottish Ministers be exercising any functions they do not currently exercise? If so, the Committee may wish to be kept up to date on the Scottish Government’s capacity and resource to fulfil any new functions.
Further information provided by the Scottish Govt on CFP Annexe C

- Illegal, Unreported and Unregulated (IUU) Fishing Regulation
- Council Regulation (EC) No 734/2008 on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears
- Technical conservation matters

Please see above (Section 2) regarding the functions or obligations being placed on the Scottish Ministers, in general terms. It should also be noted that Scottish Ministers already carry out the obligations raised by the Committee under their existing devolved competence insofar as they relate to Scotland.

We have taken care when liaising with Defra on these Regulations to ensure that the devolution settlement is respected in the drafting, i.e. to ensure that functions or obligations in devolved areas are specifically to be carried out by the Scottish Ministers, or on the rare occasions that they are carried out by the Secretary of State, that the Scottish Ministers’ consent is required.

In practice, however, as noted above (in Section 2), administrative arrangements may be put in place whereby one administration exercises a function on behalf of all administrations (similar to the Fisheries Monitoring Centre, that we have at present, and which is funded by all four administrations to carry out functions throughout UK waters but which is hosted and staffed by the Scottish Government.)

Q. To follow on from the point above. The notification states that the transfer of functions to UK and Scottish Ministers will have significant financial implications for governance and administration of sea fisheries. Do you have any further information on this at this point in time? The Committee may wish to be kept up to date on this in future.

In terms of additional resource that may be required to carry out these functions Scottish Ministers are currently considering what additional funding may be required for the continued governance and administration of Sea Fisheries, as a matter of wider policy.

Q. The notification states that “in the limited situations where a pragmatic approach would be for a UK-wide approach to be taken, steps have been taken to ensure that the devolution settlement is protected by requiring consent from the devolved administrations to the Secretary of State acting on their behalf.” We would appreciate clarification on what role the Scottish Parliament will have in the consent process.

The arrangements for consent where the Secretary of State may act on behalf of devolved administrations have not yet been confirmed but in general will be proportionate to the power being exercised and the urgency
involved. In general the Scottish Government will ensure transparency in its dealings with the UK Government. As these are non-legislative functions there will be no formal parliamentary process involved.
1. Name of the SIs

The Rural Development (EU Exit) (Amendment) Regulations 2018

The Rural Development (Implementing and Delegated Acts) (Amendment) (EU Exit) Regulations 2018

The Common Provisions (EU Exit) (Amendment) Regulations 2018

The Common Agricultural Policy (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2018

The Common Agricultural Policy (Rules for Direct Payments) (Miscellaneous Amendments) (EU Exit) Regulations 2018

2. A brief explanation of law that the proposals amend

These instruments are part of a set of statutory instruments that propose to make corrections to the EU Common Agriculture Policy (“CAP”) regulatory regime and the EU common fisheries policy becoming retained EU law so that it can continue to operate effectively in the UK in the event of a ‘no deal’ UK exit from the EU on 29 March 2019.

Pillar 2 of the CAP, which is currently funded by the European Agricultural Fund for Rural Development (“EAFRD”), is part of the EU Structural and Investment Funds (“ESIF”). ESIF is governed by the ‘Common Provisions’ regulations. Therefore, corrections to the Common Provisions regulations are proposed, alongside corrections to the CAP regulations, to allow Pillar 2 of the CAP to continue to operate in the event of a ‘no deal’ UK exit. Also part of ESIF is the European Maritime and Fisheries Fund (“EMFF”), which is therefore also governed by the Common Provisions regulations being amended by these regulations.

It should also be noted that the Scottish Parliament has already been notified on 14 November 2018 of:

- the Common Provisions (Implementing and Delegated Acts) (Amendment) (EU Exit) Regulations 2018 which propose to amend retained EU legislation to allow programmes currently funded by the EAFRD and the EMFF to remain operable to continue to receive funding for the 2014-2020 programme in the event of a no-deal EU exit; and
- the Common Agricultural Policy and Agriculture and Horticulture Development Board (Amendment etc.) (EU Exit) Regulations 2018 which propose to make a number of minor technical changes to CAP regulations and the Agriculture and Horticulture Development Board Order 2008 again so the relevant legislation continues to operate effectively as retained EU law in the event of a no-deal EU exit.
In addition, the UK Government is also planning to introduce other statutory instruments, which will be the subject of separate later notifications, as part of the EU-Exit process that will interconnect with the legislation amended by these instruments and those instruments mentioned in the notification to the Scottish Parliament of 14 November. These other instruments will be laid between late-November 2018 and February 2019 and cover the following CAP-related areas: the “Horizontal” (cross-cutting) financing, management and monitoring of framework, the market intervention measures under the Common Organisation of Agricultural Markets (“CMO”), the transfer of CAP/CMO functions previously vested in the EU Commission to the Scottish Ministers and the other UK administrations, and state aid. Again, this is with a view to ensuring that all of the relevant legislation continues to operate effectively as retained EU law following the UK’s exit from the EU. UK and Scottish Government officials are now finalising the terms of these linked instruments to ensure they respect the devolved competence of the Scottish Ministers, in particular in relation to the proposed transfer of CAP/CMO functions (which is the subject of ongoing discussion), but this does not affect the rationale or justification for this notification.

