The Committee will meet at 9.30 am in Committee Room 2.

1. **Subordinate legislation:** The Committee will consider the following negative instrument—


2. **Crofting legislation:** The Committee will consider its approach to forthcoming legislation on crofting.

3. **Marine (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 3).

Peter McGrath
Clerk to the Rural Affairs and Environment Committee
Room T3.40
The Scottish Parliament
Edinburgh
Tel: 0131 348 5240
Email: peter.mcgrath@scottish.parliament.uk
The papers for this meeting are as follows—

**Agenda Item 1**

The Common Agricultural Policy (Single Farm Payment and Support Schemes and Cross-Compliance) (Scotland) Amendment Regulations 2009 (SSI 2009/391)  
RAE/S3/09/30/1

Extract from Subordinate Legislation Committee report  
RAE/S3/09/30/2

**Agenda Item 2**

Note from the Clerk  
RAE/S3/09/30/3

**Agenda Item 3**

Marshalled List of Amendments for Stage 2  
RAE/S3/09/30/4

Groupings of Amendments for Stage 2  
RAE/S3/09/30/5

Correspondence from the Scottish Government on the purpose and effect of Government amendments  
RAE/S3/09/30/6

Correspondence from the Cabinet Secretary for Rural Affairs and the Environment on Stage 2 amendments  
RAE/S3/09/30/7

**For Information**

Recent Developments  
RAE/S3/09/30/8
INSTRUMENTS SUBJECT TO ANNULMENT

The Common Agricultural Policy (Single Farm Payment and Support Schemes and Cross-Compliance (Scotland) Amendment Regulations 2009 (SSI 2009/391) (Rural Affairs and Environment Committee)


2. Correspondence between the Committee and the Scottish Government is reproduced at Appendix 2.

Questions (a) to (d) and (f)
3. There were a number of drafting errors identified – all of which have been acknowledged by the Scottish Government. The Government has indicated that it intends to correct these errors in an amending instrument to be made, possibly, in December 2009, when Commission approval is expected to an amending EC Regulation.

Question (e)
4. As drafted, the Committee considers that the effect of the provision is ambiguous. The response from the Government acknowledges that the meaning and effect of the amendment made by regulation 17 could be made clearer.

5. The provision that is amended by regulation 17 is paragraph 18(2) of Part IV, of the Schedule to the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004. Paragraph 18(1) provides for a condition that a farmer must maintain land in a condition where vegetation does not encroach on the land to the point that the land is not capable of being used to produce agricultural products, or to put the land in such condition by any time during the growing season (by a particular date).

6. Paragraph 18(2) provides an exception. It provides that paragraph 18(1) does not apply in 2 cases (a) or (b) (encroachment on the land of native species of woodland etc, or where there is no degradation of the environmental and agricultural value of the land, and the farmer has met certain other conditions).

7. The amendment in regulation 17 of these Regulations inserts before these categories (a) or (b), the condition that the paragraph 18(1) requirement does not apply “to land managed under an agri-environmental scheme funded under the Scotland Rural Development Programme 2007 to 2013.” It is not clear whether
8. The Government agrees that this ambiguity needs to be resolved. It appears that the exception only applies to land managed under agri-environmental schemes, and only (additionally) to the extent as set out in subparagraphs (a) and (b). The meaning and effect of the provision needs to be made clearer.

**Question (g)**

9. The Committee asked why the definition of “Commission Regulation 1655/2004” was added in regulation 3(g), or if it is superfluous to the 2005 Regulations as now amended, as this definition is not used either in the principal 2005 Regulations or the amending Regulations.

10. The response explains that it is added by this instrument “to make good an omission from the interpretation section”, but the rest of the response does not explain why it is added, that is, where the definition is otherwise used.

11. Relative to the other drafting errors in the instrument, the Committee considers this apparently superfluous definition of Regulation 1655/2004 to be only a minor drafting point.

**Breach of the 21 day rule**

12. The instrument breaches the 21 day rule between the date of laying and coming into force, and so a letter explaining the breach has been provided to the Presiding Officer. In terms of the timing, the breach is quite minor – 19 days have been allowed rather than the required 21 days.

13. The explanation for the breach is that it was required to have the amendments in place by 1 December 2009, which is the first permissible date for settling claims made under the Single Farm Payment Scheme. It had been the Government’s intention to incorporate other changes arising from other amendments to a Commission Regulation, so the Parliament could consider an instrument also including provisions implementing those EC amendments. There was a delay in publication of this Commission Regulation, and so this instrument had to be further revised, resulting in a breach of the 21 day rule, for the instrument to come into force on 1 December.

14. The Committee notes that a fuller explanation of the particular Commission Regulation, along with why a delay in its publication resulted in the instrument having to be laid on 11 November (therefore breaching the rule for the instrument to come into force on 1 December) would have been useful to the Committee.

15. The Committee finds the explanation provided by the Scottish Government for not complying with the 21 day rule in bringing the Regulations into force satisfactory for its interests.
16. The Committee draws to the attention of the lead committee that it would have been useful to the Committee if the explanation for the breach of the 21 day rule had offered a fuller explanation of the Commission Regulation referred to, and of the circumstances in which the delay in publication of that Regulation led to the instrument being laid on 11 November 2009, so as to breach the rule.

17. The Committee reports to the lead Committee and to Parliament that there are various drafting errors, namely—

- in regulation 7, the Government has explained that this should propose an amendment to regulation 6 of the principal Regulations rather than to regulation 9;

- in regulation 8(2)(a), the amendment at the end of regulation 19(2)(d) of the 2005 Regulations should be to substitute “and” for “;” rather than the other way round;

- in regulation 12(2), the reference to the definition of “specified record” being substituted incorrectly refers to that provision as contained in paragraph 2(1) of schedule 5, rather than in schedule 4;

- in regulation 16(c), inserting the definition of “Council Regulation 73/2009”, the title of “Commission Regulation” is an error;

- in regulation 16(c), the definition of “abstraction” should be a definition of “abstracting”, because the latter word is used in regulation 18.

18. The Committee notes that the Government has indicated that it will correct these errors by amendment, and it may do so in December 2009. Given the number of drafting errors, the Committee considers that an amendment should be effected as soon as possible.

19. In relation to the first bullet point above, the Committee considers that the error does affect the operation of the provisions because it is not clear which regulation is being amended, but that otherwise the errors are not likely to affect the validity or operation of the instrument.

20. The Committee also reports that in regulation 17, the meaning and effect of the words inserted in the Schedule, Part IV, paragraph 18(2) of the principal Regulations could be clearer. This may affect the operation of the provisions, and the Government has again indicated that it will correct this to make the meaning and effect clearer.
APPENDIX 2

The Common Agricultural Policy (Single Farm Payment and Support Schemes and Cross-Compliance) (Scotland) Amendment Regulations 2009 (SSI 2009/391)

On 20th November the Scottish Government was asked:

(a) In regulation 7, whether the reference to “Article 44(3) of Council Regulation 1782/2003” is correct (rather than Article 25(3) of Commission Regulation 795/2004)? If not, what is the effect of this?

(b) In regulation 8(2)(a), whether the amendment at the end of regulation 19(2)(d) of the 2005 Regulations should be to substitute “and” for “;” rather than the other way round? If so, what is the effect of this?

(c) In regulation 12(2), whether the reference to the definition of “specified record” being substituted correctly refers to that provision as contained in paragraph 2(1) of schedule 5 (rather than in schedule 4)? If not, what is the effect of this?

(d) In regulation 16 (c), inserting the definition of “Council Regulation 73/2009” into the 2004 “Cross Compliance Regulations”, given that the title of “Commission Regulation” appears not to be correct (and inconsistent with the reference in regulation 3(g)), what is the effect of this?

(e) In regulation 17, to explain the meaning and effect of the words inserted in the Schedule, Part IV, paragraph 18(2), as they relate to the following sub-paragraphs (a) and (b) in that paragraph?

Could the meaning and effect be made clearer, as to whether the inserted reference to “land managed under an agri-environmental scheme…..” means that the requirement in paragraph 18(1) does not apply to each of that land, and the circumstances set out in sub-paragraphs (a) and (b); or alternatively that the requirement does not apply to such land, and the circumstances of (a) and (b) are further circumstances or conditions for the requirement not to apply?

(f) In regulation 16 (c), whether the definition of “Abstraction” should instead be a definition of “abstracting”, given the latter word is used in regulation 18 (it appears once only), and if so, what is the effect of this?

(g) why is the definition of “Commission Regulation 1655/2004” added in regulation 3(g), or is it superfluous to the 2005 Regulations as now amended?
The Scottish Government responds as follows:

(a) The reference is incorrect. This reference should propose an amendment to regulation 6 of the principal regulations rather than to regulation 9. The Scottish Government is grateful to the Committee for pointing this matter out and it will be corrected at the next appropriate legislative opportunity.

(b) The reference is incorrect. This does not, however alter the full sense of the regulation for the reader. The Scottish Government is grateful to the Committee for pointing this matter out and it will be corrected at the next appropriate legislative opportunity.

(c) The reference is incorrect. The reference to "contained in paragraph 2(1) of Schedule 5" is incorrect, however regulation 12 is correctly head noted as referring to Schedule 4 and regulation 12(1) again correctly refers to Schedule 4. As there is no definition of "specified record" in Schedule 5 it will be clear to the reader that the reference is erroneous and will have no effect on the overall sense of regulation 12. The Scottish Government is grateful to the Committee for pointing this matter out and it will be corrected at the next appropriate legislative opportunity.

(d) The reference is incorrect. The reference to "Council Regulation 73/2009" is correct and places the regulation correctly in the alphabetical list of definitions. This instrument is well known throughout the farming industry as it introduces the CAP Health Check proposals. The reference to this as a "Commission" rather than a "Council" Regulation should not affect the reader's understanding of this regulation. The Scottish Government is grateful to the Committee for pointing this matter out and it will be corrected at the next appropriate legislative opportunity.

(e) The text could be made clearer. The intention of the amendment is to make clear that the exception only applies to land managed under agri-environmental schemes and only to the extent as set out in sub-paragraphs (a) and (b) i.e. the first interpretation proposed in the Committee's note. The Scottish Government is grateful to the Committee for pointing this matter out and it will be corrected at the next appropriate legislative opportunity.

(f) The term "Abstraction" is considered appropriate in regulation 16(c) as this is the defined term used in the Water Environment and Water Services (Scotland) Act 2003. In our view it is appropriate to define such a widely known term to avoid uncertainty. Although the term "abstracting" is used only once in our view this will be read in context. The Scottish Government is grateful to the Committee for pointing this matter out and it will be corrected at the next appropriate legislative opportunity.

(g) The definition of Commission Regulation 1655/2004 is added by this instrument to make good an omission from the interpretation section. This is a technical Regulation in the sense that it was to address a particular set of
circumstances in some Member States. Prior to 2005, modulation was optional but the 2005 regulations brought in a compulsory element to replace the previous optional arrangements. There would have been no difficulty if the same percentage reductions were applied but the compulsory rate was lower than the previous optional rates and this created a funding deficit. Regulation 1655/2004 was intended to give affected Member States the powers to levy the difference in order to meet their funding requirements. The addition to the interpretation section is intended to leave the reader in no doubt as to the applicable Regulation.

In the case of the proposed corrections mentioned above, it may be possible for the Scottish Government to attend to these in an amending instrument to be made in December 2009 when Commission approval is given to an amending EC Regulation.
Background

1. Following the statement to the Parliament by the First Minister on 3 September 2009, and recent further public statements by the Minister for Environment, it is expected that a bill to make provision in relation to crofting will be introduced before Christmas. It is likely that the Rural Affairs and Environment Committee will be designated lead committee.

2. The purpose of this paper is to allow the Committee to take certain decisions in relation to practical arrangements for its consideration of the bill at Stage 1 in advance of the bill’s introduction to Parliament.

Consideration at Stage 1

Written evidence

3. If the Committee is minded to issue an open call for written evidence, it would be useful to do so as soon as possible following introduction of the bill, to allow individuals/organisations ample opportunity to respond. The Committee is therefore invited to authorise the clerks to issue a call for written evidence on the day after the bill is introduced.

Fact-finding visits and external meetings

4. The Committee may wish to hold a meeting outside Edinburgh on the bill or to undertake informal fact-finding visits to inform its scrutiny of the bill. External meetings require the prior approval of the Conveners Group and the Parliamentary Bureau. Fact-finding visits require the prior approval of the Conveners Group. The Committee is invited to authorise the Convener to make bids for any such visits or meetings on its behalf. This will not preclude the Committee discussing and agreeing upon particular visits or external meeting locations at another meeting in the near future.

Oral evidence – witness expenses

5. It is also proposed that the Committee delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses in respect of consideration of this bill.

Agenda items taken in private

6. It has been standard working practice for this Committee to consider certain items in private such as:

- the selection of witnesses to attend evidence sessions;
- possible locations for visits or external meetings;
- the review of evidence heard earlier at formal meetings; and

1 http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-09/sor0903-01.htm
• the consideration of drafts of committee reports.

7. The Committee may wish to agree to take all such items of business, in relation to the bill, in private.

Recommendation

8. The Committee is invited to agree—

a) that the clerks should issue a call for written evidence following introduction of the bill;

b) to authorise the Convener to make bids to the Conveners Group (and where necessary the Parliamentary Bureau) for any fact-finding visits or external meeting held as part of the Committee’s scrutiny of the bill;

c) to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses called to give evidence on the bill; and

d) to hold agenda items on the bill listed under paragraph 6 in private at future meetings.

Roz Wheeler
Senior Assistant Clerk
3rd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

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Amendments marked * are new (including manuscript amendments) or have been altered.

Section 78

Stuart McMillan

235 In section 78, page 45, line 18, at end insert <including the United Kingdom Hydrographic Office, to allow the content of such orders to inform—

(a) navigational charts, and

(b) notices to mariners.>

Section 79

Karen Gillon

236 In section 79, page 45, line 31, at end insert—

<(A1) The Scottish Ministers must, before deciding to—

(a) make a marine conservation order (whether in accordance with section 76 or an urgent marine conservation order in accordance with section 77),

(b) amend a marine conservation order,

give any persons who considers that their economic position could be materially disadvantaged as a result of any such decision, the opportunity of making oral or written representations to Scottish Ministers or to any person appointed by them for that purpose at a hearing.>

Karen Gillon

237 In section 79, page 45, line 40, after <subsection> insert <(A1) or>
After section 79

Liam McArthur

238 After section 79, insert—

Duty to assess impact of restriction and prohibition of activities

(1) The Scottish Ministers must assess the potential impact of—

(a) the restriction or prohibition of an activity within the area, or

(b) the displacement of an activity to another part of the Scottish marine area,

where the activity has been restricted or (as the case may be) prohibited as a
consequence of an order made under section 74(1)(a), (b) or (d).

