The Committee will meet at 10.00 am in Committee Room 5.

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

2. **Subordinate legislation**: The Committee will consider the following negative instruments—

   - the Smoke Control Areas (Authorised Fuels) (Scotland) Regulations 2010 (SSI 2010/271);
   - the Smoke Control Areas (Exempt Fireplaces) (Scotland) Order 2010 (SSI 2010/272);
   - the Less Favoured Areas Support Scheme (Scotland) Regulations 2010 (SSI 2010/273); and
   - the European Fisheries Fund (Grants) (Scotland) Amendment Regulations 2010 (SSI2010/323).

3. **Wildlife and Natural Environment (Scotland) Bill**: The Committee will take evidence on the Bill at Stage 1 from—

   Ron Macdonald, Head of Policy and Advice, Robbie Kernahan, Unit Manager, Wildlife Operations Unit, and John Kerr, Policy and Advice Officer, Scottish Natural Heritage;

   and then from—

   Finlay Clark, Association of Deer Management Groups;

   Professor John Milne, ex-Chairman of Deer Commission for Scotland;

   Dr Justin Irvine, Macaulay Land Use Research Institute;

   John Bruce, British Deer Society.
4. **Wildlife and Natural Environment (Scotland) Bill (in private):** The Committee will consider the evidence heard earlier in the meeting.

5. **Work programme:** The Committee will consider its work programme.

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 2**

*The Smoke Control Areas (Authorised Fuels) (Scotland) Regulations 2010 (SSI 2010/271)*

RAE/S3/10/20/1

*The Smoke Control Areas (Exempt Fireplaces) (Scotland) Order 2010 (SSI 2010/272)*

RAE/S3/10/20/2

*The Less Favoured Areas Support Scheme (Scotland) regulations 2010 (SSI 2010/273)*

RAE/S3/10/20/3

*The European Fisheries Fund (Grants) (Scotland) Amendment Regulations 2010 (SSI 2010/323)*

RAE/S3/10/20/4

**Agenda Item 3**

**Written Submissions**

RAE/S3/10/20/5

Briefing Paper (Private)

RAE/S3/10/20/6 (P)

**Agenda Item 5**

Work Programme Paper (Private)

RAE/S3/10/20/7 (P)

**For Information**

Recent Developments

RAE/S3/10/20/8
The following evidence has been received by those giving evidence to the Committee at its meeting on 29 September:

**WRITTEN SUBMISSION FROM ASSOCIATION OF DEER MANAGEMENT GROUPS**

**Part 3 Deer**
The Association of Deer Management Groups (ADMG) is a voluntary membership organisation, constituted in 1992 and consisting of Deer Management Groups (DMG’s) made up of public and privately owned land holdings covering some 80% of the wild red deer range in Scotland. Members own and manage in excess of 1M Ha of land and manage the culling annually of over 75,000 red, roe, sika and fallow deer in Scotland. ADMG makes representation to and participates on various committees including Moorland Forum, Deer Round Table, Best Practice, Joint Working Committees, Country Sports Tourism Group, Sustainable Deer Management Project and National Access Forum. ADMG also represents members in the promotion of sport and venison marketing.

ADMGs' comments relate exclusively to Part 3 of The Wildlife and Natural Environment (Scotland) Bill and all comments, generic and specific, relate solely to Part 3 of the Bill. ADMG is broadly supportive of the Bill and is of the view that the Bill as introduced is a fair reflection of industry comment and input following Scottish Government consultation published in June 2009.

ADMG would like to draw to the attention of Scottish Government the very significant progress that the deer industry has made over the past 20 years in fields such as welfare and safety (competence), collaborative deer management and planning (93% designated sites now in favourable or unfavourable/improving condition), venison marketing and supply chain development; training (Best Practice Guides), and education through both Borders and North Highland Colleges (University of Highlands and Islands) and many private initiatives.

Much of this progress has been delivered through the "voluntary" mechanism of good stewardship, a wish to see continuous improvement, development of a sustainable industry and peer pressure. We appreciate the Scottish Government’s wish to see the "voluntary" principle extended, albeit there will always be a need for a compulsory back stop.

We hope the following commentary will be of assistance:
Deer Management and Deer Management Code of Practice

The Deer Management Code of Practice will be a fundamental building block in the delivery of the Scottish Government's policy paper on deer "Scottish Wild Deer – A National Approach". Section 6 of the policy document states that Environment, Economy and Employment should be acknowledged equally in promoting sustainable deer management. ADMG will play a full and positive role in the preparation of the Deer Management Code of Practice. We would, however, draw attention to the need for a "dispute resolution process" which can be applied where competing land use objectives have become conflicting land use objectives. This should relate specifically to both over and under exploitation of the deer resource.

Control Agreements and Control Schemes

ADMG endorse the voluntary principle but fully support the need for compulsory intervention where the voluntary approach cannot be made to work and ultimately fails.

Under Para 3 Section 24, 3a, ii it is suggested that after six months following the notification of concern that SNH may put in place a control agreement. There are a number of practical difficulties which may arise depending on the timing of such notice being served. A notice served on 31 December would only allow six weeks of in-season female red deer culling to be effected, which is probably inadequate in most cases. There requires to be further thought given to the trigger period and dates on which notices are served. ADMG are happy to work with Scottish Government and the industry to provide a practical framework.