The Rural Development (EU Exit) (Amendment) Regulations 2018
The Rural Development (Implementing and Delegated Acts) (Amendment) (EU Exit) Regulations 2018


The Common Provisions (EU Exit) (Amendment) Regulations 2018

This proposed instrument would apply throughout the UK. This instrument proposes to amend Regulation (EU) No 1303/2013 laying down common provisions on the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund, the EAFRD and the EMFF, which operate under a common framework as the ESIF. It sets out the provisions necessary to ensure the effectiveness of the funds and their coordination with each other.

The Common Agricultural Policy (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2018
The Common Agricultural Policy (Rules for Direct Payments) (Miscellaneous Amendments) (EU Exit) Regulations 2018

These proposed instruments would apply throughout the UK. The Common Agricultural Policy (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2018 proposes to amend the principal Regulation:
• (EU) No. 1307/2013 establishing rules for direct payments to farmers and land managers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009. This Regulation establishes the high-level framework required to make Direct Payments to farmers and land managers under support schemes within the framework of the CAP.

The Common Agricultural Policy (Rules for Direct Payments) (Miscellaneous Amendments) (EU Exit) Regulations 2018 proposes to amend the relevant EU tertiary legislation in relation to Regulation (EU) No. 1307/2013, namely:

• Commission Implementing Regulation (EU) No 641/2014 laying down rules for the application of Regulation (EU) No 1307/2013; and

These EU regulations work together to create the detailed rules necessary to implement and monitor the delivery of Direct Payments across EU Member States.

3. Summary of the proposals and how these correct deficiencies

In 2016, UK agriculture received €3,927m through the EU CAP regime, with €3,035m of that being allocated as Direct Payments to farmers and land managers, and €806m via Rural Development schemes, including the Scottish Rural Development Programme schemes, and €85m as market support measures. Many farmers and land managers are reliant on this income to support their businesses, while wider rural development support provides environmental and socio-economic benefits to Scotland. The corrections introduced by the proposed instruments will help ensure that CAP scheme recipients continue to be paid following EU-Exit.

At the point of EU-Exit, European legislation relating to the CAP will be converted into UK law and corrected so that it can continue to operate throughout the UK purely as a piece of domestic law in the event of a no-deal situation on exit from the EU. It is also important that existing domestic legislation which supports implementation of the CAP in the UK is similarly corrected to ensure that the whole package of the applicable retained EU law can continue to operate effectively. With that aim in mind, it is therefore proposed that these instruments will make such corrections to both EU and domestic CAP-related legislation to provide clarity and certainty to farmers, land managers, rural businesses and communities, and the public sector at the point of exit from the EU.

As well as legislation for CAP, the legislation underpinning EU funding schemes, including the EMFF and EAFRD will also be converted into UK law and have deficiencies corrected.

These instruments being notified propose to use powers in the European Union (Withdrawal) Act 2018 to make predominantly technical changes to the above legislation to achieve the abovementioned aims.
These changes are necessary to create a UK rather than an EU regulatory regime. However, subject to this proviso, the drafting approach for the proposed amending instruments is to avoid policy changes and to maintain the status quo in so far as possible.

We have extensive experience of working collaboratively with the UK Government and other devolved administrations in these areas. Maintaining this UK wide approach is beneficial for stakeholders and for all 4 UK administrations to help provide clarity for the future.

**The Rural Development (EU Exit) (Amendment) Regulations 2018**

**The Rural Development (Implementing and Delegated Acts) (Amendment) (EU Exit) Regulations 2018**

These statutory instruments propose to amend the principal rural development Regulation (EU) No 1305/2013 and related EU legislation so that it operates effectively in the event of a no-deal situation on exit from the EU. This is being done to enable existing programmes in the UK currently funded by the EAFRD, including the Scottish Rural Development Programme (SRDP), to continue operating in the same way for the remainder of the 2014-2020 programme.

Firstly, they propose to remove provisions in the relevant EU legislation which will be deficient following EU exit, such as:

- the requirement to comply with EU law;
- the requirement to submit rural development programmes or modifications to those to the Commission for approval;
- the requirement to provide both ante and ex post evaluations;
- the potential to establish a national Monitoring Committee to co-ordinate the implementation of the programmes;
- the requirement for projects to comply with the information and publicity strategy and display the EU emblem and publicise the EU’s participation through publications, posters and on-line links;
- the requirement for National Frameworks;
- the European Network for rural development; and
- the European Innovation Partnership Network.

Secondly, other amendments that are proposed include the transfer of requirements or obligations that were previously for the Commission, or in some cases Member States, to the relevant authority which, in relation to Scotland, will be the Scottish Ministers. These obligations include changing the process for approval of the annual implementation reports so that they would on exit only need to be considered and approved by the relevant monitoring committee.

