

Rural Affairs, Islands and Natural Environment Committee

8th Meeting, 2022 (Session 6), Wednesday, 9 March

Subordinate legislation

1. This paper supports the Committee's further consideration of the [Sea Fish \(Prohibition on Fishing\) \(Firth of Clyde\) Order 2022 \(SSI 2022/35\)](#).

Background

2. Since 2001, a specific area in the Firth of Clyde has been closed to fishing for 11 weeks each year, between 14th February and 30th April, to protect spawning cod. The closure is implemented by an SSI. The purpose of this closure is to protect cod from disturbance from fishing activity during spawning in order to promote stock recovery.
3. In previous years, the SSI provided exemptions for Nephrops (langoustine) trawlers, creels and scallop dredgers.
4. The Scottish Government laid the [Sea Fish \(Prohibited Methods of Fishing\) \(Firth of Clyde\) Order 2021 \(SSI 2021/467\)](#) on 10 December 2021. This SSI provided for the closure in 2022 and 2023, with the same exemptions in place as for previous years.
5. The Cabinet Secretary for Rural Affairs and Islands [wrote](#) to the Committee on 17 January 2022 to inform it that the 2021 Order was to be revoked and a further order would be laid in its place. The Cabinet Secretary wrote that—

“upon further reflection, I believe that this approach is no longer appropriate. Despite the ongoing seasonal closure, the stock has shown little sign of recovery and as such the Scottish Government has removed the exemptions to maximise numbers.”
6. The Scottish Government laid the [Sea Fish \(Prohibition on Fishing\) \(Firth of Clyde\) Order 2022 \(SSI 2022/5\)](#) on 13 January 2022. This SSI removed the exemptions for Nephrops (langoustine) trawlers, creels and scallop dredgers.
7. The Committee informally discussed the order at its meeting on 19 January and agreed to seek written comments and take oral evidence ahead of its consideration of the instrument. The call for views closed on 23 February and responses can be viewed [here](#).

8. The Cabinet Secretary for Rural Affairs and Islands [wrote](#) to the Committee again on 1 February 2022 to inform it that the 2022 order was to be revoked and a further order would be laid in its place. The Cabinet Secretary wrote that—
- “following further discussions with scientists and stakeholders, we believe that it is necessary to make a further adjustment to the closure. In response to legitimate concerns raised by local fishermen, we have reviewed the available scientific evidence to reassure ourselves that this approach is the most appropriate and proportionate.”
9. The Scottish Government laid the [Sea Fish \(Prohibition on Fishing\) \(Firth of Clyde\) \(No. 2\) Order 2022 \(SSI 2022/35\)](#) on 1 February 2022. In comparison with previous closures, the closure provided for by the No. 2 Order 2022 is smaller in size but removes all exemptions, meaning that fishing activity by any method would be prohibited during the ban. The policy note for the instrument is provided at Annexe A.
10. The SSI came into effect on 12 February 2022, which breaches the 28-day rule between an SSI being laid and coming into force. The Cabinet Secretary wrote to the Presiding Officer to set out the reasons for the breach; this letter is provided at Annexe B.

Consideration by the Delegated Powers and Law Reform Committee

11. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [8 February 2022](#) and agreed to draw the instrument to the attention of the Parliament because it breached the 28-day rule. The DPLRC agreed it was content with the explanation that the Scottish Government had provided for the breach of the laying requirement and made no further recommendations in relation to the instrument.

RAINE Committee consideration

12. The Committee took evidence on the instrument from stakeholders at its meeting on 2 March 2022.
13. At today’s meeting, the Committee will take evidence from the Cabinet Secretary and Scottish Government officials and will then formally consider the statutory instrument.

Parliamentary procedure – negative instruments

14. The negative parliamentary procedure is set out in Chapter 10 of the Parliament’s Standing Orders. Instruments subject to the negative procedure come into force on a specified date and remain in force unless it is annulled by the Parliament. Thus, the Parliament does not need to agree to the instrument in order for it to come into force.