Deer : Close Seasons, etc

ADMG is fully supportive that there should be no change to the current close season provisions. The current provisions guard against over exploitation and compromise of welfare of deer and the retention of the current Close Seasons is seen as critical to the delivery of Scottish Government's – Scottish Wild Deer – A National Approach. The current provisions also allow the Minister to vary close seasons.

Competence

ADMG have always held the view that anyone who shoots deer, or supervises someone shooting deer, must be competent to do so. ADMG is working with Scottish Government along with the other industry stakeholders, including SGA (Scottish Gamekeepers Association), BDS (British Deer Society), BASC (British Association of Shooting and Conservation), LANTRA and such organisations as Borders and Highland Colleges, DMQ (Deer Management Qualification) and
SRPBA (Scottish Rural Property and Business Association) to deliver industry competence by 1 April 2014. It is hoped that DSC Level 1 can be aligned with NOS (National Occupational Standard) and industry is currently working with LANTRA to achieve this. Best Practice should be further developed and CPD (Continuous Professional Development) promoted.

**Occupier Rights**

ADMG fully supports the occupiers right to protect against damage by deer. ADMG also support the introduction of a responsive authorisation system based on general licence, but would strongly support the need to regulate tightly the use of such general licences, including proper cull returns, and where a general licence has been abused then that general licence should be immediately withdrawn.

**Collection of Cull Data**

ADMG supports that cull data should be collected by SNH. In the interests of collaborative deer management ADMG request that all data collected within a particular DMG (Deer Management Group) should be made available to that DMG.

ADMG would be happy to clarify any of the above commentary and look forward to giving oral evidence to the Committee on 29 September 2010.

**WRITTEN SUBMISSION FROM THE BRITISH DEER SOCIETY**

The British Deer Society is broadly in favour of the proposals contained in the draft W&NEB and has considered the implications of the memorandum associated with the draft Bill.

The section reference to the WNEB is in red.

The Draft Bill is an amendment Bill so the amendments must be read in context, we will comment upon the proposals showing the sections of the Deer (Scotland) Act 1996 which are relevant, in black.

14B, (2), a We note that deer stalkers are included in those who may be required to notify the Authorities of the presence of Muntjac or Chinese Water Deer in the wild. (Non Native Invasive species).

22, (2), 2 The additional sub sections (d) & (e) are necessary.

22, (3), (a), ii, 3, 1, (c) Any assistance in placating and managing inter deer interests is good, it is an ambitious intention when interests can be so diverse and entrenched.
The introduction of the need to take heed of deer, and the advice given about deer is an extremely proactive proposal, we welcome this as it could be the case that deer management is not of sufficient importance to minimise the human / deer interface adequately, or as well as might be with some planning and action.

The Code of Practice, CoP, the intentions of the CoP is honourable, but without sight of even a draft it is impossible to comment further upon this new document, which will contain serious and significant areas of contention. The onus of laying the CoP before Parliament is honourable and placatory, but the suggestion is that SNH may then re-write the CoP, will the re-draft also be laid before Parliament?

Control Agreements, the proposals are unclear in the draft, and may therefore be interpreted in many ways. There is an inference that a section 7 agreement may be used because of actions or inactions of deer management, this suggests there will be a power to create a Control Agreement because of actions or inactions of the occupier other than deer shooting, is this not beyond the remit of SNH?

A regular review of the Control Agreement is important.

Control Schemes, six months is too short a period to reach agreement when either party may have significant plausible reasons for being unable to provide evidence for or against the proposal, given the seasonal nature of the impacts of deer. Control Agreements are to be specific and accurate, science based and deer damage specific. It may well take longer than six months to prove either side of the debate as to the cause of damage and this tight timescale may lead to imperfect evidence being used in the decision making process, deer may only be present in some seasons, it may be some other transient animal causing the damage.

The deletion of this clause suggests that SNH will be empowered to insist on deer management methods other than shooting. We encourage the use of fences to prevent the vacuuming of deer from sites where no deer, or, where only a few deer are welcome. The management of the deer after fence construction within the fence requires consideration, as it can be argued that these deer are no longer wild because they are enclosed.

A regular review of the Control Scheme is important.

We are very concerned that the deletion of the expression “serious damage” removes the necessary qualification between normal deer impact when eating, and serious impact representing persistent economic loss or damage to a defined public interest. The proposed terminology is terribly vague, indeed it is open ended and the proposal removes any protection for deer which are exhibiting normal deer activity, this will lead to deer welfare abuse.
The damage must be measurable, serious, persistent, permanent and valuable or deer will be shot on sight, removing the word serious is a serious diminishment of the qualification currently contained in the Act.

The wording of the complementary clause in the Wildlife and Countryside Act 1981 and subsequent amendments is abundantly clear:

“Section 16 Power to grant licences;
(k) for the purposes of preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber, fisheries or inland waters,"

Deletion of the word “serious” in this section, “Emergency measures” is withdrawing the necessary qualification for the need for this Section.
This is a section for extreme circumstances, therefore the justification of the introduction, or creation of a section 10 measure must also be extreme. There are too many who identify any normal deer impact and seek to react with deer control measures of a fatal nature, the Government should determine when such reactions can be deemed appropriate, by removing the word serious there will be no qualification, deer welfare will be impinged upon.
The wording of the complementary clause in the Wildlife and Countryside Act 1981 and subsequent amendments is abundantly clear:

“Section 16 Power to grant licences;
(k) for the purposes of preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber, fisheries or inland waters,”

26. (4), 17A Register of Competence.
The Society is in support of an uptake in developing competence, however much is not clear at this stage.
The Society undertakes to assist in the provision of training, material and courses; using the broad educational experience it has available to it.
The Society is engaging in the development of this project.