**The Common Provisions (EU Exit) (Amendment) Regulations 2018**

This statutory instrument proposes to amend the above EU regulation 1303/2013 to make it operable as retained EU law in the event of a no-deal on EU exit. This is being done to enable existing programmes throughout the UK including Scotland as currently funded by the EAFRD or the EMFF to continue operating in the same way for the remainder of the 2014-2020 programme.
This proposed instrument seeks to omit the following provisions which will be inoperable following EU exit:

- the requirement to comply with EU law;
- Articles concerning the partnership agreement, an agreement between a Member State and the Commission which encompasses all of the European Structural and Investment Funds;
- the requirement for an annual review meeting to be held with the Commission;
- the Commission’s right to participate in a programme’s monitoring committee;
- the Commission’s ability to initiate technical assistance;
- the requirement to submit an ex post evaluation to the Commission for each programme;
- the Commission’s right to increase payments for Member States with temporary budgetary difficulties;
- Articles setting out the requirements for financial instruments and other instruments which are implemented or financed by the European Investment Bank;
- Articles establishing the performance framework, performance review and performance reserve, which allow the Commission to determine which programmes or priorities have achieved their milestones and require Member States to reallocate funding if a programme or priority has not. If the Member State does not comply the Commission may suspend interim payments.

It also proposes to omit the following provisions which will be deficient following EU exit because they are spent:

- Articles relating to the preparation and adoption of programmes;
- the requirement to carry out an ex ante evaluation before designing a programme;
- the procedure for designating the managing and certifying authority; and
- the payment of pre-financing.

Finally, other amendments proposed transfer requirements or obligations that were previously for the Commission, or in some cases Member States, to the relevant authority which, again in relation to Scotland, is generally the Scottish Ministers apart from in relation to the EMFF. These include:

- overall responsibility for the programme;
- promoting equality between men and women and non-discrimination;
- defining criteria for selecting community-led local development strategies;
- defining the roles for local action groups;
- setting up a programme monitoring committee;
- providing resources for carrying out evaluations;
promoting environmental protection, resource efficiency, climate change mitigation and adaption; biodiversity, disaster resilience and risk prevention; and
- the ability to initiate technical assistance.

The EMFF programme is a UK wide scheme, and as such its management is not devolved except where it has been specified as such, the relevant authority will continue to be the Secretary of State. The responsibilities of Scottish Ministers (and other devolved administrations) will be respected in reference to their role as certifying and intermediate bodies in relation to devolved interests.

The Common Agricultural Policy (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2018
The Common Agricultural Policy (Rules for Direct Payments) (Miscellaneous Amendments) (EU Exit) Regulations 2018

As described in more detail below, these statutory instruments propose to amend the principal EU Regulation in relation to direct payments (Regulation (EU) No 1307/2013) and related EU legislation so that it operates effectively in the event of a no-deal situation on exit from the EU.

The proposed instruments take account of the UK devolution settlements and will empower the relevant authorities, in relation to Scotland the Scottish Ministers, to maintain the Direct Payments framework, make payments and enforce the rules surrounding Direct Payments.

The appropriate legislative “fixes” proposed by the instruments will maintain a status quo position, as far as possible, and will have no noticeable impacts on the ground for farmers.

As part of the EU-Exit process planning for the possibility of a no deal scenario, the Scottish Government plans to make in early 2019 a Scottish Statutory instrument to amend relevant SSIs which implement specific aspects of the relevant EU CAP Regulations (as those will be modified by virtue of the proposed instruments) and provide for its enforcement in relation to Scotland.

The UK Government is also intending to make a further statutory instrument in January 2019 to correct retained EU legislation relating to State Aid rules. This will amend one article within the retained EU Direct Payments legislation concerning State Aid. The Scottish Government remains in discussion with the Defra and the other devolved administrations regarding these matters. All these additional statutory instruments proposed will of course be the subject of separate notifications to the Scottish Parliament in due course.

Direct payments provide farmers and land managers with a safety net against volatile agricultural market prices and are made on condition that the beneficiary respects “cross-compliance” rules on human and animal health and welfare, plant health and the environment. Direct payments are currently made under the EU CAP Regulations described above, and are administered and controlled in the UK by the
national authorities of each constituent nation including the Scottish Ministers in relation to Scotland.

In a scenario where a withdrawal agreement between the UK and the EU is not reached, the UK will no longer be part of the CAP at EU-Exit and the retained EU legislation relating to Direct Payments would without amendment, not operate effectively which could mean that UK administrations would not be able to continue making Direct payments to farmers and land managers throughout the UK. To avoid this situation happening, the instruments propose to amend the relevant EU legislation to create a functioning direct payments framework for the UK. In turn, this framework will ensure that current CAP Direct Payments scheme recipients will continue to be paid following EU-Exit on the basis of the existing EU CAP Regulations as retained EU law and as modified by these proposed instruments.

The instruments propose to enable the following CAP direct payments farming support schemes to continue to work effectively across the UK after EU-Exit, including (in relation to Scotland) the following schemes:

- **Basic Payment** – this is a non-competitive payment that is based on land area. Certain minimum standards on animal and public health and environmental standards must be met (known as “cross-compliance”);
- **Greening payment** – this is a 30% portion of the Basic Payment, paid to farmers who voluntarily meet certain environmental standards;
- **Young farmer payment** – this is a payment for claimants qualifying as a “Young Farmer”; and
- **Voluntary Coupled Support** – this is a payment made to incentivise production in a particular sector. It is used in Scotland to support livestock farmers in both the beef and sheep sectors to help compensate the additional costs incurred associated with livestock production.