15. The Parliament may, however, and on the recommendation of the lead committee, recommend the instrument be annulled within 40 days of the instrument being laid. Any MSP may by motion propose to the lead committee that the committee recommends “that nothing further is to be done under the instrument”. Any motion for annulment would be debated by the lead committee and a report made to Parliament.

For decision

The Committee is invited to—

- **take evidence from the Cabinet Secretary and Scottish Government officials on the instrument (agenda item 1);**
- **consider if it wishes to raise any issues in relation to the instrument (agenda item 2).**
- **consider whether the issues relating to the instrument should inform future work in relation to the joint fisheries statement, common framework on fisheries management and any future inquiry work relating to the blue economy.**

**Rural Affairs, Islands and Natural Environment Committee clerks
March 2022**

POLICY NOTE

The Sea Fish (Prohibition on Fishing) (Firth of Clyde) (No. 2) Order 2022

SSI 2022/35

1. This Order was made in exercise of the powers conferred by sections 5(1)(a), 15(3), 20(1), 22(2) and 22A of the Sea Fish (Conservation) Act 1967. The Order is subject to the negative procedure.

Purpose of the Instrument

2. To protect cod within two areas (detailed below) of the Firth of Clyde (a recognised spawning ground) from being fished or disturbed during the spawning period in 2022 and 2023. This is in response to the International Council for Exploration of the Sea (ICES) advice on the poor state of cod stocks in ICES area 6a (west of Scotland).

Policy objectives

3. The purpose of the Order is to protect cod stocks in the Firth of Clyde at a crucial time in their life cycle by prohibiting fishing effort during their spawning season. The Scottish Ministers make the Order in exercise of the powers conferred by sections 5(1)(a), 15(3), 20(1), 22(2) and 22A of the Sea Fish (Conservation) Act 1967.

4. The Order prohibits fishing within two areas of the Firth of Clyde from 14 February until 30 April, in both 2022 and 2023. A prohibition on fishing covering a larger area in the Firth of Clyde has been in effect between 14 February and 30 April every year since 2001. In previous years, vessels fishing only with a scallop dredge, creels or a trawl used for fishing Norway lobsters were exempt from the prohibition on fishing.

5. The Order prohibits all fishing activity within two areas of the Firth of Clyde from 14 February until 30 April, in both 2022 and 2023.

Part 1 - North Area:

A	55° 30.000' N	005° 05.472' W
B	55° 30.000' N	005° 00.000' W
C	55° 23.820' N	005° 00.000' W
D	55° 23.820' N	005° 24.600' W
E	55° 30.000' N	005° 24.600' W
F	55° 30.000' N	005° 19.947' W

Part 2 – South Area:

A	55° 25.713' N	005° 32.426' W
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B	55° 26.100' N	005° 31.920' W
C	55° 17.220' N	005° 16.860' W
D	55° 10.680' N	005° 14.700' W
E	55° 12.960' N	005° 08.940' W
F	55° 13.860' N	005° 00.000' W
G	55° 06.797' N	005° 00.000' W
H	55° 00.000' N	005° 02.496' W
I	55° 00.000' N	005° 05.170' W
J	55° 00.000' N	005° 10.120' W
K	55° 00.000' N	005° 21.000' W
L	55° 17.962' N	005° 47.914' W
M	55° 25.088' N	005° 33.303' W
N	55° 25.392' N	005° 33.065' W

6. In comparison with previous closures, the closure provided for by this Order is smaller in size. i.e. this is a more focused and targeted closure, with no exemptions, in order to increase the protection for spawning cod. The Order also revokes the Sea Fish (Prohibition on Fishing) (Firth of Clyde), Order 2022, the Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2021 and the Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2019.

7. The Order will apply to British fishing boats that fish in the relevant areas though, in effect, this means that the closure will apply to all fishing vessels and fishing activity as the areas fall within territorial waters.

Consultation

8. The Scottish Government consulted firstly with key stakeholders between 15 September and 13 October 2021 and then with the wider public between 20 October and 04 November 2021.