**Omissions from the draft Bill.**
The draft Bill does not address an issue which became a serious debate during and after the extreme winter snow conditions experienced this year.

There is in the Deer (Scotland) Act 1996 a section which is unclear and ambiguous which should be considered for amendment.

**Exemption for certain acts**

25 Action intended to prevent suffering
A person shall not be guilty of an offence against this Act or any order made under this Act in respect of any act done for the purpose of preventing suffering by—

(a) an injured or diseased deer; or
The current Act section 25 grants powers for the humane dispatch of diseased or injured deer, or offspring about to be orphaned. The wording and intent is unclear, we submit that there is a need for a power to despatch deer when more generic symptoms of terminal decline, when there is no likelihood of recovery.

The British Deer Society produced a paper was using advisors in animal welfare experienced in the management of animals, (of all species), in such conditions; we submit a copy for your consideration.

The reason we submit this proposal is that there are those who, for some obscure reason, chose to attempt to derive a suitable interpretation of the existing Act by suggesting that all animals in terminal decline must surely be carrying a disease, well may be they are, but what about all the other animals suffering from some non disease affliction who would benefit from despatch.

The terminology we recommend is the sort of terminology currently used across Europe and England to cover the same situations.

Wildlife & Natural Environment Bill.
Clearer exemption required for welfare culling of animals in terminal decline.

The British Deer Society is concerned that the Deer (Scotland) Act 1996 section 25(a) is unclear and seeks to bring clarification and guidance on current interpretation of this subject which grants exemption from prosecution to those who kill deer out of season to prevent suffering.

The Society has become aware of confusion in the current legislation in that it is not sufficiently specific in its description of the circumstances under which individuals may dispatch animals found in extremis such as during the recent severe winter.

We believe that the opportunity to address this situation is provided in the forthcoming Wildlife & Natural Environment Bill.

The British Deer Society are of the view that the exemption from prosecution for welfare culling in a new Act requires qualification and the current terminology is over-prescriptive in defining too tightly the conditions under which deer may be humanely destroyed. We believe that the Wildlife and Natural Environment Bill is a suitable Bill in which to reconsider the provision for welfare culling and that the existing section should be reworded to specify simply the relief of suffering, with caveats. Such alteration of the provision would then allow humane destruction of animals which were in a state of terminal decline, for example, starving following prolonged periods of extreme weather.
To qualify and explain the situation whilst limiting the interpretation we set out the opinions as follows.

1. Deer suffer stress for many reasons including disturbance, cold, a persistent lack of food and so on, this is not sufficiently severe as to justify culling for welfare reasons. It is deer which have gone through that stage into terminal decline which justify welfare culling. They may have reached this condition for any one, or a number of, reasons including disease, poisoning, internal injury, organ failure or starvation.

2. Terminal decline will be indicated by conditions, actions and inactions including; the animal, or animals may be recumbent or unable to stand, unable or unwilling to escape or to react normally to the approach of man. Animals may be emaciated, (with muscle wasting or bones distorting the skin), and probably isolated from the main herd either alone, or possibly in small cohort groups. The animals will not be behaving normally. Only in these circumstances and provided that there are no normal deer nearby and that there is no risk of excessive disturbance to the other normal deer should the deer in consideration be culled, to minimise stress to any nearby unaffected deer.

3. Culling deer which are in terminal decline is the correct action to take when in the opinion of a competent or experienced person the deer is beyond recovery and will die imminently.

4. For the purposes of the Act: The British Deer Society proposes that terminal collapse, recumbency, immobility and unresponsiveness to human approach, be considered adequate and appropriate symptoms and sufficient justification to cull a deer and that the law should not simply restrict itself to animals considered to be suffering from a specific disease. This is the logic and terminology is used in law across Europe.

5. The British Deer Society would firmly oppose the culling of deer on the pretence of culling to relieve suffering, when the deer in question remain mobile and exhibit normal behaviour, irrespective of body condition. The British Deer Society does not advocate Out of Season culling simply because deer appear to be thin.

6. Should it be suggested that this would give rise to unintended consequences such as increased, excessive and perhaps unjustified, culling by those who do not want deer on their property, The British Deer Society points out that usually those individuals or organisations can, or have, legitimately obtained Authorisation to kill Out of Season for the protection of the Natural Heritage, or for the protection of their crops, or other reason.

The British Deer Society seeks to improve the nation’s consideration of the welfare of deer and to make the humane act of culling in these circumstances more clear, as it is the actual body condition of the deer which is important, not what caused it, and because the condition of the body is actual proof and justification of the action, not a presumption that something may occur and the only action to prevent it’s development is to kill the animal.
The British Deer Society is hopeful that the opportunity can be taken to improve the situation and should there be questions, please contact John Bruce.