The legislative amendments proposed by the instruments will maintain the status quo, as far as possible, and are largely minor and technical. No substantive policy changes are being made and the beneficiaries of direct payments in Scotland as elsewhere in the UK will see no significant operational change.

The key amendments to the relevant legislation can be summarised as:

i. **Changes to direct payment scheme notification and reporting requirements:** Those currently place requirements on Member States to routinely provide notifications and reports to the European Commission to set out how they are administering the Direct Payments schemes. Such notifications and reports are necessary for the Commission to manage and monitor the EU CAP as a whole. The notification and reporting requirements include a Member State having to supply information on: the funding allocations it sets for each Direct Payments scheme; the extent of CAP “active farmer” rules applied; any equivalent practices implemented in relation to greening scheme requirements; and the commencement of any Direct Payment schemes that a Member State may not have previously utilised, for example Voluntary Coupled Support.
After EU-Exit, some of these notification and reporting requirements will no longer be appropriate and they will cease to be required. The instruments will therefore remove these provisions from the retained EU legislation. For example, the UK’s annual notification to the European Commission of the outcome of CAP greening measures is required for the Commission to assess the success of the greening policy across the EU, but this would not be required in a UK context as agriculture is a devolved matter and it is for each UK administration to assess the success of policies within its territory. Other notification and reporting requirements will, however, still be necessary to ensure that, after EU-Exit, the domestic framework for Direct Payments continues to operate effectively across the UK. These particular notification and reporting requirements will also be removed from the retained EU legislation and, instead, the collection and sharing of key information will form part of an administrative joint-working agreement that will be developed between the UK administrations, for example through a Memorandum of Understanding. This approach will help lessen the legislative reporting burden upon UK administrations.

ii. **Removal of redundant provisions:**

Some articles in the retained EU Direct Payment legislation will be redundant or irrelevant to a UK setting after EU-Exit and so the instruments will remove these articles. For example, Articles 20 and 27 of Regulation (EU) No. 1307/2013, which relate to de-mining reserves in Croatia.

iii. **Correcting references to the EU, EU institutions and “Member State(s)”:**

After EU-Exit, certain terms will be outmoded and need correction. The instruments will make technical amendments throughout the retained EU Direct Payments legislation to ensure that it remains operable and does not contain any ambiguity. References to “Member State(s)” will be amended so that, in most instances, this will be replaced with the phase “relevant authority” (meaning the Scottish Ministers in Scotland) in order to align with the UK devolved settlements and enable each constituent nation to make its own policy choices within the limits of the retained EU Direct Payments regulations.

iv. **Correcting EU procedures to reflect appropriate UK processes:**

Certain articles in the EU legislation give the European Commission the power to make implementing acts to fix spending ceilings for individual Direct Payments Schemes, in order to reflect a Member State’s spending choices. This approach is incompatible with UK law, which does not require a relevant authority in the UK to make secondary legislation to implement its spending choices, so it will be removed.

The UK Government, following approval from HM Treasury, will retain references to Euros in the retained EU Direct Payments legislation at the point of EU-Exit. This is because, as agreed with the Scottish Government as well as the other Devolved Administrations, it is considered that undertaking such currency conversion mid-way through the existing CAP programme and its schemes would be problematic from an operational perspective and also risk causing confusion for beneficiaries, including those who receive Direct Payments. References to Euros will continue to be appropriate after EU-Exit in relation to schemes which have begun to be
administered on a Euro basis before Exit. It is envisaged that such currency changes would be made at a future point using powers under the European Union (Withdrawal) Act to coincide with the end points of “rolled over” CAP schemes and programmes.

As noted in the Cabinet Secretary for the Rural Economy’s letter to the Convenor of the Rural Economy and Connectivity Committee of 7 November 2018, the proposed instruments will provide a clear and robust continuing legal basis for payments and the application of current CAP scheme rules as retained EU law in the event of a no deal situation on exit from the EU. Separately, following the Scottish Government’s “Stability and Simplicity” consultation earlier this year (discussed further in section 7 below), the Scottish Government is continuing to explore all the necessary adjustments and any other options for creating new legal powers which Scotland will need to amend, improve and, in due course, replace the current schemes at a suitable point after exit day.

4. An explanation of why the change is considered necessary

The proposed changes are considered to be necessary to ensure that legislation remains effective and ensures (a) an operable CAP regulatory regime after EU exit and (b) the programmes currently funded by the EAFRD and the EMFF remain operable post-exit and are able to continue making payments to beneficiaries. Failure to implement the proposed changes will likely result in inability of these regimes to operate. This will provide a clear and robust continuing legal basis for payments and the application of current CAP scheme rules as retained EU law as from exit day by maintaining the current UK-wide coherent legal framework.

5. Scottish Government categorisation of significance of proposals

The Scottish Government considers that in general the proposed instruments fall within Category A, as the changes are minor and technical in nature and notwithstanding the changes, policy change is being avoided to preserve in so far as possible the current status quo. However they could be considered Category B to the extent that the transition from an EU to a UK framework would be a major and significant development.