(2) The assessment must include the extent to which the restriction or prohibition of the
activity would have an adverse impact on—

(a) commercial interests,

(b) the environment elsewhere in the Scottish marine area as a result of the activity
being displaced.

(3) Where, following an assessment, the Scottish Ministers identify an adverse impact under
subsection (2), they must take such steps as they consider are reasonable to minimise it
as far as is practicable.

Section 82

Robin Harper

189 In section 82, page 46, line 37, at end insert <, imprisonment for a period not exceeding 2 years,
or both.>

Section 83

Stuart McMillan

239 In section 83, page 47, line 27, leave out <£50,000> and insert <£5,000>

Robin Harper

190 In section 83, page 47, line 28, at end insert <, imprisonment for a period not exceeding 2 years,
or both.>

Section 84

Stuart McMillan

240 In section 84, page 48, line 15, leave out <£50,000> and insert <£5,000>
After section 84

Robin Harper

241 After section 84, insert—

<Offences relating to Surfing MPAs

(1) A person commits an offence under this section if the person—

(a) intentionally or recklessly does a prohibited act in a Surfing MPA (the “protected area”), and

(b) the act has significantly hindered, or may significantly hinder, the achievement of the stated objectives for the protected area.

(2) For the purpose of subsection (1), a person does a prohibited act if the person carries out works or activities in the area which (or which are likely to)—

(a) damage or interfere with a Surfing MPA,

(b) have a significant impact on the protected area.>

Section 85

Robin Harper

242 In section 85, page 49, line 1, after <act,> insert—

<( ) the act occurred on the seaward side of the 0-6 nautical mile fisheries zone in a location where foreign vessels have fishing rights,>
Section 87

Bill Wilson

168 In section 87, page 49, line 27, leave out from beginning to <all> in line 28 and insert <A marine management scheme must be established for each>

Robin Harper

244 In section 87, page 49, line 30, at end insert—

<( ) any Surfing MPA,>

Robin Harper

245 In section 87, page 49, line 36, after the first <MPA> insert <, a Surfing MPA>

Bill Wilson

169 In section 87, page 50, line 1, leave out <relevant authority’s (or authorities’) functions> and insert <functions of a relevant authority (or of 2 or more relevant authorities acting together)>

Robin Harper

246 In section 87, page 50, line 7, at end insert—

<( ) the stated preservation objectives for any Surfing MPA to which the scheme applies,>

Bill Wilson

170 In section 87, page 50, line 17, after <area> insert <directed in writing by the Scottish Ministers to establish a marine management scheme (whether on its own or together with another relevant authority or other relevant authorities)>

Section 89

Elaine Murray

191 In section 89, page 50, line 28, at end insert—

<( ) The relevant authority (or authorities acting together) must have regard to any representations made to it by Scottish Natural Heritage under subsection (1).>

After section 90

Elaine Murray

247 After section 90, insert—
Nature Conservation MPAs: duty to review achievement of stated objectives

(1) At the end of a period mentioned in subsection (3), the appropriate statutory conservation body must carry out an assessment of the extent to which the stated conservation objectives of a designated Nature Conservation MPA have been achieved.

(2) An assessment under subsection (1) may also include an assessment of the contribution of any relevant marine management scheme to the achievement of the objectives.

(3) The periods are—
   (a) the period of 5 years beginning with the date on which the area was designated under section 58(1)(a),
   (b) each subsequent period of 5 years.

Section 91

Richard Lochhead

175 In section 91, page 51, line 20, leave out <120 of the Marine and Coastal Access Act 2009 (c.00)> and insert <124 of the 2009 Act>

Robin Harper

248 In section 91, page 51, line 25, at end insert—
   <( ) Surfing MPAs,>

Robin Harper

249 In section 91, page 51, line 32, at end insert—
   <( ) in relation to each Surfing MPA—
      (i) its size,
      (ii) the stated purpose,>

Robin Harper

250 In section 91, page 52, line 6, at end insert—
   <( ) in relation to each Surfing MPA (whether in a designation order made before or during the relevant period)—
      (i) the extent to which in the opinion of the Scottish Ministers the stated purpose has been achieved,
      (ii) any further steps which in their opinion are required to be taken in order to contribute to the achievement of that purpose,>

Liam McArthur

192 In section 91, page 52, line 17, at end insert—
   <( ) information about—
      (i) any amendment to a marine conservation order, or>
(ii) any amendment to or update of a marine management scheme, made during the relevant period as a result of monitoring the effectiveness of the order or scheme,

Richard Lochhead
171 In section 91, page 52, line 20, leave out from <an> to the end of line 26 and insert <the objective in section (Creation of network of conservation sites)(2).>

Richard Lochhead
172 In section 91, page 52, leave out lines 28 to 30

Richard Lochhead
173 In section 91, page 52, leave out lines 35 and 36

Section 92

Richard Lochhead
79 In section 92, page 53, line 1, leave out <Marine and Coastal Access Act 2009 (c.00)> and insert <2009 Act>

Richard Lochhead
80 In section 92, page 53, line 18, leave out <Marine and Coastal Access Act 2009> and insert <2009 Act>

Section 94

Richard Lochhead
81 In section 94, page 53, line 33, at end insert—

<“animal” includes any egg, larva, pupa or other immature stage of an animal,>

Robin Harper
251 In section 94, page 54, line 13, at end insert—

<“stated preservation objectives” for a Surfing MPA means the preservation objectives stated (in the designation order designating the area) as the preservation objectives for the area,>

After section 94

Robin Harper
272* After section 94, insert—
PART
MARINE LITTER STRATEGY

Marine litter strategy

(1) Scottish Ministers must prepare a marine litter strategy for the Scottish marine area.

(2) The objective of the strategy is to reduce the total load of marine litter in the marine environment, and ensure that the properties and quantity of marine litter is such as to be below a level which causes an adverse impact on—
   (a) the health of the marine environment,
   (b) navigational safety.

(3) The strategy must—
   (a) define or elaborate on the threshold at which marine litter has such an adverse impact, with reference to—
      (i) the volume of marine litter on the seabed, on the sea surface, in the water column and on the coastline,
      (ii) the ecological effects of marine litter,
      (iii) the degradation of marine litter,
      (iv) the adverse social and economic consequences of marine litter,
   (b) include an assessment of the incidence of marine littering and its likely sources,
   (c) include such maps, diagrams or illustrations as are determined by the Scottish Ministers to be appropriate to the purpose of the strategy, and
   (d) include policies and programmes aimed at the prevention and removal of marine litter, including awareness raising of the consequences of marine littering.

(4) For the purposes of this section, “marine litter” includes any persistent, manufactured or processed solid material in the sea or on the seashore.

(5) Before finalising the text of the strategy, the Scottish Ministers must—
   (a) consult such persons as they consider are likely to be interested in or affected by the implementation of the strategy, and
   (b) have regard to any representations made in response.

(6) The Scottish Ministers must publish the strategy—
   (a) no later than 3 years after this section comes into force, and
   (b) in such manner as they consider is most likely to bring it to the attention of interested persons.

(7) The Scottish Ministers must, no later than 2 years after the publication of the strategy, and within each subsequent 2 years, lay a report before the Parliament assessing the extent to which in the opinion of the Scottish Ministers the objective under subsection (2) has been achieved.

(8) The Scottish Ministers may—
   (a) review any strategy they have prepared under this section from time to time and, following such a review, revise it, and
consult such persons as they consider are likely to be interested in or affected by the implementation of the strategy before finalising the text of any revised strategy.

Robin Harper

273 After section 94, insert—

**PART CETACEAN SANCTUARY**

_Cetacean sanctuary_

(1) The Scottish marine area is designated as a cetacean sanctuary.

(2) If it appears that the action of any person may have resulted, or may have been likely to have resulted in the unintentional killing or injury of a cetacean, that person must report this to Scottish Natural Heritage as soon as reasonably practicable.

Robin Harper

274 After section 94, insert—

**PART PROTECTION OF MARINE EUROPEAN PROTECTED SPECIES**

_Guidance as regards protection of marine European Protected Species_

(1) Scottish Natural Heritage must prepare and issue guidance setting out recommendations, advice and information on—

(a) the avoidance of action which may constitute an offence under regulation 39 of the Conservation (Natural Habitats, &c.) Regulations as amended, and

(b) the protection from all injury and disturbance, in respect of marine European Protected Species.

(2) Scottish Natural Heritage must review the guidance from time to time and may, following such a review, revise it.

(3) Scottish Natural Heritage must—

(a) before preparing the guidance, and

(b) when reviewing it,

consult such persons appearing to it to have an interest in the protection of marine European Protected Species and consult such other persons as it thinks fit.

(4) Scottish Natural Heritage must—

(a) publish the guidance and any revisions to it in such manner (including on the internet or by other electronic means) as it thinks fit, and

(b) promote awareness and understanding of the guidance and any revisions to it.

(5) A person’s failure to comply with any provision of the guidance or any revisions to it does not in itself render the person liable to proceedings of any sort.

(6) In any proceedings for an offence under this Act or any other relevant enactment—
(a) failure to comply with a relevant provision of the guidance or any revisions to it may be relied upon as tending to establish liability,

(b) compliance with a relevant provision of the guidance or any revisions to it may be relied upon as tending to negative liability.

(7) In this section, “marine European Protected Species” means those species which are listed in Annex IV(a) of the Habitats Directive, and whose natural range includes any part of the Scottish marine area.

Section 95

Elaine Murray

275 In section 95, page 54, line 29, after <injuring> insert <, disturbing, harassing>

Elaine Murray

276 In section 95, page 54, line 29, at end insert—

<(  ) Obstructing access to a seal haul-out site is an offence.>

Section 97

Richard Lochhead

82 In section 97, page 55, line 23, leave out <or an authorisation granted under section 107>

Richard Lochhead

83 In section 97, page 55, line 26, leave out <or an authorisation granted under section 107>

Richard Lochhead

84 In section 97, page 55, line 28, leave out <or an authorisation granted under section 107>

Section 98

Elaine Murray

262 In section 98, page 56, line 1, at end insert—

<(  ) to protect the health and welfare of farmed fish,>

Elaine Murray

277 In section 98, page 56, line 2, leave out <to prevent> and insert <following serious damage to fisheries or fish farms, to prevent further>

Elaine Murray

278 In section 98, page 56, line 8, at end insert—
A licence may only be granted under subsection (1)(f) if the applicant has satisfied the Scottish Ministers that—

(a) a seal has caused serious damage to a fishery or fish farm, and

(b) all non-lethal alternatives to killing have been tried, given sufficient time to succeed, and demonstrably have not prevented serious damage occurring.

The Scottish Ministers must specify by regulations what constitutes a “non-lethal alternative” under subsection (2).

Robin Harper

279* In section 98, page 56, line 8, at end insert—

<(4) The Scottish Ministers may not grant a licence authorising the killing or taking of seals during the period when females are likely to be in an advanced stage of pregnancy or to have dependent pups.

(5) For the purposes of subsection (4), the period is—

(a) for grey seals, that is to say seals of the species Halichoerus grypus, from 1 September to 31 December inclusive,

(b) for common seals, that is to say seals of the species Phoca vitulina, from 1 June to 31 August inclusive.>

Robin Harper

280* In section 98, page 56, line 8, at end insert—

<(6) The Scottish Ministers may not grant a licence authorising the killing or taking of seals to the owner or operator of any fish farm, netting station or other fishery installation any part of which has been placed within one kilometre of a known seal haul-out site.

(7) Subsection (6) applies only to a fish farm, netting station or other fishery installation constructed or positioned after 31 December 2010.>

Section 99

Elaine Murray

281* In section 99, page 56, line 10, at end insert—

<(1A) A licence issued to kill a seal must specify the circumstances in which an individual named on the licence is authorised to shoot seals, including the requirement that there is sufficient visibility and the sea conditions are such to allow a clear shot to be taken.>

Elaine Murray

282 In section 99, page 56, line 10, at end insert—

<(1B) A licence issued to kill a seal must specify the circumstances in which an individual named on the licence is authorised to shoot seals, including the requirement that all reasonable steps have been taken to ensure that the seal does not suffer a prolonged or painful death.>
Elaine Murray

283 In section 99, page 56, line 10, at end insert—

<(1C) A licence issued to kill a seal must specify the circumstances in which an individual named on the licence is authorised to shoot seals, including the requirement that—

(a) the type of firearm to be used is specified under the licence,
(b) such an individual possesses the appropriate firearms licence, and
(c) the individual has satisfied the Scottish Ministers that they are a proficient marksman using the specified firearm.>  

Elaine Murray

284 In section 99, page 56, line 10, at end insert—

<(1D) A licence issued to kill a seal must specify the circumstances in which an individual named on the licence is authorised to shoot seals, including the requirement that a seal must not be shot from a moving boat or other unstable platform.>  

Section 100

Robin Harper

263 In section 100, page 56, line 18, after <Ministers> insert <within 30 days, and>

Elaine Murray

285 In section 100, page 56, line 18, leave out <as soon as reasonably practical after> and insert <, in accordance with subsection (1A), on the following>

Robin Harper

264 In section 100, page 56, line 19, after <practical> insert <within that period>

John Scott

286 In section 100, page 56, line 20, after first <seal> insert <, or seals,>

John Scott

287 In section 100, page 56, line 21, after first <seal> insert <, or seals,>

John Scott

288 In section 100, page 56, line 23, after <seal> insert <, or seals,>

Elaine Murray

289 In section 100, page 56, line 24, at end insert—

<( ) that the licensee has not carried out any of the activities specified in paragraph (b)(i) to (iii).>
Elaine Murray

290 In section 100, page 56, line 24, at end insert—

<( ) requiring that, when a seal has been killed, all reasonable steps be taken to recover its carcase and, if so recovered, the Natural Environment Research Council be notified of the availability of the carcase for post-mortem or research purposes.>

Elaine Murray

291 In section 100, page 56, line 24, at end insert—

<(1A ) The licensee must report to the Scottish Ministers within the specified period the information set out under subsection (1)(b) at the end of the period of 3 months after the date on which this section comes into force and at the end of each subsequent period of 3 months.>

Elaine Murray

292 In section 100, page 56, line 29, after <taken> insert <, in addition to those specified in section 99(1A), (1B), (1C) and (1D)>

After section 103

Elaine Murray

293 After section 103, insert—

<Seal licences: review

(1) The Scottish Ministers must, before the end of every second calendar year following the year in which section 98 comes into force, review the operation of seal licences.