John Bruce,
For and on behalf of
The British Deer Society

WRITTEN SUBMISSION FROM MACAULAY LAND USE RESEARCH INSTITUTE

Deer (PART 3 OF THE BILL)
Collaborative Deer Management Structures.
Deer management should not be seen in isolation but as an important mechanism for the sustainable management of a range of ecosystem goods and services in Scotland. The success of the proposed legislation in practice will depend on providing managers with clear guidance (Code of Practice) together with a balance between public support (Incentives) and regulatory powers (Control measures); underpinned by sound data.

- the creation of a statutory duty on landowners to manage deer sustainably. The bill proposes a statutory code of practice for sustainable deer management rather than a responsibility (although there may already be a responsibility to manage deer in order to prevent damage to others’ interests). For this to work it needs to a) promote wide stakeholder participation; b) include consideration of public and private land-use objectives (ecosystem goods and services); c) encourage appropriate monitoring to measure objectives; d) link to regulatory powers and incentives to facilitate the code’s implementation and e) foster training and capacity among agency staff to encourage and facilitate collaboration among stakeholders and communicate public objectives to land managers.

- local collaborative deer management. The practicalities of complying with the code require collaboration between neighbouring landowners and with the public as well as government agency staff. SNH should therefore work to support the development of a collaborative management framework that can be used for managing deer across a landscape with reference to their impact on relevant public and private land-use objectives. This framework needs to be applicable for both existing deer management group areas and for the urban and peri-urban fringe where deer management planning is less well developed and issues may be very different. The framework needs to be adaptive in that in has the capacity to adapt to future land-use priorities and to environmental change as well as accommodating new data and information as it becomes available. The Institute supports the provision for supporting deer panels that are designed to be representative of a wide stakeholder interest group.

- extended intervention powers for SNH. The Institute supports the recommendations in the Policy Memorandum but emphasises the need for developing clear criteria for triggering regulatory interventions (such as the voluntary and compulsory measures available in Sections 7 & 8 of the Deer (Scotland) Act 1996). These criteria should be part of the above Code of Practice on Deer Management and be agreed in consultation with the deer management sector. Assessment of criteria requires evidence and this will come from monitoring. The types of information to be monitored for each criteria and the
appropriate methods need to be agreed with a wide range of stakeholders in the deer management sector. In summary, the Institute accepts that the voluntary approach to collaborative management should continue but work is needed to devise the best ways that public resources can promote, support and facilitate a voluntary approach that considers both public and private objectives at the appropriate landscape scale. Where private landowners have responsibilities for public objectives, these need to be made clear.

**Competence requirement in deer stalking**
The institute notes the decision to give the Industry time to develop a voluntary framework to demonstrate competency but supports the development of a register of competency with associated training (including night shooting skills). However, if the aim is to ensure public confidence in deer management in relation to public safety, food safety and welfare issues, a register on its own may not achieve this. It needs to be supported by appropriate monitoring (**Data Collection**). Therefore we would recommend that competent persons were obliged to provide larder data and game dealers obliged to provide carcass quality data and that these data were analysed to monitor deer population performance and carcass quality so that trends can be identified and investigated. One mechanism to ensure traceability and help with identifying issues is carcass tagging. Resources need to be set-aside to ensure the data is collected and then analysed centrally with the results made available to the deer sector. This may help to maintain standards better then relying purely on assessment of competency.

Assessment of competency should be judged by a test against DCS best practice guidance and for existing practitioners, grandfather rights for say 3 years based on proof of previous experience. It is worth considering putting in place hunter training course similar to those used in Scandinavia (including knowledge of deer ecology, firearms handling, food safety etc). Full competency status should only come after a probationary period where the candidate is supervised for the first x number of kills and the associated carcass handling and processing.

**Close seasons**
The Institute notes that the proposals to change the close season dates has been dropped. If competency in deer management can be demonstrated through the code of practice and a register of competency than there is no need, in theory, for a close season on welfare grounds. However, the institute agrees that that a close season for females in the post-calving period is necessary but dealing the start of the close season could allow more flexibility for cull targets to be met. For males, the Institute has no evidence that their welfare would be affected by removing the close season if the code of practice for deer management was implemented and competency was monitored. These two measures would provide a mechanism to address overexploitation of males at a local level and together with appropriate data, the effect on deer population performance can be monitored. The institute would support the provision for local management to vary the close season to fit with local conditions. In other countries with
Occupier Exemptions and authorisations
All persons managing deer should be competent and this competence would include welfare and population level considerations. Therefore, if competence can be demonstrated there is no need to require authorisations for close season shooting or night shooting. The right to shoot deer held by owners and occupiers should remain but with this right comes the responsibility to be competent to do the task. If an owner/occupier is not competent then they would have to employ the services of a competent deer manager. The Institute would support the idea of removing the need for authorisations if there was a functional competency register. However, in the light of the competency related proposals in the bill, there is a need to maintain the current system for authorisations particularly for night shooting.

WRITTEN SUBMISSION FROM PROFESSOR JOHN MILNE

Views on General Principles of Bill from Professor John Milne, Chairman of the Deer Commission for Scotland until 31 July 2010.

The views expressed in this submission are the personal views of Professor Milne and relate to deer (Part 3 of the Bill).