6. Impact on devolved areas

The Scottish Government agree that the changes in the proposed statutory instruments constitute a pragmatic approach to addressing deficiencies in CAP and funding legislative provisions, arising as a result of EU Exit, and are the best option in the circumstances to ensure continued effective operation of these provisions to minimise the risk in the short term of disruption to devolved territories. The proposed Regulations respect the current devolution settlement by ensuring that Scottish Ministers can exercise all applicable functions under the retained EU law as modified by these instruments as the relevant authority in relation to Scotland.
No significant impact on business, charities or voluntary bodies is anticipated. Beneficiaries will continue to receive rural development funding similarly to before EU exit.

No significant impact on the public sector is anticipated. There may be a negligible increase in administration cost as notifications may go to responsible bodies within the UK rather than European institutions, but this is not expected to be a significant impact.

As a result of EU exit, the UK’s membership of the European Network for Rural Development (“ENRD”) would no longer be operable. This network currently provides limited support as none of the UK administrations have entered into transnational co-operation to date so we expect this to have minimal impact in practice.

No, or no significant, impact on business, charities or voluntary bodies is anticipated. Beneficiaries will continue to receive funding similarly to before EU exit.

No significant impact on the public sector is anticipated. There may be a negligible increase in administration cost as notifications may go to responsible bodies within the UK rather than European institutions.

No significant impact is anticipated on business, charities or voluntary bodies as eligible beneficiaries will continue to receive Direct Payments funding as they had done before EU-Exit.

No significant impact is anticipated on the public sector.

7. Summary of stakeholder engagement/consultation

As these instruments are being proposed to avoid deficiencies arising as a result of the UK’s withdrawal from the EU and are aimed at preserving the functioning of the CAP regulations and the programmes currently funded by the EAFRD and EMFF as at present, we have not undertaken any formal public consultation.

The UK Government have published a series of technical notices which provide details on how UK businesses and individuals should prepare in the event of a no deal Brexit scenario, including the following:
A technical notice titled “Guidance: Receiving rural development funding if there’s no Brexit deal” was published on 23 August 2018. https://www.gov.uk/government/publications/receiving-rural-development-funding-if-theres-no-brexit-deal

A technical notice titled “Guidance: Farm payments if there is no Brexit deal was published on 23 August 2018. https://www.gov.uk/government/publications/farm-payments-if-theres-no-brexit-deal

A technical notice titled “Guidance: Commercial fishing if there’s no Brexit deal” was published on 12 October 2018. https://www.gov.uk/government/publications/commercial-fishing-if-theres-no-brexit-deal


This consultation invited comments on Scottish Government proposals for dealing with the implications associated with coming out of the Common Agricultural Policy (CAP) which explained that the first stage would be retained EU law in domestic legislation.

The consultation was titled Stability and Simplicity and closed 15 Aug 2018 with 137 responses received. Overall, respondents were broadly content for support to continue in its current form to ensure a period of stability for the rural economy.

An external stakeholder panel the “Simplification Task Force” is being established to look more closely at the responses to and opportunities for simplification of the retained EU law.

The Scottish Government has been and continues to be in regular contact with stakeholders in Scotland regarding the implications of leaving the EU. The effect of the statutory instruments described in this notification is consistent with the proposals set out in the consultation.

8. A note of other impact assessments, (if available)

An impact assessment has not been carried out in relation to these regulations as they are aimed at preserving the effect of the current regulatory regimes.

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

Common agricultural policy

If these deficiencies are not corrected in the scenario of a no-deal EU exit, the Scottish Ministers believe that we would no longer have an effectively functioning
legal framework for continuing to provide for payments and the administration of the applicable payment schemes. This would likely cause problems for our stakeholders who need as much certainty and continuity as possible to help plan and operate their businesses. This could also pose risks for agriculture and the rural economy in Scotland.

The Scottish Ministers propose to consent to these UK instruments to fix deficiencies in the relevant legislation. The approach set out in the UK instruments is realistic, achievable and minimises the risk of immediate disruption. The Scottish Ministers believe that, in the circumstances, consenting to the UK SI’s would be the most effective way to help ensure continuity of current arrangements for stakeholders to assist them to continue to run their businesses, and ensure the existing regulatory regime can continue to function with scheme payments continuing to be administered and paid.

The Scottish Ministers believe that the changes proposed by these instruments are necessary to secure continuation of effective regulatory regimes. The approach of these instruments respect the devolution settlement and provide for a transition from an EU to UK regulatory framework with devolved options for Scotland.

The Scottish Government has worked constructively with the UK Government and the other Devolved Administrations and, in light of that, we are satisfied that the proposed amendments to the applicable legislation will ensure that it continues to operate effectively as retained EU law whilst respecting Scottish Government’s devolved competence in relation to the implementation of CAP in Scotland.

Given there is a need to prepare for a no deal exit from the EU, the Scottish Ministers consider that it is appropriate for the fixing legislation to be made on a UK-wide basis by the UK Government. This provides an effective achievable solution in current circumstances of limited resources and significant resource intensive legislative work needing to be completed in extremely tight time constraints. It also reduces the risk of conflicting provisions being produced by UK administrations that could result in confusion.

The Scottish Ministers believe stakeholders need clarity and continuity in the immediate future in so far as possible to continue to operate their businesses during this period of transition and consenting to the proposed UK instruments is the most likely way of achieving that aim at this time.