(2) In conducting a review under subsection (1), the Scottish Ministers must—

(a) take into account scientific evidence on seal biology, welfare and behaviour and such other matters as they consider relevant to the understanding of the purposes for which seal licences may be granted, and

(b) consult such persons as they consider are likely to be interested in or affected by the review.

(3) Following a review under subsection (1), the Scottish Ministers must—

(a) consider how the operation of the provisions in this Part can be modified in order to reduce to a minimum the killing or taking of seals, and

(b) implement any such modifications that are reasonably practicable.>

Section 105

Elaine Murray

294 In section 105, page 58, line 5, after <granted> insert—

<( ) that, for licences applied for under section 98(1)(f), the Scottish Ministers are satisfied that the conditions under subsection 98(2) have been met by the applicant,>
Section 107

Richard Lochhead

85 In section 107, page 58, line 23, leave out from first <any> to <prevent> and insert <a person to enter land in order to kill or take seals in accordance with a seal licence granted for the purpose of preventing>.

Section 117

Richard Lochhead

86 In section 117, page 61, line 10, leave out <and 84> and insert <, 84, 95 and 100(4),>

Stuart McMillan

295 In section 117, page 61, line 15, leave out <subsections (4) and (5)> and insert <subsection (4)>

Stuart McMillan

265 In section 117, page 61, line 21, leave out subsections (5) to (7)

Richard Lochhead

87 In section 117, page 61, line 37, at end insert—

<“vessel” does not include aircraft.>

Section 126

Richard Lochhead

88 In section 126, page 66, line 26, at end insert—

<( ) Where a marine enforcement officer reasonably believes that a person is or has been carrying on a relevant activity, the officer may require that person to afford such facilities and assistance with respect to matters under that person’s control as the officer considers would facilitate the exercise in relation to that person of any power conferred by section 125 or this section.>

Richard Lochhead

176 In section 126, page 66, line 28, leave out <243(7) of the Marine and Coastal Access Act 2009 (c.00)> and insert <253(7) of the 2009 Act>

Section 132

Liam McArthur

296 In section 132, page 68, line 19, at end insert—

<( ) Before doing any of the things in subsection (2), the officer must take all reasonable steps to—>
(a) notify the port authority for the port to which the officer proposes that the vessel
be taken, and
(b) seek the views of the port authority as to the appropriateness of so doing.

Liam McArthur

297 In section 132, page 68, line 28, at end insert—

<(  ) The owner of a vessel or marine installation which has been detained in a port by virtue
of subsection (3) is liable to pay compensation to the relevant port authority for any
damage or loss of revenue arising from that detention.>

Section 136

Stuart McMillan

266 In section 136, page 69, line 23, leave out <if requested to do so>

Stuart McMillan

267 In section 136, page 69, line 27, leave out subsection (3)

Section 137

Stuart McMillan

268 In section 137, page 69, line 32, leave out <if requested to do so>

Stuart McMillan

269 In section 137, page 69, line 34, leave out <, if requested to do so,>

Stuart McMillan

270 In section 137, page 70, line 4, leave out subsection (5)

Section 138

Stuart McMillan

271 In section 138, page 70, line 17, at end insert—

<(  ) if the act was carried out without reasonable skill or care,>

Section 141

Richard Lochhead

90 In section 141, page 71, leave out lines 26 and 27.

Richard Lochhead

91 In section 141, page 72, line 4, at end insert—
After section 141

Richard Lochhead

After section 141, insert—

<PART

SEA FISHERIES

Extension of modifications relating to Sea Fish (Conservation) Act 1967

(1) The modifications to the Sea Fish (Conservation) Act 1967 (c.84) made by Chapter 1 of Part 7 of, and Schedules 15 and 22 to, the 2009 Act, except those mentioned in subsection (2), extend to Scotland.

(2) The modifications made by sections 194(4) and (5), 196 and 198(3) of, and paragraph 1(4) of Schedule 15 to, the 2009 Act do not extend to Scotland.

Richard Lochhead

After section 141, insert—

<Modification of section 22A of Sea Fish (Conservation) Act 1967

(1) Section 22A (application to Scotland) of the Sea Fish (Conservation) Act 1967 is modified as follows.

(2) In subsection (2) after “sections” insert “1(3B) and (9), 5(8),”.

(3) After subsection (2) insert—

“(2A) In section 1—

(a) for subsections (3) and (3A) substitute—

“(3B) Sea fish of any description which do not meet the requirements as to size prescribed in relation to sea fish of that description by an order of the Scottish Ministers must not be carried, whether within or outside the Scottish zone, on a Scottish fishing boat; and an order under this subsection may prohibit the carrying by a relevant British fishing boat or a foreign vessel in the Scottish zone of sea fish of any description prescribed by the order which do not meet the requirements as to size so prescribed in relation to sea fish of that description.”,

(b) in subsection (8) for “(3)” substitute“(3B)”,

(c) for subsection (9) substitute—

“(9) In this section—

“foreign vessel” means any vessel other than a relevant British fishing boat or a Scottish fishing boat,

“relevant British fishing boat” means a vessel, other than a Scottish fishing boat, which—

(a) is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995 (c.21), or
(b) is owned wholly by persons qualified to own British ships for the purposes of that Part of that Act.”.

(2B) In section 3—

(a) in subsection (2A) for “adjacent to England and Wales” substitute “of the United Kingdom adjacent to Scotland”,

(b) for subsection (2B) substitute—

“(2B) In subsection (2A) above—

(a) the Scottish Ministers are “the appropriate national authority”,

(b) the boundaries between the parts of the territorial sea of the United Kingdom adjacent to Scotland and the parts not so adjacent are to be determined by reference to an Order in Council made under section 126(2) of the Scotland Act 1998 (c.46) to the extent that the Order in Council is expressed to apply for the purposes of that Act.”.

(4) For subsection (6) substitute—

“(6) In section 5—

(a) in subsection (1), for “appropriate national authority” substitute “Scottish Ministers”,

(b) for subsections (8) and (9) substitute—

“(8) An order under this section may make provision—

(a) applying to Scottish fishing boats whether within or outside the Scottish zone,

(b) in any other case, applying to fishing boats within the Scottish zone.”.

(5) After subsection (9) insert—

“(9A) In section 11(1)(a), for “4(3), (6) or (9A)” substitute “4(3) or (6)”.”.

Richard Lochhead

258 After section 141, insert—

<Extension of modifications relating to Sea Fisheries (Shellfish) Act 1967

The modifications to the Sea Fisheries (Shellfish) Act 1967 (c.83) made by sections 203, 204, 206, 207, 209, 210, 211(1) and (3) and 214 of, and Part 5(A) of Schedule 22 to, the 2009 Act extend to Scotland.>

Richard Lochhead

259 After section 141, insert—

<Modification of Sea Fisheries (Shellfish) Act 1967

(1) The Sea Fisheries (Shellfish) Act 1967 (c.83) is modified as follows.

(2) In section 1 (power to make orders as to fisheries for shellfish)—

(a) omit subsection (4),

(b) after subsection (14) insert—
“(14A) Subsection (14) above has effect in relation to Scotland as if the reference to the Town and Country Planning Act 1990 were a reference to section 26 of the Town and Country Planning (Scotland) Act 1997 (c.8).”.

(3) In section 7 (protection of fisheries), in subsection (4), for “level 3 on the standard scale” substitute “£50,000”.

(4) In paragraph 6 of Schedule 1—
   (a) the existing provision is renumbered as sub-paragraph (1),
   (b) after that sub-paragraph insert—

   “(2) Where the proposed order relates to any portion of the sea shore belonging to Her Majesty in right of the Crown, the appropriate Minister must also have regard to the powers and duties of the Crown Estate Commissioners under the Crown Estate Act 1961 (c.55).”

Before section 142

Liam McArthur

260 Before section 142, insert—

<Judicial review

(1) In any application for judicial review relating to or arising out of the provisions of this Act, it will be enough for any party to show sufficient interest in order to satisfy the common law tests of title and interest.

(2) “Sufficient interest” is to be interpreted in accordance with the criteria laid out in Article 9 of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters signed at Aarhus on 25 June 1998 (“the Aarhus Convention”).

(3) In relation to the expenses associated with any judicial review proceedings under this Act, the court may impose a cap on, or otherwise regulate, the extent of liability for expenses between the parties; and such applications may be competently made at any stage of the proceedings.

(4) When determining an application made under subsection (3) above, the court is to have regard to the need to remove or reduce financial or other barriers to access to justice, in accordance with the principles laid out in Article 9 of the Aarhus Convention.

(5) In any application for judicial review under this Act, the court may competently consider both the substantive and the procedural legality of the decision, act or omission under review.>

Section 142

Richard Lochhead

92 In section 142, page 72, line 21, leave out <Part> and insert <Act>
Section 145

Liam McArthur

193 In section 145, page 73, line 23, leave out subsection (3)

Richard Lochhead

93 In section 145, page 73, line 33, at end insert

\(<(\quad)\text{ an order under section 85(2A),}>\)

Section 146

Richard Lochhead

94 In section 146, page 74, line 2, at end insert—

\(<\text{“the 2009 Act” means the Marine and Coastal Access Act 2009 (c.23),}>\)

Richard Lochhead

95 In section 146, page 74, line 10, at end insert—

\(<\text{“marine installation” means any artificial island, installation or structure (other than a vessel),}>\)

Richard Lochhead

177 In section 146, page 74, line 12, at end insert—

\(<\text{“UK marine area” has the meaning given in section 42 of the 2009 Act,}>\)

Schedule 5

Richard Lochhead

252 In schedule 5, page 88, line 17, at end insert—

\(<\text{the 2009 Act Section 146(1),}>\)

Richard Lochhead

253 In schedule 5, page 89, line 5, at end insert—

\(<\text{marine installation Section 146(1),}>\)

Richard Lochhead

254 In schedule 5, page 89, line 7, at end insert—

\(<\text{marine policy statement Section 15,}>\)

Richard Lochhead

255 In schedule 5, page 89, line 25, at end insert—
Schedule 4

Elaine Murray

174 In schedule 4, page 87, line 18, at end insert—

<Town and Country Planning (Scotland) Act 1997 (c.8)

(1) The Town and Country Planning (Scotland) Act 1997 is amended as follows.

(2) In section 26—

(a) in subsection (1), the words “or the operation of a marine fish farm in the circumstances specified in section 26AA” are repealed,

(b) in subsection (6)—

(i) after “any”, where it occurs for the third time, there is inserted “inland”,

(ii) the words from “which”, where it first occurs, to “miles”, where it first occurs, are repealed,

(iii) for the definition of “inland waters”, there is substituted ““inland waters” means waters which do not form part of the sea, as defined in section 2 of the Marine (Scotland) Act 2009 (asp 00),”

(iii) the definition of “nautical miles” is repealed,

(c) subsections (6C) to (6J) are repealed.

(3) Section 26AA is repealed.

(4) Section 31A is repealed.

(5) In section 275—

(a) in subsection (4), for the words“(6A) and (6C), 31A” there is substituted “and (6A)”,

(b) in subsection (5A), the words “or (6C)” are repealed.>

Richard Lochhead

298 In schedule 4, page 88, line 13, at end insert—

<Part

Sea Fisheries

Sea Fisheries Act 1968

In the Sea Fisheries Act 1968 (c.77), in section 15 (amendments of Sea Fisheries (Shellfish) Act 1967), subsection (2A) is repealed.

Fisheries Act 1981

(1) The Fisheries Act 1981 (c.29) is modified as follows.

(2) The following provisions are repealed—

(a) section 19(2)(e),
(b) section 22(2)(a) and (3),
(c) section 28.

(3) In paragraph 33 of Part 2 of Schedule 4 (offences to which section 33(5) applies)—
(a) for “Sea Fisheries (Conservation) Act 1967” substitute “Sea Fish (Conservation) Act 1967”,
(b) for “smaller than the prescribed size” substitute “which do not meet the prescribed size requirements”.

Sea Fish (Conservation) Act 1992
In the Sea Fish (Conservation) Act 1992 (c.60), paragraph (b) of section 5 is repealed.

Criminal Justice and Public Order Act 1994
In the Criminal Justice and Public Order Act 1994 (c.33), in Part 1 of Schedule 8 (increase in penalties), the entry relating to section 7(4) of the Sea Fisheries (Shellfish) Act 1967 is repealed.

Long Title
Elaine Murray

299 In the long title, page 1, line 1, leave out <functions and activities in> and insert <the sustainable development of>
3rd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the third day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

**Groupings of amendments**

**Marine conservation orders: publicity**
235

**Marine conservation orders: impact on economic position**
236, 237, 238

**Marine protected areas: offences**
189, 239, 190, 240

**Marine protected areas: exceptions to offences under sections 82, 83 and 84**
242, 75, 243, 76, 77, 93

**Marine protection and enhancement: marine management schemes**
168, 169, 170, 191

**Marine protection and enhancement: nature conservation MPAs – duty to review achievement of stated objectives**
247

**Definitions**
175, 79, 80, 81, 87, 176, 90, 91, 94, 95, 177

**Marine protected areas: reports to Parliament**
192

**Marine litter strategy**
272

**Cetacean sanctuary**
273
Protection of marine European protected species
274

Conservation of seals: offences
275, 276

Seal licences: power to enter land to protect fisheries or fish farms from seals
82, 83, 84, 85

Seal licences: protection of health and welfare of farmed fish
262

Seal licences: non-lethal alternatives
277, 278, 294

Seal licences: circumstances in which licences may not be granted
279, 280

Seal licences: conditions
281, 282, 283, 284, 292

Seal licences: requirement to report certain information

Notes on amendments in this group
Amendment 285 pre-empts amendment 264

Seal licences: review of operation
293

Common enforcement powers: marine protection and nature conservation legislation
86, 295, 265

Common enforcement powers: powers of seizure
88

Power to direct vessel or marine installation to port
296, 297

Duties and liability of marine enforcement officers
266, 267, 268, 269, 270, 271

Modifications of or relating to Sea Fish (Conservation) Act 1967 and Sea Fisheries (Shellfish) Act 1967
256, 257, 258, 259, 298

Judicial review
260
Crown application
92

Interpretation: general
252, 253, 254, 255

Sustainable development
299

Amendments already debated

Marine protection and enhancement: surfing marine protected areas (MPAs)
With 194 – 241, 244, 245, 246, 248, 249, 250, 251

Nature Conservation MPAs: establishment of network
With 199 – 171, 172, 173

Designation orders: procedure
With 178 - 193

Marine licensing: fishfarming
With 164 - 174
Amendments in debating order

**Marine conservation orders: publicity**

**Stuart McMillan**

In section 78, page 45, line 18, at end insert *(including the United Kingdom Hydrographic Office, to allow the content of such orders to inform—*

- navigational charts, and
- notices to mariners.*>

**Marine conservation orders: impact on economic position**

**Karen Gillon**

In section 79, page 45, line 31, at end insert—

*(A1) The Scottish Ministers must, before deciding to—*

- make a marine conservation order (whether in accordance with section 76 or an urgent marine conservation order in accordance with section 77),
- amend a marine conservation order,

give any persons who considers that their economic position could be materially disadvantaged as a result of any such decision, the opportunity of making oral or written representations to Scottish Ministers or to any person appointed by them for that purpose at a hearing.*>

**Karen Gillon**

In section 79, page 45, line 40, after *(subsection)* insert *(A1) or>*

**Liam McArthur**

After section 79, insert—

*Duty to assess impact of restriction and prohibition of activities*

(1) The Scottish Ministers must assess the potential impact of—

- the restriction or prohibition of an activity within the area, or
- the displacement of an activity to another part of the Scottish marine area,

where the activity has been restricted or (as the case may be) prohibited as a consequence of an order made under section 74(1)(a), (b) or (d).