Sections 22, 23 and 24 – Deer management issues

1. In its advice to the Scottish Government, the Deer Commission for Scotland (DCS) recommended that the existing voluntary approach to local deer management should be strengthened in order to deliver sustainable deer management. In the red deer range these arrangements are provided by Deer Management Groups. There is no basis in legislation at present which enables Deer Management Groups to address or resolve conflicting private objectives or to deliver multiple public objectives (see paragraph 2 below). DCS in its advice to the Scottish Government rejected statutory Deer Management Groups or compulsory deer management planning because they would be expensive, increase the level of bureaucracy and need additional public funding to make them work. This advice was accepted by the Scottish Government (see paragraph 139 of Policy Memorandum).

2. DCS argued that the voluntary approach to local deer management has the potential to deliver sustainable deer management provided that cooperation of all landowners within a particular sub-population of deer or area can be secured and deer management plans, which take into account both public and private objectives, are developed and agreed, and then implemented. The voluntary approach also needs to involve those living in such an area and impacted by the effects of deer. The arguments for the
benefits of a voluntary approach are developed more fully in Milne et al. (2010)\(^1\). It is surely right that decisions about the objectives of deer management are decided and implemented locally by those with the knowledge and experience of managing deer and of local interests. The voluntary approach does not work well currently because there is no requirement for landowners with deer interests to join and participate appropriately in a Deer Management Group.

3. The Bill leaves the status quo in relation to the powers of SNH under Section 7 and 8 of the Deer (Scotland) Act 1996 other than expanding the coverage of damage by deer to include deer welfare and to the public interests of a social, economic or environmental nature. While these latter changes are welcomed, because they define the public interest in a more relevant manner than in the Deer (Scotland) Act 1996, the Bill does not address concerns over the effectiveness of Sections 7 and 8 of the Deer (Scotland) Act 1996. In my experience in the use of Section 7, for example to achieve agreements with landowners in relation to avoiding damage to the natural heritage, it is exceedingly demanding of staff time to persuade landowners to agree to a scheme as there is a lack of incentive to become involved and no credible back-up powers as Section 8 has not been used because of perceived difficulties in its enforcement. Moreover, it deals with one specific public interest for the length of time set until damage to the natural heritage is no longer occurring and hence does not provide for longer term sustainable deer management which may need yet more involvement by SNH staff. The proposal in the Bill to expand the coverage of damage to include a wider range of public interests will only increase the amount of effort and time required in reaching Section 7 agreements because there are likely to be more cases and cases are likely to be more complex. At a time when cuts in public expenditure are likely to occur, it appears unwise to increase the public resources required to deliver sustainable deer management.

4. In its advice DCS recommended that the voluntary and devolved approach to deer management would be best supported and directed through a duty on relevant land managers to manage deer sustainably, described in a Code of Practice covering collaborative planning, consultation and implementation. This duty would replace Sections 7 and 8 of the Deer (Scotland) Act 1996. There should be back-up powers for SNH to compel land managers to develop and implement deer management plans where the voluntary approach is failing to protect the public interest. This power would be supported by offences relating to non-compliance and measures for SNH to enforce the plan and recover costs. This power would replace the existing compulsory control scheme in Sections 8 and 9 of the Deer (Scotland) Act 1996 which have always been regarded as impractical and have never been used. The proposal aimed to deliver sustainable deer management effectively without increasing the burden on SNH or increasing the amount of bureaucracy on landowners (the effort on planning and implementation as a duty would replace that involved in being part of Section 7 agreements).

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I recommend that the voluntary and devolved approach to deer management would be best supported in legislation through a duty on relevant land managers to manage deer sustainably, described in a Code of Practice covering collaborative planning, consultation and implementation, and with appropriate back-up powers.

4. The consideration of urban and peri-urban deer, usually roe deer, is welcomed but what is included in the Bill falls short of the advice of DCS to Ministers. In its advice DCS stated “There are some situations, for example in areas where voluntary deer management groups do not exist, but deer management issues could arise, where the setting up of a formal panel would be the most appropriate route to encourage the delivery of the public interest. …, particularly in some woodland and peri-urban situations. These panels would be required to develop and deliver a deer management plan. Panels would be “task and finish” groups focused on a specific issue, and then disbanded once delivery mechanisms were in place”. This would be an extension to the current use of panels described in Section 4 of the Deer (Scotland) Act 1996. I believe that such an extension to Section 4 would be valuable in dealing with roe deer issues in urban and peri-urban areas. The Bill only addresses the issue by adding to the powers of SNH “to assist any person or organisation in reaching agreements with third parties” and removes the limit of 9 persons from the number of members on a panel. The Bill increases the resources required by SNH without any clear outcomes specified.

I recommend that the existing provisions that allow SNH to appoint advisory panels to deal with local deer management issues (Section 4 of the Deer (Scotland) Act 1996) should be extended to allow SNH to place a duty on its members to prepare and implement a management plan within a specified area.

5. The Scottish Government has not taken the advice of DCS on sustainable deer management, apparently on the grounds that the duty to manage deer sustainably was not described precisely enough by DCS and that it would infringe the rights of landowners under the Human Rights legislation\(^2\). I would argue that the duty can be clearly described in the Code of Practice and this should be approved by the Scottish Parliament to ensure that it was satisfied that the Code of Practice was fit for purpose. The proposal in the Bill for the proposed Code to be only laid before the Scottish Parliament would not provide for this and would need to be changed. In relation to the Human Rights legislation, the concept of a duty is not new to legislation in deer, for example in control schemes (section 8, subsection 7, Deer (Scotland) Act 1996) it is stated that “every owner or occupier shall take such measures as the scheme may require of him”. There is thus a precedent whereby those with the rights to take deer have a responsibility to manage deer. I would argue that the severity of the proposed duty is no greater than that which exists for control schemes described above. Parallels can also be drawn between the duty proposed and the access duties, imposed by the

Land Reform (Scotland) Act 2003, whereby a landowner must manage land responsibly for access and where this duty is clarified in a code.