**Common fisheries policy**

It is necessary to correct the deficiencies in the Common Provisions Regulations to ensure that the EMFF programme can continue to operate effectively after exit day. The amendments made by these regulations align with the policy agreement between the Scottish Government and the UK government regarding the operation of funding under the EMDD regulation after exit day. The amendments in this instrument are technical in nature and do not represent a change in policy.
10. Intended laying date (if known) of instruments likely to arise

The Rural Development (EU Exit) (Amendment) Regulations 2018, the Rural Development (Implementing and Delegated Acts) (Amendment) (EU Exit) Regulations 2018 and the Common Provisions (EU Exit) (Amendment) Regulations 2018 are all subject to negative procedure and will be laid for sifting at Westminster on 29 November 2018.

The Common Agricultural Policy (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2018 and the Common Agricultural Policy (Rules for Direct Payments) (Miscellaneous Amendments) (EU Exit) Regulations 2018 are both subject to negative procedure and will be laid for sifting at Westminster on 28 November 2018.

We are working with Defra on the basis that no EU Exit statutory instruments will proceed to be made, until after they have been through the consent process agreed with the Scottish Parliament.

11. Does the Scottish Parliament have 28 days to scrutinise?

Yes.

12. Information about any time dependency associated with the proposal

It is essential that these instruments are in force on the day we exit the EU in the event of a no deal scenario to ensure that legislation is operable to enable the Scottish Government to continue to administer and regulate our schemes and make payments to our stakeholders.

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

Following finalisation of the instruments, the Scottish Government will work with UK Government and other devolved administrations to put in place sound governance arrangements to ensure transparency and accountability for decision making. This work will be designed within the context of the principles, agreed by the UK Government, the Scottish Government and the Welsh Government on 16 October 2017, to apply to common frameworks.

14. Any significant financial implications?

These Regulations are not expected to have any significant financial implications for stakeholders in Scotland.
EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT
POLICY AREA: COMMON AGRICULTURAL POLICY
The Rural Development (EU Exit) (Amendment) Regulations 2018
The Rural Development (Implementing and Delegated Acts) (Amendment) (EU Exit) Regulations 2018
The Common Provisions (EU Exit) (Amendment) Regulations 2018
The Common Agricultural Policy (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2018
The Common Agricultural Policy (Rules for Direct Payments) (Miscellaneous Amendments) (EU Exit) Regulations 2018

Thank you for your email of 4 December regarding the above notifications. I am pleased to address the points the Committee has raised as follows:

1: (With reference to the above Direct Payments SI’s) “does it mean that in all instances that are in line with the Scottish devolution settlement, references to the Scottish Ministers will be inserted?”

**Answer:** Depending on where the term “Member State” is used in the EU legislation, the correcting solution either replaces the term with a reference to the appropriate or relevant authority (which, in relation to Scotland would be the Scottish Ministers) or the Secretary of State but acting only with the consent of all other appropriate or relevant authorities. The latter would be for those few cases where it would be appropriate for a relevant function to be exercised on an agreed UK-wide basis, for example, adjustments of the financial ceilings in relation to direct payments support in consequence of the exercise of relevant functions by each administration of the UK. Given that where joint decision making is necessary for a UK wide decision, the Secretary of State will need the consent of Scottish Ministers and the other devolved
Further information from the Scottish Govt on CAP

administrations, we are satisfied that the devolution settlement has been properly respected, whilst still ensuring the continuing legal operability of the functions.

2: Can it be confirmed that these provisions ensure that CAP scheme recipients will receive the same payments immediately following 20 March 2019 as they would have been entitled to prior to that date?

**Answer:** Subject to satisfactory funding from HM Treasury, recipients should receive, next year, the same payments that they were entitled to prior to 20 March 2019 in accordance with the above SI’s. I have discussed the UK funding guarantees with the committee including most recently on 31st October 2018. I and my officials will continue to press Defra on this point and will keep the committee updated of progress in this matter.

3: Does the Scottish Government consider that there may be value in retaining notification and reporting requirements in binding legislation? Does the Scottish Government agree that transparency and accountability may be supported by placing legislative reporting requirements, concerning rural farming payments, on Scottish Ministers and other UK administrations? Would any joint-working agreement developed between UK administrations, that concerned notification and reporting requirements, be made available to the Scottish Parliament for scrutiny?

**Answer:** The reporting notification requirements provided for in the EU legislation were designed to allow the EU to achieve its collective reporting responsibilities in an international 28 member state context. Leaving the EU for a UK regime with well-established constitutional arrangements for just 4 constituent nations, means this part of the EU regulations is no longer necessary or appropriate. Scotland is already obliged under the Scotland Act 1998 when exercising functions within devolved competence (in this context, functions in relation to agricultural support in Scotland) to observe and implement applicable international obligations, such as relevant reporting requirements on the UK as a whole under the WTO Agreement on Agriculture. As indicated in paragraph 13 of the Notifications of 14 and 21 November, following finalisation of these instruments the Scottish Government will work with the UK Government and other Devolved Administrations to put in place sound governance arrangements. This will ensure our future cooperation in areas of mutual interest, including how we can continue to work together to allow the UK to observe applicable international obligations. Therefore, as agreed with all UK administrations, it is not necessary to replace these notification requirements as they are in effect a supra national reporting mechanism relevant only in the context of continuing membership of the EU. To conclude, I can confirm that we will keep the Committee regularly informed of the outcome of the discussions on future frameworks and will be prepared to address any further questions which may arise in respect of that.