(2) The assessment must include the extent to which the restriction or prohibition of the activity would have an adverse impact on—

- commercial interests,
- the environment elsewhere in the Scottish marine area as a result of the activity being displaced.
(3) Where, following an assessment, the Scottish Ministers identify an adverse impact under subsection (2), they must take such steps as they consider are reasonable to minimise it as far as is practicable.

Marine protected areas: offences

Robin Harper

189 In section 82, page 46, line 37, at end insert <, imprisonment for a period not exceeding 2 years, or both.>

Stuart McMillan

239 In section 83, page 47, line 27, leave out <£50,000> and insert <£5,000>

Robin Harper

190 In section 83, page 47, line 28, at end insert <, imprisonment for a period not exceeding 2 years, or both.>

Stuart McMillan

240 In section 84, page 48, line 15, leave out <£50,000> and insert <£5,000>

Marine protected areas: exceptions to offences under sections 82, 83 and 84

Robin Harper

242 In section 85, page 49, line 1, after <act,> insert—

<( ) the act occurred on the seaward side of the 0-6 nautical mile fisheries zone in a location where foreign vessels have fishing rights,>

Richard Lochhead

75 In section 85, page 49, line 3, at end insert—

<(2A) The Scottish Ministers may by order amend this section so as to remove, or restrict the application of, the defence provided by subsection (2).>

Robin Harper

243 In section 85, page 49, line 4, at end insert—

<“foreign vessel” means any vessel other than a British vessel, Scottish fishing boat or a Northern Ireland fishing boat.>

Richard Lochhead

76 In section 86, page 49, line 11, leave out <structure,> and insert <installation, and>

Richard Lochhead

77 In section 86, page 49, leave out line 12
Richard Lochhead

93 In section 145, page 73, line 33, at end insert

<( ) an order under section 85(2A),>

Marine protection and enhancement: marine management schemes

Bill Wilson

168 In section 87, page 49, line 27, leave out from beginning to <all> in line 28 and insert <A marine management scheme must be established for each>

Bill Wilson

169 In section 87, page 50, line 1, leave out <relevant authority’s (or authorities’) functions> and insert <functions of a relevant authority (or of 2 or more relevant authorities acting together)>

Bill Wilson

170 In section 87, page 50, line 17, after <area> insert <directed in writing by the Scottish Ministers to establish a marine management scheme (whether on its own or together with another relevant authority or other relevant authorities)>

Elaine Murray

191 In section 89, page 50, line 28, at end insert—

<( ) The relevant authority (or authorities acting together) must have regard to any representations made to it by Scottish Natural Heritage under subsection (1).>

Marine protection and enhancement: nature conservation MPAs – duty to review achievement of stated objectives

Elaine Murray

247 After section 90, insert—

<Nature Conservation MPAs: duty to review achievement of stated objectives

Nature Conservation MPAs: duty to review achievement of stated objectives

(1) At the end of a period mentioned in subsection (3), the appropriate statutory conservation body must carry out an assessment of the extent to which the stated conservation objectives of a designated Nature Conservation MPA have been achieved.

(2) An assessment under subsection (1) may also include an assessment of the contribution of any relevant marine management scheme to the achievement of the objectives.

(3) The periods are—

(a) the period of 5 years beginning with the date on which the area was designated under section 58(1)(a),

(b) each subsequent period of 5 years.>
Definitions

Richard Lochhead

175 In section 91, page 51, line 20, leave out <120 of the Marine and Coastal Access Act 2009 (c.00)> and insert <124 of the 2009 Act>

Richard Lochhead

79 In section 92, page 53, line 1, leave out <Marine and Coastal Access Act 2009 (c.00)> and insert <2009 Act>

Richard Lochhead

80 In section 92, page 53, line 18, leave out <Marine and Coastal Access Act 2009> and insert <2009 Act>

Richard Lochhead

81 In section 94, page 53, line 33, at end insert—

"animal" includes any egg, larva, pupa or other immature stage of an animal.

Richard Lochhead

87 In section 117, page 61, line 37, at end insert—

"vessel" does not include aircraft.

Richard Lochhead

176 In section 126, page 66, line 28, leave out <243(7) of the Marine and Coastal Access Act 2009 (c.00)> and insert <253(7) of the 2009 Act>

Richard Lochhead

90 In section 141, page 71, leave out lines 26 and 27.

Richard Lochhead

91 In section 141, page 72, line 4, at end insert—

( ) any aircraft.

Richard Lochhead

94 In section 146, page 74, line 2, at end insert—

"the 2009 Act” means the Marine and Coastal Access Act 2009 (c.23).

Richard Lochhead

95 In section 146, page 74, line 10, at end insert—

"marine installation” means any artificial island, installation or structure (other than a vessel).

Richard Lochhead

177 In section 146, page 74, line 12, at end insert—

"UK marine area” has the meaning given in section 42 of the 2009 Act,
Land protected areas: reports to Parliament

Liam McArthur

192 In section 91, page 52, line 17, at end insert—

<(  ) information about—

(i) any amendment to a marine conservation order, or
(ii) any amendment to or update of a marine management scheme,

made during the relevant period as a result of monitoring the effectiveness of the order or scheme.>

Marine litter strategy

Robin Harper

272* After section 94, insert—

<PART

MARINE LITTER STRATEGY

Marine litter strategy

(1) Scottish Ministers must prepare a marine litter strategy for the Scottish marine area.

(2) The objective of the strategy is to reduce the total load of marine litter in the marine environment, and ensure that the properties and quantity of marine litter is such as to be below a level which causes an adverse impact on—

(a) the health of the marine environment,
(b) navigational safety.

(3) The strategy must—

(a) define or elaborate on the threshold at which marine litter has such an adverse impact, with reference to—

(i) the volume of marine litter on the seabed, on the sea surface, in the water column and on the coastline,
(ii) the ecological effects of marine litter,
(iii) the degradation of marine litter,
(iv) the adverse social and economic consequences of marine litter,

(b) include an assessment of the incidence of marine littering and its likely sources,

(c) include such maps, diagrams or illustrations as are determined by the Scottish Ministers to be appropriate to the purpose of the strategy, and

(d) include policies and programmes aimed at the prevention and removal of marine litter, including awareness raising of the consequences of marine littering.

(4) For the purposes of this section, “marine litter” includes any persistent, manufactured or processed solid material in the sea or on the seashore.
(5) Before finalising the text of the strategy, the Scottish Ministers must—
   (a) consult such persons as they consider are likely to be interested in or affected by the implementation of the strategy, and
   (b) have regard to any representations made in response.

(6) The Scottish Ministers must publish the strategy—
   (a) no later than 3 years after this section comes into force, and
   (b) in such manner as they consider is most likely to bring it to the attention of interested persons.

(7) The Scottish Ministers must, no later than 2 years after the publication of the strategy, and within each subsequent 2 years, lay a report before the Parliament assessing the extent to which in the opinion of the Scottish Ministers the objective under subsection (2) has been achieved.

(8) The Scottish Ministers may—
   (a) review any strategy they have prepared under this section from time to time and, following such a review, revise it, and
   (b) consult such persons as they consider are likely to be interested in or affected by the implementation of the strategy before finalising the text of any revised strategy.

Cetacean sanctuary

Robin Harper

273 After section 94, insert—

<PART
CETACEAN SANCTUARY

Cetacean sanctuary

(1) The Scottish marine area is designated as a cetacean sanctuary.

(2) If it appears that the action of any person may have resulted, or may have been likely to have resulted in the unintentional killing or injury of a cetacean, that person must report this to Scottish Natural Heritage as soon as reasonably practicable.

Protection of marine European protected species

Robin Harper

274 After section 94, insert—
**PROTECTION OF MARINE EUROPEAN PROTECTED SPECIES**

**Guidance as regards protection of marine European Protected Species**

(1) Scottish Natural Heritage must prepare and issue guidance setting out recommendations, advice and information on—

(a) the avoidance of action which may constitute an offence under regulation 39 of the Conservation (Natural Habitats, &c.) Regulations as amended, and

(b) the protection from all injury and disturbance, in respect of marine European Protected Species.

(2) Scottish Natural Heritage must review the guidance from time to time and may, following such a review, revise it.

(3) Scottish Natural Heritage must—

(a) before preparing the guidance, and

(b) when reviewing it,

consult such persons appearing to it to have an interest in the protection of marine European Protected Species and consult such other persons as it thinks fit.

(4) Scottish Natural Heritage must—

(a) publish the guidance and any revisions to it in such manner (including on the internet or by other electronic means) as it thinks fit, and

(b) promote awareness and understanding of the guidance and any revisions to it.

(5) A person’s failure to comply with any provision of the guidance or any revisions to it does not in itself render the person liable to proceedings of any sort.

(6) In any proceedings for an offence under this Act or any other relevant enactment—

(a) failure to comply with a relevant provision of the guidance or any revisions to it may be relied upon as tending to establish liability,

(b) compliance with a relevant provision of the guidance or any revisions to it may be relied upon as tending to negative liability.

(7) In this section, “marine European Protected Species” means those species which are listed in Annex IV(a) of the Habitats Directive, and whose natural range includes any part of the Scottish marine area.

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**Conservation of seals: offences**

Elaine Murray

275 In section 95, page 54, line 29, after <injuring> insert <, disturbing, harassing>

Elaine Murray

276 In section 95, page 54, line 29, at end insert—

<( ) Obstructing access to a seal haul-out site is an offence>
Seal licences: power to enter land to protect fisheries or fish farms from seals

Richard Lochhead

82 In section 97, page 55, line 23, leave out <or an authorisation granted under section 107>

Richard Lochhead

83 In section 97, page 55, line 26, leave out <or an authorisation granted under section 107>

Richard Lochhead

84 In section 97, page 55, line 28, leave out <or an authorisation granted under section 107>

Richard Lochhead

85 In section 107, page 58, line 23, leave out from first <any> to <prevent> and insert <a person to enter land in order to kill or take seals in accordance with a seal licence granted for the purpose of preventing>

Seal licences: protection of health and welfare of farmed fish

Elaine Murray

262 In section 98, page 56, line 1, at end insert—

<(  ) to protect the health and welfare of farmed fish,>

Seal licences: non-lethal alternatives

Elaine Murray

277 In section 98, page 56, line 2, leave out <to prevent> and insert <following serious damage to fisheries or fish farms, to prevent further>

Elaine Murray

278 In section 98, page 56, line 8, at end insert—

<(2) A licence may only be granted under subsection (1)(f) if the applicant has satisfied the Scottish Ministers that—

(a) a seal has caused serious damage to a fishery or fish farm, and

(b) all non-lethal alternatives to killing have been tried, given sufficient time to succeed, and demonstrably have not prevented serious damage occurring.

(3) The Scottish Ministers must specify by regulations what constitutes a “non-lethal alternative” under subsection (2).>
Elaine Murray

294 In section 105, page 58, line 5, after <granted> insert—

   <(  ) that, for licences applied for under section 98(1)(f), the Scottish Ministers are satisfied that the conditions under subsection 98(2) have been met by the applicant,>

Seal licences: circumstances in which licences may not be granted

Robin Harper

279* In section 98, page 56, line 8, at end insert—

   <(4) The Scottish Ministers may not grant a licence authorising the killing or taking of seals during the period when females are likely to be in an advanced stage of pregnancy or to have dependent pups.

   (5) For the purposes of subsection (4), the period is—

   (a) for grey seals, that is to say seals of the species Halichoerus grypus, from 1 September to 31 December inclusive,

   (b) for common seals, that is to say seals of the species Phoca vitulina, from 1 June to 31 August inclusive.>

Robin Harper

280* In section 98, page 56, line 8, at end insert—

   <(6) The Scottish Ministers may not grant a licence authorising the killing or taking of seals to the owner or operator of any fish farm, netting station or other fishery installation any part of which has been placed within one kilometre of a known seal haul-out site.