9. There were a total of 208 consultation responses, which have been published online where permission has been granted by the respondees. Almost all of the responses indicated that they were in favour of the closure continuing into 2022 and 2023. A high proportion of responses also called for some or all of the exemptions to be removed.

10. Provisions for such a closure have been implemented annually/biennially since 2001 and stakeholders have been consulted each time the closure has been renewed.

11. Prior to this Order being made, there was a further stakeholder meeting with key representatives from industry and environmental groups to discuss the shape, size and co-ordinates of the spawning cod fishing grounds. This gave participants a further opportunity to comment on the final closure areas.

Prohibition of all fishing activity within smaller areas

12. On 1 September 2021, the Scottish Government (SG) and the Scottish Green Party (SGP) published a shared policy programme, setting out areas of collaboration

over the current parliamentary term. The SG-SGP agreement is explicit in seeking to restore marine habitats in Scotland's inshore waters, with the aim of achieving good environmental status, recognising that those waters contain valuable blue carbon hot spots, nursery grounds for fish stocks and an array of rich marine wildlife and biodiversity. Furthermore, the SG-SGP agreement states it will provide additional environmental protection over and above the existing MPA network by establishing sites which will provide protection from all extractive, destructive or depositional activities, including all fisheries.

13. In addition, during the 2021 consultation, concerns were raised that the exemptions undermine the effectiveness of the closure. It would be contradictory to continue to implement exemptions in respect of gears that can catch cod whilst also causing environmental disturbance which will further impact on the success of the spawning cod. Any activity within the spawning grounds is understood to have an impact on the spawning cod, by making spawning more difficult.

14. Prohibition of all fishing activity will create consistency with fisheries management in other areas, namely the UK National North Sea Cod Avoidance Plan, which includes closure areas for all gear types (excluding pelagic), and the recent emergency Marine Protected Area (MPA) designation in certain areas of the Inner Sound, and related Marine Conservation Order, which includes prohibition on creeling in order to protect the critically endangered flapper skate nursery area.

15. The Scottish Government has therefore decided to implement a prohibition on all fishing activity for the closed areas in 2022 and 2023. The more targeted closure area allows vessels to continue fishing in some areas that were previously closed, without risking disturbance in areas where cod is more likely to be spawning. This closure will be subject to increased monitoring by Marine Scotland Compliance. We will continue to work closely with local stakeholders on the efficacy of this closure in achieving the stated policy objectives and will meet with representatives after the spawning season to discuss their experience of the closure.

Impact assessment

16. A Business and Regulatory Impact Assessment has been completed and is attached.

Financial effects

17. This Order has no bearing on quota, which remains unchanged, and the closure should not prevent skippers from catching their full quota over the duration of the year. At most, the proposed targeted closure may lead to a reduction in fish landings for its duration, and therefore may affect incomes on a temporary basis. The fishermen should not be financially disadvantaged overall. In addition, this closure should protect the stock so that in future years there is a benefit to all fishermen.

18. The Order will not give rise to further costs to the Scottish Government. Enforcement of this Order will be achieved by virtue of existing enforcement powers, implemented by Marine Scotland Compliance.

Letter from the Cabinet Secretary for Rural Affairs and Islands to the Presiding Officer, 1 February 2022

Since 2002, SSIs have provided for a closure in the Firth of Clyde to provide an area to protect cod during their spawning season (14 February – 30 April). Since its introduction, the closure has included exemptions to allow Nephrops trawlers, creels and scallop dredgers to continue to fish in the closure area, due to the low numbers of cod they catch.

The Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2021 was laid on 10 December 2021 with the exemptions in place for Nephrops trawlers, creels and scallop dredgers. The intention, at that time, was to review these exemptions in 2022.

However, upon reconsideration of the responses from the stakeholder consultation, the scientific evidence, the advantages of having a uniform approach with other sea fisheries management measures, and the precautionary principle we decided to revoke the Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2021 and replace it with the Sea Fish (Prohibition on Fishing) (Firth of Clyde) Order 2022 which provides for the same spawning closure areas but without any exemptions. The Sea Fish (Prohibition on Fishing) (Firth of Clyde) Order 2022 was laid on 13 January 2022.