I recommend that the Committee reviews the advice given by Scottish Government officials in relation to the duty to manage deer sustainably.

6. As currently drafted, the Code of Practice has no force in law other than SNH having only to “monitor compliance with the Code” and “have regard to the Code in exercising its functions”. I consider this a major weakness. The Bill does not include the breach of the Code by a landowner as grounds for SNH seeking an agreement under Section 7 or making a control scheme under Section 8. Although such grounds could increase the use of Sections 7 and 8, it appears to be the only means possible in the current Bill to enforce the Code of Practice. If it proves impossible to introduce a duty to manage deer sustainably, then I would recommend that a breach of the Code by a landowner would be grounds for SNH seeking an agreement under Section 7 or making a control scheme under Section 8.

7. As currently drafted, Section 8 (6) and Schedule 2 of the Deer (Scotland) Act 1996 would require to be changed and brought in line with the provision for appealing Land Management Orders. These were included in the Nature Conservation (Scotland) Act 2004. In my opinion an appeal to the Scottish Land Court to affirm, or direct Scottish ministers to amend or revoke a scheme appears more workable than the exiting appeal process route through a public enquiry as described in Schedule 2 Part 12 paragraph 3 of the Deer (Scotland) Act 1996). If it proves impossible to introduce a duty to manage deer sustainably, then I would recommend that Section 8 (6) and Schedule 2 of the Deer (Scotland) Act 1996 should be changed as described above.

Section 26- Register of persons competent to shoot deer

9. The proposal under the Bill - 17 A, Register of persons competent to shoot deer - is welcomed and follows on from the advice of DCS. It was always accepted that there would be a period before the register could be introduced because of the need for those who shoot deer to demonstrate the skills and knowledge described through the industry-agreed standards at National Occupational Standard Level 2. The proposal by the deer sector that they would facilitate that process is to be welcomed. However, it would appear that 17 A would only be put in place by regulation depending upon the extent of the skills and knowledge of those who shoot deer as reported on by SNH. It is not clear why there would not be a need for a register even if most of those who shoot deer in 2014 can be classified as having the skills and knowledge. Also, what about those who start shooting deer after 2014? A register provides a means of ensuring that there is a reasonable probability that those who shoot deer at the time of the register being introduced and subsequently will do so such that the welfare of deer is protected. In the part of the Bill covering snaring, it is proposed that there will be an equivalent role for a register for those who have the skills and knowledge to snare certain animal species. Surely it is as important that the welfare of the estimated 135,000 deer culled each year
receive the same consideration as other species. Moreover, a register would allow a much more accurate estimate of the number of deer of different species shot in Scotland to aid SNH in its management of deer populations than can be obtained using the routes that exist in the current deer legislation.

Whilst the attempt to modify the automatic occupiers’ exemptions which allow occupiers to shoot deer during the close season is welcomed, the approach would be strengthened to protect deer welfare if the register described above was put in place. According to the Policy Memorandum, the Bill would provide for a general authorisation to an occupier without a separate assessment of whether individual applicants are “fit and competent” to be so authorised. The introduction of the register would ensure that this loophole is closed.

I recommend that a register of all those with the skills and knowledge to shoot deer should be introduced in 2014 irrespective of the extent of those who shoot deer that have the skills and knowledge to do so.

J A Milne
16 August 2010

WRITTEN SUBMISSION FROM SCOTTISH NATURAL HERITAGE

Scottish Natural Heritage (SNH) is the Scottish Government’s statutory advisor on natural heritage issues. The Wildlife and Natural Environment Bill brings much needed modernisation to wildlife legislation, and should also streamline regulatory procedures and make them more effective.

Following the recent merger with the Deer Commission for Scotland (DCS) our remit has expanded to cover a wider wildlife management role. The Bill will give SNH new powers and duties in a number of areas concerned with wildlife management. These will fit well with our enhanced role and we welcome the overall policy objectives of the Bill.

Game
The simplification of the legislation governing game and poaching will have significant benefits. We agree with retaining the protection of mountain and brown hares during their breeding seasons. We do not see a need for full protection as there is no evidence to show that current levels of exploitation are causing a decline in the species’ range in Scotland. Protection is currently given through the restriction on selling hares from March to July inclusive by the Hares Preservation Act 1892. We advised the Scottish Government that the two species have different breeding periods and should therefore benefit from tailored close seasons. The dates that have been included in the Bill reflect the peak breeding periods for each species. We will also be responsible for issuing licences for killing or taking hares out of season. As this will be a new licensable purpose, it is hard to assess accurately the future workload, although we do not consider that this will be too onerous.
Keeping the admissibility of single witness evidence for the prosecution of offences for poaching game birds, hares and rabbits is a legal anomaly. Whilst we understand the historic reasons for this, it does not extend to the prosecution of other offences under the Wildlife & Countryside Act 1981. For example cases involving the illegal killing of non-game wild birds require corroboration by two or more witnesses.