   (7) Subsection (6) applies only to a fish farm, netting station or other fishery installation constructed or positioned after 31 December 2010.>

Seal licences: conditions

Elaine Murray

281* In section 99, page 56, line 10, at end insert—

   <(1A) A licence issued to kill a seal must specify the circumstances in which an individual named on the licence is authorised to shoot seals, including the requirement that there is sufficient visibility and the sea conditions are such to allow a clear shot to be taken.>

Elaine Murray

282 In section 99, page 56, line 10, at end insert—

   <(1B) A licence issued to kill a seal must specify the circumstances in which an individual named on the licence is authorised to shoot seals, including the requirement that all reasonable steps have been taken to ensure that the seal does not suffer a prolonged or painful death.>
Elaine Murray

283 In section 99, page 56, line 10, at end insert—

<(1C) A licence issued to kill a seal must specify the circumstances in which an individual named on the licence is authorised to shoot seals, including the requirement that—

(a) the type of firearm to be used is specified under the licence,

(b) such an individual possesses the appropriate firearms licence, and

(c) the individual has satisfied the Scottish Ministers that they are a proficient marksman using the specified firearm.>

Elaine Murray

284 In section 99, page 56, line 10, at end insert—

<(1D) A licence issued to kill a seal must specify the circumstances in which an individual named on the licence is authorised to shoot seals, including the requirement that a seal must not be shot from a moving boat or other unstable platform.>

Elaine Murray

292 In section 100, page 56, line 29, after <taken> insert <, in addition to those specified in section 99(1A), (1B), (1C) and (1D)>

Seal licences: requirement to report certain information

Robin Harper

263 In section 100, page 56, line 18, after <Ministers> insert <within 30 days, and>

Elaine Murray

285 In section 100, page 56, line 18, leave out <as soon as reasonably practical after> and insert <, in accordance with subsection (1A), on the following>

Robin Harper

264 In section 100, page 56, line 19, after <practical> insert <within that period>

John Scott

286 In section 100, page 56, line 20, after first <seal> insert <, or seals,>

John Scott

287 In section 100, page 56, line 21, after first <seal> insert <, or seals,>

John Scott

288 In section 100, page 56, line 23, after <seal> insert <, or seals,>

Elaine Murray

289 In section 100, page 56, line 24, at end insert—
Elaine Murray

290 In section 100, page 56, line 24, at end insert—

<( ) requiring that, when a seal has been killed, all reasonable steps be taken to recover its carcase and, if so recovered, the Natural Environment Research Council be notified of the availability of the carcase for post-mortem or research purposes.>

Elaine Murray

291 In section 100, page 56, line 24, at end insert—

<(1A ) The licensee must report to the Scottish Ministers within the specified period the information set out under subsection (1)(b) at the end of the period of 3 months after the date on which this section comes into force and at the end of each subsequent period of 3 months.>

Seal licences: review of operation

Elaine Murray

293 After section 103, insert—

<Seal licences: review

(1) The Scottish Ministers must, before the end of every second calendar year following the year in which section 98 comes into force, review the operation of seal licences.

(2) In conducting a review under subsection (1), the Scottish Ministers must—

(a) take into account scientific evidence on seal biology, welfare and behaviour and such other matters as they consider relevant to the understanding of the purposes for which seal licences may be granted, and

(b) consult such persons as they consider are likely to be interested in or affected by the review.

(3) Following a review under subsection (1), the Scottish Ministers must—

(a) consider how the operation of the provisions in this Part can be modified in order to reduce to a minimum the killing or taking of seals, and

(b) implement any such modifications that are reasonably practicable.>

Common enforcement powers: marine protection and nature conservation legislation

Richard Lochhead

86 In section 117, page 61, line 10, leave out <and 84> and insert <, 84, 95 and 100(4),>

Stuart McMillan

295 In section 117, page 61, line 15, leave out <subsections (4) and (5)> and insert <subsection (4)>
Stuart McMillan
265 In section 117, page 61, line 21, leave out subsections (5) to (7)

Common enforcement powers: powers of seizure

Richard Lochhead
88 In section 126, page 66, line 26, at end insert—

<(  ) Where a marine enforcement officer reasonably believes that a person is or has been carrying on a relevant activity, the officer may require that person to afford such facilities and assistance with respect to matters under that person’s control as the officer considers would facilitate the exercise in relation to that person of any power conferred by section 125 or this section.>

Power to direct vessel or marine installation to port

Liam McArthur
296 In section 132, page 68, line 19, at end insert—

<(  ) Before doing any of the things in subsection (2), the officer must take all reasonable steps to—

(a) notify the port authority for the port to which the officer proposes that the vessel be taken, and
(b) seek the views of the port authority as to the appropriateness of so doing.>

Liam McArthur
297 In section 132, page 68, line 28, at end insert—

<(  ) The owner of a vessel or marine installation which has been detained in a port by virtue of subsection (3) is liable to pay compensation to the relevant port authority for any damage or loss of revenue arising from that detention.>

Duties and liability of marine enforcement officers

Stuart McMillan
266 In section 136, page 69, line 23, leave out <if requested to do so>

Stuart McMillan
267 In section 136, page 69, line 27, leave out subsection (3)

Stuart McMillan
268 In section 137, page 69, line 32, leave out <if requested to do so>

Stuart McMillan
269 In section 137, page 69, line 34, leave out <, if requested to do so,>
Stuart McMillan
270 In section 137, page 70, line 4, leave out subsection (5)

Stuart McMillan
271 In section 138, page 70, line 17, at end insert—

\(<( )\) if the act was carried out without reasonable skill or care,>"

Richard Lochhead
256 After section 141, insert—

\(<\textsc{part}\)

\textsc{sea fisheries}

\textit{Extension of modifications relating to Sea Fish (Conservation) Act 1967}

(1) The modifications to the Sea Fish (Conservation) Act 1967 (c.84) made by Chapter 1 of Part 7 of, and Schedules 15 and 22 to, the 2009 Act, except those mentioned in subsection (2), extend to Scotland.

(2) The modifications made by sections 194(4) and (5), 196 and 198(3) of, and paragraph 1(4) of Schedule 15 to, the 2009 Act do not extend to Scotland.>

Richard Lochhead
257 After section 141, insert—

\(<\textsc{modification of section 22A of Sea Fish (Conservation) Act 1967}\)

(1) Section 22A (application to Scotland) of the Sea Fish (Conservation) Act 1967 is modified as follows.

(2) In subsection (2) after “sections” insert “1(3B) and (9), 5(8),”.

(3) After subsection (2) insert—

“(2A) In section 1—

(a) for subsections (3) and (3A) substitute—

“(3B) Sea fish of any description which do not meet the requirements as to size prescribed in relation to sea fish of that description by an order of the Scottish Ministers must not be carried, whether within or outside the Scottish zone, on a Scottish fishing boat; and an order under this subsection may prohibit the carrying by a relevant British fishing boat or a foreign vessel in the Scottish zone of sea fish of any description prescribed by the order which do not meet the requirements as to size so prescribed in relation to sea fish of that description.”,

(b) in subsection (8) for “(3)” substitute “(3B)”,

(c) for subsection (9) substitute—

“(9) In this section—
“foreign vessel” means any vessel other than a relevant British fishing boat or a Scottish fishing boat,

“relevant British fishing boat” means a vessel, other than a Scottish fishing boat, which—

(a) is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995 (c.21), or

(b) is owned wholly by persons qualified to own British ships for the purposes of that Part of that Act.”.

(2B) In section 3—

(a) in subsection (2A) for “adjacent to England and Wales” substitute “of the United Kingdom adjacent to Scotland”,

(b) for subsection (2B) substitute—

“(2B) In subsection (2A) above—

(a) the Scottish Ministers are “the appropriate national authority”,

(b) the boundaries between the parts of the territorial sea of the United Kingdom adjacent to Scotland and the parts not so adjacent are to be determined by reference to an Order in Council made under section 126(2) of the Scotland Act 1998 (c.46) to the extent that the Order in Council is expressed to apply for the purposes of that Act.”.

(4) For subsection (6) substitute—

“(6) In section 5—

(a) in subsection (1), for “appropriate national authority” substitute “Scottish Ministers”,

(b) for subsections (8) and (9) substitute—

“(8) An order under this section may make provision—

(a) applying to Scottish fishing boats whether within or outside the Scottish zone,

(b) in any other case, applying to fishing boats within the Scottish zone.”.

(5) After subsection (9) insert—

“(9A) In section 11(1)(a), for “4(3), (6) or (9A)” substitute “4(3) or (6)”.”.

Richard Lochhead

258 After section 141, insert—

<Extension of modifications relating to Sea Fisheries (Shellfish) Act 1967

The modifications to the Sea Fisheries (Shellfish) Act 1967 (c.83) made by sections 203, 204, 206, 207, 209, 210, 211(1) and (3) and 214 of, and Part 5(A) of Schedule 22 to, the 2009 Act extend to Scotland.>

Richard Lochhead

259 After section 141, insert—
Modification of Sea Fisheries (Shellfish) Act 1967

(1) The Sea Fisheries (Shellfish) Act 1967 (c.83) is modified as follows.

(2) In section 1 (power to make orders as to fisheries for shellfish)—
   (a) omit subsection (4),
   (b) after subsection (14) insert—
      “(14A) Subsection (14) above has effect in relation to Scotland as if the reference to
      the Town and Country Planning Act 1990 were a reference to section 26 of the
      Town and Country Planning (Scotland) Act 1997 (c.8).”.

(3) In section 7 (protection of fisheries), in subsection (4), for “level 3 on the standard
     scale” substitute “£50,000”.

(4) In paragraph 6 of Schedule 1—
   (a) the existing provision is renumbered as sub-paragraph (1),
   (b) after that sub-paragraph insert—
      “(2) Where the proposed order relates to any portion of the sea shore belonging to
      Her Majesty in right of the Crown, the appropriate Minister must also have
      regard to the powers and duties of the Crown Estate Commissioners under the
      Crown Estate Act 1961 (c.55).”.

Richard Lochhead

298 In schedule 4, page 88, line 13, at end insert—

<PART
SEA FISHERIES

Sea Fisheries Act 1968

In the Sea Fisheries Act 1968 (c.77), in section 15 (amendments of Sea Fisheries
(Shellfish) Act 1967), subsection (2A) is repealed.

Fisheries Act 1981

(1) The Fisheries Act 1981 (c.29) is modified as follows.

(2) The following provisions are repealed—
   (a) section 19(2)(c),
   (b) section 22(2)(a) and (3),
   (c) section 28.

(3) In paragraph 33 of Part 2 of Schedule 4 (offences to which section 33(5) applies)—
   (a) for “Sea Fisheries (Conservation) Act 1967” substitute “Sea Fish (Conservation)
       Act 1967”,
   (b) for “smaller than the prescribed size” substitute “which do not meet the
       prescribed size requirements”.

Sea Fish (Conservation) Act 1992

In the Sea Fish (Conservation) Act 1992 (c.60), paragraph (b) of section 5 is repealed.
Criminal Justice and Public Order Act 1994

In the Criminal Justice and Public Order Act 1994 (c.33), in Part 1 of Schedule 8 (increase in penalties), the entry relating to section 7(4) of the Sea Fisheries (Shellfish) Act 1967 is repealed.

Judicial review

Liam McArthur

260 Before section 142, insert—

<Judicial review

(1) In any application for judicial review relating to or arising out of the provisions of this Act, it will be enough for any party to show sufficient interest in order to satisfy the common law tests of title and interest.

(2) “Sufficient interest” is to be interpreted in accordance with the criteria laid out in Article 9 of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters signed at Aarhus on 25 June 1998 (“the Aarhus Convention”).

(3) In relation to the expenses associated with any judicial review proceedings under this Act, the court may impose a cap on, or otherwise regulate, the extent of liability for expenses between the parties; and such applications may be competently made at any stage of the proceedings.

(4) When determining an application made under subsection (3) above, the court is to have regard to the need to remove or reduce financial or other barriers to access to justice, in accordance with the principles laid out in Article 9 of the Aarhus Convention.

(5) In any application for judicial review under this Act, the court may competently consider both the substantive and the procedural legality of the decision, act or omission under review.>

Crown application

Richard Lochhead

92 In section 142, page 72, line 21, leave out <Part> and insert <Act>

Interpretation: general

Richard Lochhead

252 In schedule 5, page 88, line 17, at end insert—

<the 2009 Act Section 146(1)>
Richard Lochhead

253 In schedule 5, page 89, line 5, at end insert—

<marine installation> Section 146(1)>

Richard Lochhead

254 In schedule 5, page 89, line 7, at end insert—

<marine policy statement> Section 15>

Richard Lochhead

255 In schedule 5, page 89, line 25, at end insert—

<UK marine area> Section 146(1)>

Sustainable development

Elaine Murray

299 In the long title, page 1, line 1, leave out <functions and activities in> and insert <the sustainable development of>
### Amendment number(s)

<table>
<thead>
<tr>
<th>Amendment number(s)</th>
<th>Amendment 82 - 85</th>
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### Subject

- Conservation of Seals

### Text of amendment(s)

- **Amendment 82**
  
  In section 97, page 55, line 23, leave out `<or an authorisation granted under section 107>`

- **Amendment 83**
  
  In section 97, page 55, line 26, leave out `<or an authorisation granted under section 107>`

- **Amendment 84**
  
  In section 97, page 55, line 28, leave out `<or an authorisation granted under section 107>`

- **Amendment 85**
  
  In section 107, page 58, line 23, leave out from first `<any>` to `<prevent>` and insert `<a person to enter land in order to kill or take seals in accordance with a seal licence granted for the purpose of preventing>`