Given the vulnerability of cod to any disturbance during the spawning season, we were of the view that the measures contained in this SSI would provide a higher chance of stock recovery and contribute to a more sustainable cod fishery in the West of Scotland in the medium-longer term. It would also create consistency with fisheries management in other respects, including the UK National North Sea Cod Avoidance Plan, which covers closure areas for all gear types (excluding pelagic), and the recent emergency Marine Protected Area (MPA) designation in the Inner Sound and the related Marine Conservation Order, which includes a prohibition on creeling in order to protect the critically endangered flapper skate nursery area. However, such an approach would clearly impact on fishers, even though the impact would be short term. Again, we reviewed the available scientific evidence to reassure ourselves that this approach was the most appropriate and proportionate. Following further discussions with scientists and stakeholders we believe that we can mitigate the impacts of the seasonal closure while maintaining the policy objective of protecting the spawning cod in the Firth of Clyde.

To that end, the Sea Fish (Prohibition On Fishing) (Firth Of Clyde) (No. 2) Order 2022 provides for reduced spawning closure areas without any exemptions. The provisions in this SSI take into account additional scientific and compliance-related data, particularly about the seabed and vessel activities, which means that we can be more precise in locating where the cod are spawning and identifying the habitats that could be used for spawning. This is a pragmatic and evidence-based solution to ensure that the spawning cod are protected whilst also mitigating the socio-economic impacts on our vulnerable coastal communities. Compared to the original closure with exemptions this provides for increased protection for spawning cod.

The Sea Fish (Prohibition on Fishing) (Firth Of Clyde) (No. 2) Order 2022, (SSI 2022/35) was made by the Scottish Ministers under sections 5(1)(a), 15(3), 20(1), 22(2) and 22A of the Sea Fish (Conservation) Act 1967 (“the 1967 Act”) and laid before the Scottish Parliament today. The Sea Fish (Prohibition on Fishing) (Firth Of Clyde) (No. 2) Order 2022 comes into force on 12 February 2022.

Section 20(5) of the 1967 Act states that a statutory instrument containing an order made under section 5 of that Act shall be subject to the negative procedure.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 sets out that a negative SSI must be laid before the Scottish Parliament at least 28 days before the instrument comes into force. On this occasion, this requirement has not been complied with and to meet the requirements of section 31(3) of that Act, this letter sets out the reasons why.

It is essential that the closure be in place when the spawning period begins on 14 February. To achieve this will mean that there is now insufficient time remaining to meet the 28-day requirement.

To ensure that the Sea Fish (Prohibited Methods of Fishing) (Firth Of Clyde) Order 2021 and the Sea Fish (Prohibition on Fishing) (Firth of Clyde) Order 2022 are revoked and, the Sea Fish (Prohibition on Fishing) (Firth of Clyde) (No. 2) Order 2022 is in place for the beginning of the spawning period, the Sea Fish (Prohibition on Fishing) (Firth of Clyde) (No. 2) Order 2022 must come into force on 12 February.

I appreciate that the process in this case has been far from ideal and that the revoking and replacing of the regulations takes up valuable parliamentary time and resource. This is not how I would have wanted this to happen. But it has been a complex issue to balance, and we will be looking to learn lessons from this. It is, however, important to remain flexible and responsive to new evidence, data and perspectives that emerge and to ensure that the approach we put in place to this closure achieves the right balance of objectives. We will continue to work closely with local stakeholders and their representatives this year to ensure that the closure continues to meet its intended policy purpose and will monitor its implementation.

I trust that this explanation will be sufficient to ensure Parliamentary support for this SSI to come into force on 12 February, i.e. in time for the spawning season. I and officials will of course be happy to continue to liaise with, provide evidence on and speak to the Sea Fish (Prohibition on Fishing) (Firth of Clyde) (No. 2) Order 2022 at the RAINE committee which had already been planned for the previous order. If your officials would like to discuss any matters arising from this order, government officials would also be happy to engage with them.