Finally, as set out in the notifications, it is worth recalling that the instruments to which these notifications relate will only apply in the event of a no deal to ensure that the applicable CAP EU rules continues to operate effectively in domestic law as retained EU law. Should we be leaving the EU on 29 March 2019 with no deal in place, these are intended to be short term requirements. Following the Scottish Government’s “Stability and Simplicity” consultation earlier this year, my officials are
Further information from the Scottish Govt on CAP

continuing to consider what changes may be appropriate over the medium to long term.

I hope this has clarified the points raised, and will ensure the Committee is kept up to date on any future developments on any of these matters.

FERGUS EWING
ANIMAL HEALTH - NOTIFICATION TO THE SCOTTISH PARLIAMENT

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

The Trade in Animals and Related Products (Amendment) (EU Exit) Regulations 2018

A brief explanation of the law that the proposals amend

The Trade in Animals and Related Products (Amendment) (EU Exit) Regulations 2018 (“the proposed SI”) is being made using powers under the European Union (Withdrawal) Act 2018 in order to correct deficiencies in what will become retained EU law – in this case EU-derived domestic legislation - relating to trade in animals and related products.

The proposed SI will amend five GB-wide instruments and two instruments that will apply to England only (see details below). It is intended that this notification only addresses the five GB-wide instruments.

The legislation that will be amended by the proposed SI is as follows:

Part 1 (GB-wide instruments)

**Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974**
For the purpose of preventing the introduction of rabies into Great Britain, this Order in particular controls the landing in the United Kingdom of any animal (other than man) belonging to the ten orders of mammals specified in Parts 1 and 2 of the schedule of the Order. Specified animals are prohibited from landing in Great Britain except under the authority of a licence. Exceptional circumstances may exist where animals may be allowed to land at prescribed ports and airports, however, they will have to be moved as soon as practicably possible after landing to authorised quarantine premises. The animals will then be kept for a prescribed period in quarantine. The Order also contains detailed provisions relating to the movement of animals during quarantine, the licensing of carrying agents and of quarantine premises, and the control of animals which are passing through Great Britain or which are on board a vessel in a British port.

**Artificial Insemination of Pigs (EEC) Regulations 1992**
These Regulations implement the provisions of Council Directive 90/429/EEC in relation to exports to member States and the approval of semen collection centres which engage in intra-Community trade in porcine semen.

**The Animals (Post-Import Control) Order 1995**
This Order establishes controls on certain animals after they have been imported into Great Britain by laying down requirements relating to cattle from areas not free from warble fly, pigs from areas not free from Aujeszky’s disease, cattle from Canada, cattle imported under specific Community legislation and sheep and goats from areas not free from contagious agalactia. The Order also empowers an inspector to serve a notice in specified circumstances and enforcement is carried out by the relevant local authority.
Consent notification for SI relating to the trade of animals

The Bovine Embryo (Collection, Production and Transfer) Regulations 1995
These Regulations give effect to the provisions of Council Directive 89/556/EEC in respect to the trade in bovine embryos, the approval of collection, production and transfer teams, storage conditions for bovine embryos and also provide for domestic trade in bovine embryos.

The Non-Commercial Movement of Pet Animals Order 2011
This Order makes provision for the administration and enforcement of various EU instruments in Great Britain: Regulation (EC) No 998/2003 on the animal health requirements applicable to the non-commercial movement of pet animals; Commission Decision 2006/146/EC on certain protection measures with regard to certain fruit bats, dogs and cats coming from Malaysia (Peninsula) and Australia; Commission Decision 2007/25/EC as regards certain protection measures in relation to highly pathogenic avian influenza and movements of pet birds accompanying their owners into the Community and; Commission Delegated Regulation (EU) No 1152/2011 as regards preventive health measures for the control of Echinococcus multilocularis infection in dogs.

Overall, this Order is concerned with the preventive measures that apply to the movement of pet animals to Great Britain to protect against the risk of the introduction of rabies, Echinococcus multilocularis (tapeworm), Hendra disease, Nipah disease and highly pathogenic avian influenza. Additionally, it outlines requirements of carriers that land pet dogs, cats and ferrets in Great Britain to be approved, subject to certain exceptions, and makes provision regarding the suspension or withdrawal of carrier approvals under the enforcement section.

Part 2 (England only)

The proposed SI will also bring forward amendments to The Bovine Semen (England) Regulations 2007 and The Trade in Animals and Related Products Regulations 2011. These Regulations do not apply in Scotland and are not covered further in this notification.

Summary of the proposals and how these correct deficiencies

The amendments contained in Part 1 of the proposed SI do not change existing policy, but will be necessary in the event of a ‘no deal’ exit from the EU on 29 March 2019 to ensure the operability and continued implementation of the statutory measures detailed above.

As the UK will no longer be a Member State of the EU, the proposed SI will amend EU references. Where necessary, for example, it will replace what will become obsolete references to EC Directives with references to relevant domestic Instruments.