### Purpose & Effect

Section 97 provides for exceptions to the offence of killing, injuring or taking a live seal created by section 95. Section 97 currently provides for killing or taking a seal “in accordance with a seal licence or an authorisation granted under section 107”. Under this wording, an authorisation under section 107 is sufficient to kill a seal. This is not the intention and amendments 82 to 85 put matters right. The amendments make clear that a licence under section 98 is needed in every case and that an authorisation under section 107 is an additional authority needed to kill seals on someone else’s land (without the landowner’s permission).
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<th>Amendment 86</th>
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<tbody>
<tr>
<td>Subject</td>
<td>Common enforcement powers in relation to seals</td>
</tr>
<tr>
<td>Text of amendment(s)</td>
<td>In section 117, page 61, line 10, leave out &lt;and 84&gt; and insert &lt;, 84, 95 and 100(4),&gt;</td>
</tr>
<tr>
<td>Purpose &amp; Effect</td>
<td>Purpose and Effect</td>
</tr>
<tr>
<td></td>
<td>Section 117(2) defines the “marine protection and nature conservation legislation” for which marine enforcement officers have common enforcement powers.</td>
</tr>
<tr>
<td></td>
<td>Amendment 86 adds into section 117(2) references to section 95 and 100(4) of the Bill. This addition provides that marine enforcement officers will have common enforcement powers in the marine environment in relation to the offences of killing, taking or injuring a live seal and of failure to comply with a seal licence condition.</td>
</tr>
<tr>
<td>Amendment number(s)</td>
<td>252 - 255</td>
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<tr>
<td><strong>Subject</strong></td>
<td>Schedule 5 - Index</td>
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<tr>
<td><strong>Text of amendment(s)</strong></td>
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</tbody>
</table>
| Amendment 252       | In schedule 5, page 88, line 17, at end insert—  
|                     | <the 2009 Act Section 146(1)> |
| Amendment 253       | In schedule 5, page 89, line 5, at end insert—  
|                     | <marine installation Section 146(1)> |
| Amendment 254       | In schedule 5, page 89, line 7, at end insert—  
|                     | <marine policy statement Section 15> |
| Amendment 255       | In schedule 5, page 89, line 25, at end insert—  
<p>|                     | &lt;UK marine area Section 146(1)&gt; |
| <strong>Purpose &amp; Effect</strong>| This group of amendments makes changes to schedule 5 to the Bill. That schedule simply provides an index of where terms used in the Bill are defined. These amendments are consequential on other amendments already discussed. |</p>
<table>
<thead>
<tr>
<th>Amendment number(s)</th>
<th>258</th>
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<tbody>
<tr>
<td><strong>Subject</strong></td>
<td><strong>Modification of the Sea Fisheries (Shellfish) Act 1967</strong></td>
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<tr>
<td><strong>Text of amendment(s)</strong></td>
<td>Amendment 258</td>
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<tr>
<td></td>
<td>After section 141 insert—</td>
</tr>
<tr>
<td></td>
<td><strong>Extension of modifications relating to Sea Fisheries (Shellfish) Act 1967</strong></td>
</tr>
<tr>
<td></td>
<td>The modifications to the Sea Fisheries (Shellfish) Act 1967 (c.83) made by sections 203, 204, 206, 207, 209, 210, 211(1) and (3) and 214 of, and Part 5(A) of Schedule 22 to, the 2009 Act extend to Scotland.</td>
</tr>
<tr>
<td><strong>Purpose &amp; Effect</strong></td>
<td>This amendment applies, as regards Scotland, the modifications to the Sea Fisheries (Shellfish) Act 1967 (“the Shellfish Act”) made by sections 203, 204, 206, 207, 209, 210, 211(1) and (3) and 214 of, and Part 5(a) of Schedule 22 to, the Marine and Coastal Access Act 2009 (“the UK Marine Act”).</td>
</tr>
<tr>
<td></td>
<td><strong>Section 203 of the UK Marine Act</strong></td>
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<tr>
<td></td>
<td>Section 203 of the UK Marine Act modifies section 1 of the Shellfish Act to continue the appropriate Minister’s powers to vary or revoke several or regulating orders made by the Minister under section 1 of the Shellfish Act, and, in addition, enables the appropriate Minister to vary or revoke several and regulating orders in order for development of the sea shore affected by such orders to proceed.</td>
</tr>
<tr>
<td></td>
<td>The latter power to vary or revoke several and regulating orders (section 1(10) of the Shellfish Act, as modified) is available where permission has been granted for a development in, on or over any part of the sea shore in respect of which such an order is in force, and that development will make it impossible or impracticable to exercise the rights conferred under that order. Before varying or revoking a several or regulating order, the appropriate Minister must consult anyone entitled to a right of fishery under such an order in the affected area, and owners and occupiers of that area, and may require those owners to provide the Minister with such information as is reasonably required to enable them to decide whether to vary or revoke the order in question.</td>
</tr>
</tbody>
</table>
In addition to varying or revoking an order, the appropriate Minister may make provision for the owner of the affected area to pay compensation to any person entitled to fishery rights under a several order as regards the area to be developed.

The effect of the amendment is to modify section 1 of the Shellfish Act to apply these provisions as regards Scotland in order that the Scottish Ministers will have the same powers as those available to Ministers in England and Wales, and that those with a right of a several fishery will have the same rights as regards an entitlement to compensation as those who have a such an entitlement in England and Wales. The reference to “appropriate Minister” in section 1 of the Shellfish Act in relation to Scotland means the Scottish Ministers (section 22(1) of the Shellfish Act).

**Section 204 of the UK Marine Act**

Section 204 of the UK Marine Act modifies section 3 of the Shellfish Act to specify the powers of grantees of regulating orders who have the right to regulate the fishery. The modification of section 3 of the Shellfish Act provides that grantees may apply monies collected by way of tolls and royalties for purposes connected with the regulation of the fishery, and not just for the improvement of the fishery as is currently the position in terms of section 3(2) of the Shellfish Act.

The provision also enables grantees to retain a portion of the tolls and royalties to recover the costs associated with applying for their order, where the order provides for this.

The effect of the amendment is to modify section 3 of the Shellfish Act to apply these provisions as regards Scotland in order that grantees may apply monies collected by way of tolls and royalties for the same purposes as grantees in England and Wales, and to enable grantees to recover the costs associated with applying for an order under section 1 of the Shellfish Act by retaining a portion of these tolls and royalties. In effect, grantees in Scotland will enjoy the same rights as those in England and Wales.

**Section 206 of the UK Marine Act**

Section 206 of the UK Marine Act modifies section 3 of the Shellfish Act to provide that where a sea fishing boat is used in the commission of an offence under section 3(3) of that Act, the master, owner and charterer (if any) of the boat is guilty of an offence. In consequence of this amendment, section 22(2) of the Shellfish Act is modified to include a definition of “master” for the purposes of that offence. That definition is in line with the definition of “master” in section 22(1) of the Sea Fish

The effect of this amendment is to modify section 3 of the Shellfish Act to apply these provisions as regards Scotland and to extend the persons who may commit an offence under section 3(3) of that Act to include the master, owner and charterer of the boat in question. The consequential modification of section 22(2) of the Shellfish Act to provide for a definition of “master” is also applied as regards Scotland. This ensures parity of approach to this offence across the UK.

Section 207 of the UK Marine Act

Section 207 of the UK Marine Act modifies section 3 of the Shellfish Act such that where a regulating order made under section 1 of the Shellfish Act enables a grantee to impose restrictions or make regulations concerning the dredging, fishing for and taking of shellfish, the grantee is able to carry into effect and to enforce those restrictions and regulations in the same way as may be done had those restrictions or regulations been imposed by the appropriate Minister under the order itself.

In addition, the modification of section 3 of the Shellfish Act by section 207 of the UK Marine Act provides that references to restrictions or regulations in section 3 of the Shellfish Act are to be read as including a reference to restrictions imposed, or regulations made, by a grantee.

Similar provision already exists as regards Scotland in section 15(2A) of the Sea Fisheries Act 1968. However, applying the modification of section 3 of the Shellfish Act by section 207 of the UK Marine Act as regards Scotland (which is the effect of this amendment) is considered to be desirable as section 3 will now apply uniformly across England, Wales and Scotland, and the modification of section 3 will now be provided for in the Shellfish Act as opposed to the Sea Fisheries Act 1968. In this way, it is hoped that the legislation will be clearer for the reader.

As a result of this approach, consequential repeal of section 15(2A) of the Sea Fisheries Act 1968 is necessary, and that is provided for under amendment 298.

Section 209 of the UK Marine Act

Section 209 of the UK Marine Act inserts a new section 4ZA into the Shellfish Act and requires the grantees of a regulating order to establish and maintain a register of current licence holders’ names and addresses and to make the register available for inspection free of charge. Copies of the register may be issued and a charge may be made for doing so.
The intention of this modification is to assist, in particular, the Gangmasters Licensing Authority in its enforcement functions under the Gangmasters Licensing Act 2004.

The effect of this amendment is to apply the provisions in section 209 of the UK Marine Act so as to introduce a requirement in relation to Scotland for grantees to maintain a register, and for that register to be publically accessible.

Section 210 of the UK Marine Act

Section 210 of the UK Marine Act modifies section 7 of the Shellfish Act to extend the protection as regards ownership currently afforded to private oyster beds to all privately owned shellfish beds for the particular type of shellfish to which the rights of ownership relate.

The effect of this amendment is to apply the provisions in section 210 of the UK Marine Act as regards Scotland and thus extend the rights under section 7 of the Shellfish Act to all privately owned shellfish beds, not just to oyster beds. In consequence of this amendment, section 7 of the Shellfish Act is further modified to provide for a definition of “relevant” shellfish.

Section 211 of the UK Marine Act

Section 211 of the UK Marine Act modifies section 7 of the Shellfish Act in relation to implements of fishing. In terms of section 7(4) of the Shellfish Act, it is an offence to use any implement of fishing except for the implements of fishing specified in section 7(a) of the Act in an area in respect of which a several order is in place or in a private oyster bed. The modification of section 7 of the Shellfish Act under section 211 of the UK Marine Act allows the appropriate Minister to specify, by or under an order under section 7(4) (a) (iii) of the Shellfish Act, other implements of fishing that may be used in areas where a right of a several fishery exists. In addition, that power may restrict the use of such implements to particular times or particular areas of the fishery.

The effect of this amendment is to apply the provisions in section 211(1) and (3) of the UK Marine Act as regards Scotland and to modify section 7 of the Shellfish Act so as to extend the Scottish Ministers’ order making powers under section 7(4) (a) (iii) of the Shellfish Act to enable them to specify the periods during which, and areas in which, those implements may be used.

The effect of this amendment ensures that the Scottish Ministers’ order making powers are equivalent to those available as regards England and Wales.
Section 214 of the UK Marine Act

Section 214 of the UK Marine Act modifies Schedule 1 to the Shellfish Act. Paragraph 4 of Schedule 1 to the Shellfish Act currently requires that where there are objections to an order under section 1 of the Shellfish Act which are considered to be neither frivolous nor irrelevant, the appropriate Minister shall appoint an inspector to carry out an inquiry into the subject matter of the proposed order. The modification of Schedule 1 to the Shellfish Act in section 214(2) and (3) of the UK Marine Act removes this requirement and provides the appropriate Minister with discretion as to whether to appoint an inspector and call an inquiry in relation to a proposed order under section 1 of the Shellfish Act. Section 214(4) and (5) of the UK Marine Act contains provision in consequence of these modifications.

The effect of this amendment is to modify Schedule 1 to the Shellfish Act to afford the Scottish Ministers an equivalent discretion as to whether to appoint an inspector and to hold an inquiry in relation to a proposed order under section 1 of the Shellfish Act Part 5(A) of Schedule 22 to the Marine Act.

Part 5(A) of Schedule 22 to the UK Marine Act (repeals relating to Chapters 1 and 2 of Part 7) repeals provisions in the enactments referred to therein in consequence of the modifications referred to above.

The effect of this amendment is to make equivalent repeals as regards Scotland.

Consultation

Amendment 258

These modifications have been subject to targeted stakeholder engagement in the form written consultation and, in addition, meetings/telephone discussion where required.

Background notes

Amendment 258

This amendment modifies the Shellfish Act as regards Scotland to modify the way in which several and regulating orders, which are used to establish and manage shell fisheries, are made and operated.

The amendment modifies the Shellfish Act to provide the Scottish Ministers with the same powers as are available to Ministers in England and Wales, and ensures legislative coherence across the UK in relation to the management and operation of shellfisheries.

The amendment is, in part, in response to the decision in May of this year by the House of Lords to refuse the Isle of Anglesey County Council and the Crown Estate Commissioners leave to appeal the decision of the Court of Appeal to refuse to allow the development of a
marina in the Menai Straits in an area in respect of which an order under section 1 of the Shellfish Act was in force. This decision resulted in the Crown Estate Commission becoming concerned about its ability to carry out its functions and meet its obligations under the Crown Estate Act 1961 and concerns about the future application of the 1967 Shellfish Act as a fisheries management tool. This amendment addresses these concerns by removing the requirement for Crown Estate consent to Shellfish Act orders, and enables the Scottish Ministers to vary or revoke an order to allow for development, and to provide for compensation for grantees of several fisheries (section 202(3) of the UK Marine Act). The effect of this is that Shellfish Act orders can continue to be used as a fisheries management tool in a way that meets landowners concerns and provides stability to those who may be granted orders in the future.

<table>
<thead>
<tr>
<th>Amendment number(s)</th>
<th>256</th>
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<tbody>
<tr>
<td>Subject</td>
<td>Modification of the Sea Fish (Conservation) Act 1967 Size</td>
</tr>
<tr>
<td>Text of amendment(s)</td>
<td>After section 141 insert—</td>
</tr>
</tbody>
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<Part

SEA FISHERIES

Extension of modifications relating to Sea Fish (Conservation) Act 1967

(1) The modifications to the Sea Fish (Conservation) Act 1967 (c.84) made by Chapter 1 of Part 7 of, and Schedules 15 and 22 to, the 2009 Act, except those mentioned in subsection (2), extend to Scotland.