Areas of Special Protection (ASP)
This nature conservation designation dates from the 1950s and predates most current conservation legislation. The aim was to protect birds and their eggs, and to prohibit public entry to specified areas at certain times of the year. The protection given to birds by these Orders has been replicated and strengthened by the changes made to the Wildlife & Countryside Act 1981 by the Nature Conservation (Scotland) Act 2004. In addition, the provisions of the Land Reform (Scotland) Act 2003 and the Scottish Outdoor Access Code allow for better visitor management at locations where public access could otherwise cause a problem. We therefore believe that the ASP designation has become redundant and that removing it from the statute will assist in decluttering the many designations that can be applied to land.

Snaring
The Bill proposes measures that will help regulate and promote good practice with regard to snaring. The overall result should be the promotion of better animal welfare in this area. SNH supports these proposed measures.

There is currently an apparent discrepancy between how snares are described in the Wildlife & Countryside Act 1981 and the Conservation (Natural Habitats, &c.) Regulations 1994 (the Habitats Regulations), so that it is uncertain whether snares are considered to be traps for the purpose of licensing under the 1994 Regulations. This particularly applies to the licensing of snaring to control populations of mountain hares. SNH would support measures taken to include snares as traps including any necessary amendments to domestic legislation.

Invasive non-native species
SNH is a member of the Scottish Working Group on Invasive Non-native Species, and has been working closely with the Scottish Government in developing the policy aims of the Bill. Many non-native species have either been deliberately introduced to Scotland or have found their way here unintentionally as a result of human activity. If they become invasive they can have a devastating effect on fragile natural environments in some locations, particularly on islands. SNH has recently carried out large scale programmes to remove mink and hedgehogs from the Western Isles.

The provisions in the Bill will reduce the threat of non-native species being released into the wild and make control and eradication schemes more successful. The new 'no release' presumption will be easier to understand, particularly when backed up by the code of practice. The code will need to clearly define the terms 'native range' and 'in the wild' as used in the Bill, but also recognise that some native ranges will change as a
result of climate change. The native ranges of many species are already well defined, for example by the Botanical Society for the British Isles or the British Ornithologists Union. The introduction of the code should also be accompanied by an increase in awareness-raising amongst key target groups to help prevent future releases.

We expect control orders to be a valuable tool in helping public agencies to carry out large-scale eradication programmes, although we do not anticipate that we will need to use this measure very often. Most land managers are willing to enter into voluntary agreements to control invasive non-native species on their land. Control orders will therefore be a fall-back option where all attempts to reach a voluntary agreement have failed, or where the ownership of land is unknown. It is unlikely that we will recover costs from land managers through control orders unless eradication work is being carried out as a result of their actions, such as for example, the reckless release of non-native crayfish to a catchment where they were not previously found.

The Bill does not set out lead agencies for dealing with different invasive non-native species. A protocol has been set up by the Rapid Response Working Group, established under the Invasive Non-native Species Framework Strategy for Great Britain (jointly produced by the Governments of England, Wales and Scotland). This sets out which agency should be the lead coordination body for dealing with new invasions of non-native species. This could also be included in the code of practice.

Owners of certain species that are held in captivity, such as beavers, should be obliged through the Bill to tag their animals, so that they can be identified if they escape. There can be serious implications on the welfare of the escapees, on other landowners, and on the integrity of licensed reintroduction projects from these unmanaged releases or escapes. In addition the costs of recovering and keeping escaped animals can fall to public agencies if the owners of the animals cannot be traced.

**Species licensing**

The proposed transfer of all species licensing functions to SNH will result in a significant additional workload. The Financial Memorandum states that this work is currently carried out by 4 full time staff, at a cost of £109,769. Some Scottish Government licensing work (such as out of season goose licences) is carried out by Rural Payments and Inspections Division staff in addition to the above. If this work is also passed to SNH there would be further resource implications.

The consultation document for the Bill showed that the number of licenses issued by the Scottish Government increased by almost 250% from 2005 to 2008. Numbers are continuing to rise every year. We are discussing with the Scottish Government how the administration and monitoring of this extra workload can be accommodated at a time of severe financial constraints.

In addition to SNH taking on existing licensing duties from the Scottish Government the Bill introduces new licensing duties related to killing or taking hares and rabbits, and snaring. We will also be the licensing authority for the new social, economic or
environmental purpose to be inserted in to the Wildlife & Countryside Act 1981. We welcome this new purpose, which we have long called for, as it will remove an anomaly in species protection. It is difficult to estimate what the demand for licences under these new purposes will be.

With the appropriate resources the transfer of all species licensing to SNH will present an opportunity to streamline the licensing process. For customers this will simplify what is generally accepted as being a confusing regulatory system. SNH already provides advice to the Scottish Government on the vast majority of its licences. The proposed changes will mean that we will be responsible for assessing issues such as public health and safety and socio-economic matters that are not currently within our remit, and will seek advice from other public bodies where we do not have sufficient expertise. Implementing these changes will require careful planning and development of policies and procedures well in advance of the enactment of the new legislation. We will prepare guidance for SNH staff and licence applicants that will be made available on our website and against which our decisions can be scrutinised.

**Deer**

The proposals to amend the Deer (Scotland) Act 1996 originate from recommendations that were made to the Scottish Government by the DCS. These aimed to better safeguard wild deer welfare; improve the voluntary approach to deer management; and improve the delivery of public benefit within deer management. This would also contribute to the Scottish Government’s new wild deer strategy, ‘Scotland’s Wild Deer – A National Approach’ (WDNA).