An explanation of why the change is considered necessary

The changes made by this proposed SI are fairly minor and necessary to ensure that the existing GB-wide EU derived legislation continues to be operable once the UK leaves the EU.
Scottish Government categorisation of significance of proposals

**Category A.** The amendments which will be made by the proposed SI to the GB-wide legislation set out above do not change existing policy. The Scottish Government has worked with DEFRA on the amendments and is content that the provision to be made is necessary and appropriate to ensure that existing law continues to be operable once the UK leaves the EU. So far as the GB-wide legislation amended provides for functions to be exercisable by the Scottish Ministers, the amendments to be made by the proposed SI do not alter the position

**Impact on devolved areas**

The Proposed SI will make provision in a devolved area. The relatively minor changes in the proposed SI are required to ensure the continued operability of existing measures.

**Summary of stakeholder engagement/consultation**

Other than engagement with Defra and other devolved administrations there has been no formal stakeholder engagement or consultation in relation to (Part 1) of the proposed SI as there will be no measureable change to policy and no operational or financial impact is anticipated.

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

An impact assessment has not been carried out in relation to the proposed SI as its main aim is to remove what will become redundant references or provisions, add new definitions where necessary and generally ensure that existing GB legislation is operable upon EU exit.

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

The proposed SI will make amendments to existing GB-wide SIs which are minor in nature and aim to ensure the continued operability of EU derived domestic legislation. In these circumstances the Scottish Ministers consider it is appropriate that the proposed measures be brought forward by the UK Government. Where so far as the GB-wide legislation amended provides for functions to be exercisable by the Scottish Ministers, the amendments to be made by the proposed SI do not alter the position

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

The proposed SI’s amendments do not change existing policy, but are necessary to ensure that existing provision, such as controls on certain imports and the non-commercial movement of pet animals, can continue to operate in the UK should we leave the EU under a ‘no deal’ scenario. The proposed SI will not make any substantive changes to the legislative provisions already in place to safeguard the welfare of animals being imported into the UK. We are content therefore that the
Consent notification for SI relating to the trade of animals

The proposed SI will not adversely impact on animal welfare (in particular that regard must be given to the welfare requirements of animals as sentient beings).

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

The proposed SI is subject to the negative procedure and will be laid for sifting at Westminster on 27 November 2018. We are working with Defra on the basis no EU Exit SIs will proceed to be made (for negative procedure SIs), or laid in draft (for affirmative SIs), until after they have been through the consent process agreed with the Scottish Parliament.

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

The Scottish Parliament will have 28 days to scrutinise.

Information about any time dependency associated with the proposal

N/A.

Any significant financial implications?

These proposed SI is not expected to have any financial implications, including for the Scottish Government and for stakeholders in Scotland.

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 the proposed SI and the Scottish Government will continue its good working relationships with UK Government and the other Devolved Administrations. The proposed SI will simply make a number of technical amendments to ensure the operability of existing EU derived, GB-wide domestic legislation in the event of a 'no deal' UK exit from the EU on 29 March 2019.
Public Petition PE1598 – Protecting wild salmonids from sea lice from Scottish salmon farms

Introduction

1. PE1598, was lodged on 25 February 2016 by Guy Linley-Adams on behalf of Salmon & Trout Conservation Scotland:

“Calling on the Scottish Parliament to urge the Scottish Government to strengthen Scottish legislative and regulatory control of marine fish farms to protect wild salmonids of domestic and international conservation importance.”

2. The petition specifically relates to the regulatory control of marine fish farms in order to limit the impact of sea lice on wild salmonids.

Public Petitions Committee consideration

3. The Public Petitions Committee (PPC) wrote to a number of stakeholders regarding the petition, including Marine Scotland, the Scottish Environment Protection Agency (SEPA), Scottish Salmon Producers Organisation (SSPO), Atlantic Salmon Trust and the Association of Salmon Fisheries Board. In response to the PPC’s request for information on sea lice reporting in Norway, SPICe published a briefing dated 18 August 2016.¹

4. At its meeting on 29 September 2016, the PPC referred the petition to the Rural Economy and Connectivity Committee.

Rural Economy and Connectivity Committee consideration

5. The Rural Economy and Connectivity (REC) Committee first considered the petition on 26 October 2016. During the period up to April 2017, the REC Committee corresponded with the Cabinet Secretary for Rural Economy and Connectivity on the petition, visited a salmon farm to better understand the issues in the petition, and received further correspondence from the petitioner calling on the Committee to support the wild salmon industry’s call for statutory publication of farm-specific data on sea lice numbers.²

6. At its meeting of 21 June 2017, the Committee agreed to carry out an inquiry into aquaculture early in 2018. The Committee agreed its approach to an

¹ All background information relating to the PPC’s consideration of the petition is available on the Petitions website.
² Details of all correspondence is available on the Committee’s webpages at: http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/101696.aspx
inquiry on salmon farming in Scotland on 31 January 2018, and published its report with its recommendations on 27 November 2018.

Action:

The Committee is invited to consider whether it wishes to take any further action in relation to the petition. Options include—

- closing the petition, given that the issues raised in the petition have been fully considered in the Salmon Farming in Scotland inquiry; or

- taking any other action the Committee considers to be appropriate.

Clerking team
Rural Economy and Connectivity Committee
December 2018