(2) The modifications made by sections 194(4) and (5), 196 and 198(3) of, and paragraph 1(4) of Schedule 15 to, the 2009 Act do not extend to Scotland.
```

| Purpose & Effect | This amendment applies, as regards Scotland, the modifications to the Sea Fish (Conservation) Act 1967 (“the Conservation Act”) made by Chapter 1 of Part 7 of, and Schedules 15 and 22 to, the Marine and Coastal Access Act 2009 (“the UK Marine Act”), with the exception of the modifications made by sections 194(4) and (5), 196 and 198(3) of, and paragraph 1(4) of Schedule 15 to, the UK Marine Act. |
Section 194 of the UK Marine Act

Section 1 of the Conservation Act enables the Ministers (the Scottish Ministers as regards Scotland) to make an order to prescribe minimum size limits for the landing of sea fish. An order under section 1 of the Conservation Act may prohibit any person from landing sea fish below a specified size, prohibit the sale of sea fish below a specified size, and prohibit the carriage by a relevant British fishing boat or a Scottish fishing boat of sea fish below the specified size. An order under section 1 of the Conservation Act may make different size limits for different areas, or for fish of different sexes, and may restrict the landing by any person of parts of fish below the size limit specified for that species.

Section 1 of the Conservation Act does not currently allow for a maximum size limit or for a size range to be specified in an order, or for the carriage restrictions to apply to vessels which do not fall within the definition of relevant British fishing vessel or Scottish fishing boat.

Section 194 of the UK Marine Act amends section 1 of the Conservation Act to provide for all the current powers available in relation to orders under section 1 to apply to any requirements as to size, as opposed to minimum size limits only, and for the prohibition on carriage to apply to all relevant British fishing vessels. The effect of the amendment of section 1 by section 194 of the UK Marine Act is to allow Ministers to make an order prescribing a maximum or a minimum size limit for sea fish or a size range outside of which no fish may be landed, sold or carried.

This amendment 256 modifies section 1(1) and (2) of the Conservation Act as regards Scotland to introduce references to “requirements as to size”. We have not applied the amendments to section 1(3) and (9) of the Conservation Act which are provided for in section 194(4) and (5) of the UK Marine Act as they are separately provided for under amendment 257 (which modifies section 22A of the Conservation Act as regards Scotland to give effect to the provisions of section 194(4) and (5) of the UK Marine Act).

The effect of this amendment 256 and amendment 257, is to extend the Scottish Ministers powers under section 1 of the Conservation Act in line with those available to Ministers as regards England and Wales, to enable them to make an order specifying a minimum or a maximum size limit for sea fish, or a size range.

Section 195 of the UK Marine Act

Section 3 of the Conservation Act enables the Ministers (now the Scottish Ministers as regards Scotland) to make an order in relation to relevant British fishing boats (as regards Scotland, this section is modified to enable the Scottish Ministers to make an order in relation to any Scottish fishing boat registered in the UK) applying restrictions to nets and other fishing gear in respect of their construction, design,
material and size. An order under section 3 of the Act may apply only in relation to fishing for specified descriptions of sea fish, specified methods of fishing, and specified areas or periods.

Section 3(2) of the Conservation Act provides that an order may be made to extend to nets and fishing gear carried within British fishery limits (excluding the Scottish zone) by Scottish fishing boats, fishing boats registered outside the UK and unregistered boats. (This provision is modified as regards Scotland and section 3(2) of the Conservation Act enables the Scottish Ministers to make an order in relation to the Scottish zone in respect of relevant British fishing boats or fishing boats registered in any country outside the UK or not registered in any country).

In addition to other matters, section 3(3) and (4) of the Conservation Act provides for exemptions from the restrictions imposed by orders under section 3 of the Act to be made in relation to fishing boats. Section 3(5) of the Conservation Act creates offences for fishing in contravention of any orders made under section 3.

Currently, section 3 of the Conservation Act does not allow restrictions to apply equally to persons fishing from the shore as they apply to persons fishing from a boat. The effect of section 195 of the UK Marine Act is to amend section 3 so that restrictions of this type may be made by order in respect of persons fishing from the shore. Section 3 is also amended to create new offences for any person fishing from the shore in contravention of any restrictions and to allow for orders to exempt persons from the restrictions imposed.

The effect of this amendment 256 is to modify section 3 of the Conservation Act as regards Scotland to extend the Scottish Ministers’ order-making powers in line with those available to Ministers as regards England and Wales, and for an order to apply as regards persons fishing from a boat and from the shore of Scotland.

**Section 197 of the UK Marine Act**

Section 197 of the UK Marine Act amends section 4 of the Conservation Act in relation to the purposes in respect of which a condition may be imposed in a licence under section 4 of the Act. Section 4 of the Act enables Ministers (the Scottish Ministers as regards Scotland) to prohibit fishing by fishing boats in any specified area, except as authorised by a licence. Section 4(6) of the Act provides that licenses may authorise fishing subject to conditions.

Section 197 of the UK Marine Act amends section 4(6) of the Conservation Act to add to these conditions to allow the imposition of conditions for marine environmental purposes, as described.

The effect of this amendment 256 is to modify section 4 of the Conservation Act to apply the amendments in section 197 of the UK
Marine Act (which inserts a new section 4(6ZA) into the Conservation Act) to enable the Scottish Ministers to apply marine environmental conditions to licenses granted by them under section 4 of the Conservation Act.

Section 198 of the UK Marine Act

Section 198 of the UK Marine Act amends section 5 of the Conservation Act, which enables the Ministers (the Scottish Ministers as regards Scotland) to make an order restricting fishing for sea fish of any description and by any method specified for any period and creates an offence where any fishing boat is used in contravention of such an order.

Section 198(3) of the UK Marine Act amends section 5(8) of the Conservation Act to make provision in relation to the application of an order made under section 5. We are not seeking to modify section 5 of the Conservation Act in line with section 198(3) of the UK Marine Act, and instead provide for the application of an order made by the Scottish Ministers under section 5 of the Conservation Act by separately modifying the effect of section 5(8) of the Conservation Act – see amendment 257.

Section 5(6) of the Conservation Act requires any fish caught in contravention of a restriction in an order to be returned to the sea immediately. Orders made under section 5 only apply to fishing boats and not to persons fishing from the shore. Section 198(2) of the UK Marine Act amends section 5(1) of the Conservation Act so that orders may be made in relation to such persons. In addition, offences are created in respect of persons fishing in contravention of an order. The amendments by the UK Marine Act also provide for restrictions to be made in an order to place limits on how much fish a person or a fishing boat may take in any given period. Any fish caught in excess of this limit must be returned to the sea. The order may provide that any sea fish caught during the relevant period but returned to the sea as soon as the limit is exceeded do not count towards the limit imposed by the order in question. In addition, the amendments provide that an order which prohibits fishing for sea fish, or fishing for sea fish by any specified method, may require the stowage of fishing gear.

The effect of this amendment 256 is to modify section 5 of the Conservation Act as regards Scotland in line with the amendment of that Act provided for in section 198(1) and (2) of the UK Marine Act. This will enable the Scottish Ministers to make an order under section 5 of the Conservation Act in line with the powers available to Ministers as regards England and Wales. Modification of the Conservation Act as regards Scotland in relation to the application of an order under section 5 of the Act, in response to section 198(3) of the UK Marine Act, is
Section 199 of the UK Marine Act

Section 199 of the UK Marine Act amends sections 11, 15 and 16 of the Conservation Act in relation to penalties for offences.

Section 11 of the Conservation Act sets the levels of fine applicable for persons found guilty of offences under specified sections of that Act. Section 199(2) of the UK Marine Act amends section 11(1)(a) of the Conservation Act to add further provisions of the Conservation Act which attract a fine not exceeding £50,000 on summary conviction or an unlimited fine on indictment. Section 199(2) of the UK Marine Act also amends section 11(1)(b) of the Conservation Act to specify the provisions of the Act which attract a fine not exceeding the statutory maximum on summary conviction or an unlimited fine on indictment.

The effect of this amendment 256 is to modify section 11(1) of the Conservation Act as regards Scotland to add the provisions of the Conservation Act referred to in section 199(2) of the UK Marine Act to the provisions specified in section 11(1) of the Conservation Act which attract penalties. The effect of this is to criminalise the same activities and to harmonise applicable penalties across the whole of the UK.

Section 15 of the Conservation Act provides penalties for certain offences in relation to the enforcement of orders under that Act by British sea-fishery officers. Section 199(3) of the UK Marine Act amends section 15 of the Conservation Act to add two new sub-sections which provide for maximum fines on summary conviction for the offences of obstructing or assaulting an enforcement officer in the exercise of his duties of, respectively, £20,000 and £50,000.

The effect of this amendment 256 is to modify section 15 of the Conservation Act (in line with the amendment of that Act by section 199(3) of the UK Marine Act) to increase the penalties for obstructing or assaulting an enforcement officer in line with the applicable penalties in England and Wales. The effect of this is to criminalise the same activities and to harmonise applicable penalties across the whole of the UK.

Section 16 of the Conservation Act provides for the enforcement of section 2 and orders made under section 1 of that Act. Section 199(4) of the UK Marine Act amends section 16 of the Conservation Act to add two new sub-sections which provide for maximum fines on summary conviction for the offences of assaulting or obstructing an enforcement officer in the exercise of his powers under section 16(1) of the Conservation Act of, respectively, £20,000 and £50,000.

The effect of this amendment 256 is to modify section 16 of the
Conservation Act (in line with the amendment of that Act by section 199(4) of the UK Marine Act) to increase the penalties for obstructing or assaulting an enforcement officer in line with the applicable penalties in England and Wales. The effect of this is to criminalise the same activities and to harmonise applicable penalties across the whole of the UK.

### Section 200 of the UK Marine Act

Section 200 of the UK Marine Act inserts a new section 12 into the Conservation Act to provide that where offences under sections 1 to 6 of the Conservation Act are committed by a body corporate, then any officer (as defined in new section 12(2) of the Conservation Act) of the body corporate may be found guilty of that offence and liable to proceedings and on conviction, to fines. Officers will be liable in this way only where the offence has been committed with their consent or connivance or through their neglect. Similar provision is made at new section 12(4) of the Conservation Act in respect of offences committed by Scottish firms (partnerships).

The effect of this amendment is to modify the Conservation Act as regards Scotland to insert the new section 12 provided for in section 200 of the UK Marine Act. This has the effect of extending the persons to who may commit offences under sections 1 to 6 of the Conservation Act to officers of corporate bodies and partners of Scottish firms. The effect of this is for the same persons to be liable for offences across the whole of the UK.

### Section 201 of the UK Marine Act

Section 201 of the UK Marine Act introduces the minor and consequential amendments in Schedule 15 to the UK Marine Act, which concern sections 1, 3, 5 and 11 of the Conservation Act and Schedule 4 to the Fisheries Act 1981.

The effect of this amendment is to apply section 102 of the UK Marine Act as regards Scotland in order that the consequential and minor amendments relating to Chapter 1 of Part 7 of the UK Marine Act may be applied as regards Scotland (with the exception of paragraph 1(4) of Schedule 15 to the UK Act, which amends section 1(8) of the Conservation Act).

### Schedule 15 to the Conservation Act

Schedule 15 to the UK Marine Act makes minor and consequential amendments to sections 1, 3, 5 and 11 of the Conservation Act and Schedule 4 to the Fisheries Act 1981. The effect of this amendment is to modify the Conservation Act and the Fisheries Act 1981 as regards Scotland to apply those provisions, with the exception of the
amendment contained in paragraph 1(4) of Schedule 15. That minor amendment adds new definitions to section 1(8) of the Conservation Act. Those definitions are provided for as regards Scotland in amendment 257.

<table>
<thead>
<tr>
<th>Consultation</th>
<th>These modifications have been subject to targeted stakeholder engagement in the form written consultation and, in addition, meetings/telephone discussion where required.</th>
</tr>
</thead>
</table>

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<thead>
<tr>
<th>Background notes</th>
<th>The modifications of the Conservation Act provided for under this amendment are intended to help align the legislative position in Scotland with that in the rest of the UK. Specifically, in the case of the modification of section 1 of the Conservation Act in relation to maximum landing size, the scientific advice is that there is merit for some species in complimenting the current ability to set a minimum landing size by also being able to set a maximum landing size. This would in result larger, more fecund animals being retained within the breeding population. Larger numbers of larger fish may also be a measure of healthy stocks under Good Environmental Status indicator 3 (healthy fish populations) under the Marine Strategy Framework Directive.</th>
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<tbody>
<tr>
<td>Amendment number(s)</td>
<td>298</td>
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<tr>
<td>---------------------</td>
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<tr>
<td>Subject</td>
<td>Sea Fisheries – consequential modifications and repeals</td>
</tr>
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</table>
| Text of amendment(s)| In substitution for amendment 261—<br>In schedule 4, page 88, line 13, at end insert—<br>\[\]
<p>|                     | <code>&lt;PART SEA FISHERIES</code> |
| Sea Fisheries Act 1968 | In the Sea Fisheries Act 1968 (c.77), in section 15 (amendments of Sea Fisheries (Shellfish) Act 1967), subsection (2A) is repealed. |
| Fisheries Act 1981 | (1) The Fisheries Act 1981 (c.29) is modified as follows.&lt;br&gt;(2) The following provisions are repealed—&lt;br&gt;(a) section 19(2)(c),&lt;br&gt;(b) section 22(2)(a) and (3),&lt;br&gt;(c) section 28.&lt;br&gt;(3) In paragraph 33 of Part 2 of Schedule 4 (offences to which section 33(5) applies)—&lt;br&gt;(a) for “Sea Fisheries (Conservation) Act 1967” substitute “Sea Fish (Conservation) Act 1967”,&lt;br&gt;(b) for “smaller than the prescribed size” substitute “which do not meet the prescribed size requirements”. |
| Sea Fish (Conservation) Act 1992 | In the Sea Fish (Conservation) Act 1992 (c.60), paragraph (b) of section 5 is repealed. |
| Criminal Justice and Public Order Act 1994 | In the Criminal Justice and Public Order Act 1994 (c.33), in Part 1 of Schedule 8 (increase in penalties), the entry relating to section 7(4) of the Sea Fisheries (Shellfish) Act 1967 is repealed.&gt; |
| Purpose &amp; Effect | This amendment replaces amendment 261 which is withdrawn. The purpose of this amendment is to make certain consequential modifications of, and repeals in respect of, the Sea Fisheries Act 1968, the Fisheries Act 1981, the Sea Fish (Conservation) Act 1992 and the Criminal Justice and Public Order Act 1994, as they apply in relation to Scotland. |
| Consultation | Covered by wider consultation process. |</p>
<table>
<thead>
<tr>
<th>Amendment number(s)</th>
<th>259</th>
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<tbody>
<tr>
<td>Subject</td>
<td>Modification of the Sea Fisheries (Shellfish) Act 1967</td>
</tr>
</tbody>
</table>
| Text of amendment(s) | After section 141, insert—  
   <Modification of Sea Fisheries (Shellfish) Act 1967  
   (1) The Sea Fisheries (Shellfish) Act 1967 (c.83) is modified as follows.  
   (2) In section 1 (power to make orders as to fisheries for shellfish)—  
      (a) omit subsection (4),  
      (b) after subsection (14) insert—  
      “(14A) Subsection (14) above has effect in relation to Scotland as if  
      the reference to the Town and Country Planning Act 1990  
      were a reference to section 26 of the Town and Country  
      Planning (Scotland) Act 1997 (c.8).”.
   (3) In section 7 (protection of fisheries), in subsection (4), for “level 3 on  
      the standard scale” substitute “£50,000”.  
   (4) In paragraph 6 of Schedule 1—  
      (a) the existing provision is renumbered as sub-paragraph (1),  
      (b) after that sub-paragraph insert—  
      “(2) Where the proposed order relates to any portion of the sea  
      shore belonging to Her Majesty in right of the Crown, the  
      appropriate Minister must also have regard to the powers and  
      duties of the Crown Estate Commissioners under the under the  
      Crown Estate Act 1961 (c.55).”> |
| Purpose & Effect    | This amendment 259 modifies section 1 of the Sea Fisheries (Shellfish) Act 1967 (“the Shellfish Act”) as regards Scotland in consequence of the modifications in amendment 258.  
The effect of this amendment is to modify section 1 of the Shellfish Act to  
omit sub-section (4) which requires the consent of the Crown Estate  
Commissioners to be obtained before the Scottish Ministers may make  
an order under section 1 of the Act affecting any portion of the seashore  
belonging to Her Majesty in right of the Crown. This modification arises  
from the decision of the House of Lords in relation to the Menai Straits  
case discussed in relation to amendment 258.  
This amendment also modifies section 1 of the Shellfish Act such that a  
reference to the Town and Country Planning Act 1990 is to be read as a  
reference to section 26 of the Town and Country Planning (Scotland) Act 1997. This modification is in consequence of the insertion of a new sub-section (14) into section 1 of the Shellfish Act by section 203 of the UK |
Marine Act, which is discussed under amendment 258. The effect of this amendment is to modify section 1 of the Shellfish Act as regards Scotland in order to provide for a definition of “development”.

This amendment modifies section 7 of the Shellfish Act to substitute the maximum fine that a person may be liable for in respect of an offence under sub-section (4) on summary conviction. The effect of this modification means that person who commits an offence in terms of section 7(4) of the Shellfish Act may now be liable on summary conviction to a fine not exceeding £50,000. This amendment is in consequence of the amendment of section 7 of the Shellfish Act by section 205(3) of the UK Marine Act, and makes equivalent provision as regards Scotland as is made through that amendment.

This amendment modifies paragraph 6 of Schedule 1 to the Shellfish Act as regards Scotland to impose an obligation on the appropriate Minister (the Scottish Ministers in relation to Scotland) to have regard to the powers and duties of the Crown Estate Commissioners when they are to consider making an order under section 1 of the Shellfish Act concerning any portion of the sea shore belonging to Her Majesty in right of Crown. This amendment is in consequence of the repeal of section 1(4) of the Shellfish Act by section 202(3) of the UK Marine Act, which removes the requirement to obtain the consent of the Crown Estate Commissioners for an order under section 1 of the Act affecting any part of the sea shore belonging to the Crown. Again, this modification relates to the situation in the Menai Straits, and the effect of the modification is to impose the same obligation on the Scottish Ministers to have regard to the Crown Estate Commissioners functions as exists in relation to the appropriate Minister in relation to the rest of the UK.

Consultation
These modifications have been subject to targeted stakeholder engagement in the form written consultation and, in addition, meetings/telephone discussion where required.

Background notes
The amendment to Section 7 of the Shellfish Act in relation to fine levels brings the situation in Scotland in line with the rest of the UK. The other amendments are consequential to amendments made elsewhere in the Bill.
<table>
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<tr>
<th>Amendment number(s)</th>
<th>257</th>
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<tr>
<td>Subject</td>
<td>Modification of section 22A of the Sea Fish (Conservation) Act 1967</td>
</tr>
<tr>
<td>Text of amendment(s)</td>
<td>After section 141, insert—</td>
</tr>
</tbody>
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<Modification of section 22A of Sea Fish (Conservation) Act 1967

(1) Section 22A (application to Scotland) of the Sea Fish (Conservation) Act 1967 is modified as follows.

(2) In subsection (2) after “sections” insert “1(3B) and (9), 5(8),”.

(3) After subsection (2) insert—

“(2A) In section 1—

(a) for subsections (3) and (3A) substitute—

“(3B) Sea fish of any description which do not meet the requirements as to size prescribed in relation to sea fish of that description by an order of the Scottish Ministers must not be carried, whether within or outside the Scottish zone, on a Scottish fishing boat; and an order under this subsection may prohibit the carrying by a relevant British fishing boat or a foreign vessel in the Scottish zone of sea fish of any description prescribed by the order which do not meet the requirements as to size so prescribed in relation to sea fish of that description.”,

(b) in subsection (8) for “(3)” substitute “(3B)”,

(c) for subsection (9) substitute—

“(9) In this section—

“foreign vessel” means any vessel other than a relevant British fishing boat or a Scottish fishing boat,

“relevant British fishing boat” means a vessel, other than a Scottish fishing boat, which—

(a) is registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995 (c.21), or

(b) is owned wholly by persons qualified
```
to own British ships for the purposes of that Part of that Act.”.

(2B) In section 3—

(a) in subsection (2A) for “adjacent to England and Wales” substitute “of the United Kingdom adjacent to Scotland”,

(b) for subsection (2B) substitute—

“(2B) In subsection (2A) above—

(a) the Scottish Ministers are “the appropriate national authority”,

(b) the boundaries between the parts of the territorial sea of the United Kingdom adjacent to Scotland and the parts not so adjacent are to be determined by reference to an Order in Council made under section 126(2) of the Scotland Act 1998 (c.46) to the extent that the Order in Council is expressed to apply for the purposes of that Act.”.

(4) For subsection (6) substitute—

“(6) In section 5—

(a) in subsection (1), for “appropriate national authority” substitute “Scottish Ministers”,

(b) for subsections (8) and (9) substitute—

“(8) An order under this section may make provision—

(a) applying to Scottish fishing boats whether within or outside the Scottish zone,

(b) in any other case, applying to fishing boats within the Scottish zone.”.

(5) After subsection (9) insert—

“(9A) In section 11(1)(a), for “4(3), (6) or (9A)” substitute “4(3) or (6)”.”.

**Purpose & Effect**

Section 22A of the Sea Fish (Conservation) Act 1967 (“the Conservation Act”) contains provisions which modify the effect of the Conservation Act as regards Scotland in relation to the provisions of the Act specified therein.

Section 22A(2) of the Conservation Act modifies certain references in the Act as regards Scotland, and specifies the sections of the Act in which those references appear, and exceptions to the modifications. This amendment adds sections 1(3B) and(9) and 5(8) of the
Conservation Act to the provisions whose affect is not modified as regards the references in section 22A(2). This has the effect of modifying the text of the Conservation Act as regards Scotland, except in relation to sections 1(3B) and(9), 5(8), 17 and 22, in accordance with the provisions of section 22A(2).

This amendment also modifies section 22A of the Conservation Act by inserting a new sub-section (2A), which modifies section 1 of the Act to insert a new sub-section (3B), in place of sub-sections (3) and (3A) (which were inserted by section 194(4) of the UK Marine Act). This modification is in consequence of the amendment of section 1(1) and (2) of the Conservation Act by section 194(2) and (3), which enables the Scottish Ministers to make provision in an order under section 1 of the Conservation Act in relation to the size of sea fish that may be landed, etc. This is discussed under amendment 256. This amendment also modifies section 1(9) of the Conservation Act in consequence to add definitions of “foreign vessel” and “relevant British fishing boat” as regards Scotland.

The effect of this modification is to prohibit the carriage of fish that do not meet the specified size requirements, and to modify certain definitions in section 1(9) of the Act as regards Scotland. This ensures that the Scottish Ministers’ powers are equivalent to those available to the UK Minister.

This amendment modifies section 22A of the Conservation Act to add a new sub-section (2B), which makes amendments to section 3 of the Act. The effect of section 3(2A) of the Conservation Act is modified so as to enable the Scottish Ministers to include provision in an order under section 3 which extends to persons fishing from the shore of the United Kingdom adjacent to Scotland. This is in consequence of the amendment of section 3 by section 195(2) of the UK Marine Act, which is discussed under amendment 256. In addition, this amendment clarifies that the Scottish Ministers have powers under section 3 of the Conservation Act to make an order and clarifies the extent of their legislative competence.

The effect of this amendment extends the order-making power under section 3 of the Conservation Act to enable the Scottish Ministers to regulate the use and type of nets and fishing gear under an order, and for the provisions of the order to apply to those fishing from the shore as they apply to those fishing from a boat. This ensures that section 3 of the Conservation Act may apply throughout the UK.

This amendment also modifies section 22A(6) of the Conservation Act such that the reference in section 5 of the Act to “appropriate national authority” be read as a reference to the Scottish Ministers. In addition, a new section 5(8) is inserted into the Conservation Act to enable the Scottish Ministers to include provisions in an order made under section 5 of the Act in relation to Scottish fishing boats and fishing boats within the Scottish zone. This amendment is in consequence of the
amendment of section 5 of the Act by section 198(3) of the UK Marine Act, which makes equivalent provision as regards England and Wales. The effect of this amendment ensures that the extent of the Scottish Ministers order-making powers under section 5 of the UK is the same as are available to Ministers as regards the rest of the UK, but with modifications to reflect the extent of the Scottish Ministers’ powers.

Finally, this amendment modifies section 22A of the Conservation Act to insert a new sub-section (9A) into section 22A. That new sub-section makes provision to amend section 11(1)(a) of the Conservation Act to specify that as regards Scotland, a person guilty of an offence under sections 1, 2, 3 or 4(3) or (6) of the Conservation Act are liable on summary conviction to a fine not exceeding £50,000 or on conviction on indictment to an unlimited fine. This amendment is in consequence of the amendment in section 199(2) of the UK Marine Act, and the modifications have the effect of extending the increased penalties to offences under the sections specified in section 11(1)(a) of the Act.

**Consultation**

These modifications have been subject to targeted stakeholder engagement in the form written consultation and, in addition, meetings/telephone discussion where required.

**Background notes**

These modifications help to align the legislative position in Scotland with that in the rest of the UK. In particular, they relate to the prohibition of the carriage of sea fish which to not meet specified size requirements, the ability to restrict fishing from the shore as well as form vessels and an increase in the maximum fine levels in the case of the obstruction or assault of fisheries enforcement officers.
<table>
<thead>
<tr>
<th>Amendment number(s)</th>
<th>261</th>
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<tbody>
<tr>
<td><strong>Subject</strong></td>
<td>Sea Fisheries - consequential modifications and repeals</td>
</tr>
</tbody>
</table>
| **Text of amendment(s)** | In schedule 4, page 88, line 13, at end insert—  
> Part  
> SEA FISHERIES  
>  
> **Fisheries Act 1981**  
> (1) The Fisheries Act 1981 (c.29) is modified as follows.  
> (2) The following provisions are repealed—  
> (a) section 19(2)(c),  
> (b) section 22(2)(a) and (3),  
> (c) section 28.  
> (3) In paragraph 33 of Part 2 of Schedule 4 (offences to which section 33(5) applies)—  
> (a) for “Sea Fisheries (Conservation) Act 1967” substitute “Sea Fish (Conservation) Act 1967”,  
> (b) for “smaller than the prescribed size” substitute “which do not meet the prescribed size requirements”.  
>  
> **Sea Fish (Conservation) Act 1992**  
> In the Sea Fish (Conservation) Act 1992 (c.60), paragraph (b) of section 5 is repealed.  
>  
> **Criminal Justice and Public Order Act 1994**  
> In the Criminal Justice and Public Order Act 1994 (c.33), in Part 1 of Schedule 8 (increase in penalties), the entry relating to section 7(4) of the Sea Fisheries (Shellfish) Act 1967 is repealed.> |
| **Purpose & Effect** | The purpose of this amendment was to make minor consequential modifications to, and repeal certain provisions of, the Fisheries Act 1981, the Sea Fish (Conservation) Act 1967 and the Criminal Justice and Public Order Act 1994. However, this amendment is now superseded by amendment 298 which contains an omitted consequential amendment and for that reason is withdrawn. |
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

MARINE (SCOTLAND) BILL

CORRESPONDENCE FROM THE CABINET SECRETARY FOR RURAL AFFAIRS AND THE ENVIRONMENT ON STAGE 2 AMENDMENTS

As a follow up to my appearance before the Committee at Stage 1 of the Marine (Scotland) Bill on 9 September, I am now writing to provide details of the a relatively small number of Government amendments to sea fisheries legislation which I propose to bring forward later in Stage 2 of the Bill. [Clerk’s note: these are amendments 256 to 259 and 261 on the Daily List for 23 November. At the time of writing amendment 261 will be substituted and this will be marked on the Daily List for 26 November.]

I regret that, as a result of the need for further exchanges with Defra and the Crown Estate together with the need for stakeholder engagement on the proposed amendments, it has not been possible to provide these details before now. My understanding is, however, that it will be possible to have the amendments considered at the third Stage 2 sitting of the Committee on 2 December. If the committee has difficulties with this approach, I would be willing to withdraw the amendments and instead lay them at Stage 3.

The amendments are largely technical in nature and while one or two of them may generate some debate, generally they are not controversial. They are required for two reasons. First, following a legal case south of the border and subsequent concerns expressed by the Crown Estate about Orders made under the Sea Fisheries (Shellfish) Act 1967, there is a need to amend the that Act. The amendments would remove the need for Crown Estate consent to the Orders in question in future and allow Scottish Ministers to revoke or vary the Orders as may be required. There would also be a means by which the land owner (the Crown Estate) may compensate the Order holder in the event of a revocation or variation.

Secondly, there is a need to make some amendments to the 1967 Shellfish Act and to the Sea Fish (Conservation) Act 1967 to further align the two pieces of legislation in Scotland with the rest of the UK. While, as I have said already they are technical and, therefore, are somewhat complicated, they are relatively minor in terms of their impact. Details of the proposed amendments are provided in the attachment to this letter. The actual amendments themselves will be lodged later today to meet the Parliamentary deadline.

The responses to the consultation on these amendments were generally supportive and I do not envisage that they will generate any difficulties during the Committee process. The officials involved would be very happy to explain the amendments further, so if they or I can be of any assistance to you or to the Committee then please let me know.

RICHARD LOCHHEAD
Cabinet Secretary for Rural Affairs and the Environment
24 November 2009
Marine (Scotland) Bill Proposed Fisheries Amendments

The Sea Fisheries (Conservation) Act 1967

In addition to the current ability to set a minimum landing size for sea fish, provide a power to set a maximum landing size or a size range.

Extend existing powers to make restrictions to nets and other gear in respect of construction, design, material and size apply equally to those fishing from the shore.

Add marine environmental proposes to the existing circumstances when conditions may be applied to fishing.

Extend the current ability to restrict fishing from a boat according to description and method to also cover fishing from the shore. Also provide power to restrict how much fish a person or boat may catch in a given period.

Increase the maximum fine on summary conviction of an offence from £5,000 to £50,000.

New provisions to provide for a maximum fine on summary conviction of obstructing an enforcement officer in the exercise of his duties of £20,000 and of assaulting an enforcement officer of £50,000.

Replacement provisions to allow that in relation to offences under Sections 1 to 6 an officer of a body corporate can be prosecuted.

The Sea Fisheries (Shellfish) Act 1967

Amend to allow that tolls and royalties can be used for purposes connected with the regulation of the fishery as opposed to just for the improvement of the fishery.

Amend to allow master, owner and charterer may each be found guilty of an offence and to introduce a definition of the term “master”.

Amend to extend current protection of private oyster beds to all privately owned shellfish beds.

Amend to provide the ability by Order to use other implements of fishing.

Amend to remove the need to appoint an inspector and call an inquiry and instead leave such action to Ministers’ discretion.


Amend to remove the requirement to obtain Crown Estate consent to the granting of Several or Regulating Orders and instead require Ministers to have regard to the duties and Powers of the Crown Estate Commissioners.

Amend to enable Ministers to revoke or vary Several Orders.
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

RECENT DEVELOPMENTS WITHIN THE COMMITTEE’S REMIT

Note by the Clerk: Each time an agenda and papers for a meeting are circulated to members, a short paper like this one will also be included as a means of alerting members to relevant documents of general interest which they can follow up through the links included.

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