Although the suggested statutory duty to manage deer sustainably has not been taken forward in the Bill, this will be implicit in the proposed statutory Code for Deer Management. This will help to support land managers to deliver their responsibilities associated with managing wild deer with guidance on achieving wider sustainable deer management. It will also set out triggers for government intervention where the public interest is at risk. This will allow scrutiny of the decision making process taken by landowners when SNH determines that deer are causing damage that needs to be addressed under section 7 (voluntary control agreement) or section 8 (compulsory control scheme) of the 1996 Act. The Code will be relevant to all species of wild deer and to all habitats, including urban deer. A draft structure has been developed.

The proposal to widen the section 7 and section 8 triggers to include damage to welfare and socio-economic interests will help address the current narrow definition of public interest and support SNH’s expanded socio-economic remit and objectives. We are working on how best to identify what is meant by damage in these new circumstances. This is essential not only to define when public interest has been affected but also to assist with monitoring compliance with the Code.

The principal aim of the register of competence recommended by DCS was to safeguard deer welfare, by ensuring that those who shoot deer have the necessary skills and knowledge. The effect of delaying the implementation of this will be to
encourage the development of a competence scheme by the deer industry. The levels of competence and the impact of this on deer welfare will be assessed by SNH if a compulsory scheme has not been brought in before 1 April 2014. Linked to the competence register in the original DCS proposals was a requirement for individuals to produce a cull return. Comprehensive and accurate data is fundamental to good management planning. If the register is not brought into operation SNH will need to review the current deer data collection and collation to ensure it is fit for purpose. Specifically this data must assist in the monitoring of the Code. If a competence system is introduced it is estimated that its administration will require an 0.75 FTE.

The removal of the owner occupier rights to take or kill deer out of season in order to protect crops, pasture and enclosed woodland is likely to be replaced by a form of general licence. There is an expectation that this would not operate through the periods of greatest welfare risk. Exceptions to this may be allowed, although the precise circumstances where damage overrides welfare considerations has yet to be confirmed.

**Badgers**
The Bill allows for the Scottish Government’s licensing functions under the Badgers Act 1992 to be passed to SNH. We currently issue around 50 licences per annum under this Act, mostly to allow the disturbance of setts for development. We also provide advice to the Scottish Government licensing team on a similar number of applications each year, mainly for the disturbance of setts for forestry purposes. The proposed transfer of licensing responsibility to SNH will therefore simplify this area of licensing. Any increase in resources required to cope with this additional work should be covered in discussions over the transfer of other licensing duties.

**Muirburn**
SNH has been working closely with the Scottish Government directly and through the Moorland Forum to develop the provisions put forward in the Bill. We support these changes as they have the potential to introduce greater flexibility in muirburn management, and will allow research to be carried out into the implications of burning outside the season. We are likely to be the licensing authority for the new out of season muirburn licences. Based on our current estimate of the number of licences that may be applied for each year, this would cost around £9,000 per annum in staff time and other costs.

It is important to note the distinction between the Scottish Ministers’ power to vary the muirburn season, and the ability for individual land managers to carry out licensed out of season burning. If the Scottish Ministers exercise their power to vary the season, this will apply to all land within the area specified, which could be the whole of Scotland, or land defined by its altitude or location. It is likely that such a blanket change to the season would be backed up by prior research to show that a change to the season will not have a detrimental effect on natural heritage interests. Licences for burning out of season will apply to specific areas of land and for specific purposes. One of these purposes is for research, and this may back up a case for the Scottish Ministers to vary the season by order.
We consider that it is important for licence applicants to be able to show that their plans can only be carried out in the close season and that the benefits to be gained will over-ride the underlying purpose of the close season. This will require the applicant to provide adequate information, and may mean that an ecological survey will need to be carried out.

**Sites of Special Scientific Interest (SSSI)**
The changes to be made to the Nature Conservation (Scotland) Act 2004 are aimed at streamlining the administration of the SSSI series. These provisions have been suggested by SNH and we have been working closely with the Scottish Government in their development.

Two of the provisions will have an effect on the boundaries of SSSIs; the ability of SNH to merge individual SSSIs, and the ability to denotify all or part of a SSSI without further consultation where the special interest has been lost as a result of an operation approved by a regulatory body. We do not have extensive plans to merge SSSIs, but will instead use this provision where this can be shown to reduce the administrative burden on land managers and SNH. Our initial consideration is that this may apply to around 5-10 SSSIs.

The new denotification provision will be used to adjust the boundaries of sites where designated land has been lost to development (housing etc) or roads. It seems unnecessarily bureaucratic to seek objections on scientific grounds to the removal of this land from a SSSI. In addition the decision to allow the development will have already been reached through an open public process that took account of SNH's advice.

It is expected that the introduction of restoration notices will provide an easier means of securing restoration of illegal damage to SSSIs caused by those with an interest in the land. We see this as a fall-back option, and anticipate that these notices will help us to agree voluntary restoration with land managers instead, where this is possible. Therefore this will allow us to work constructively with land managers instead of relying on enforcement through the Police and Courts to restore damage. It is estimated that this will apply to around 5 situations annually.
The following evidence has been received as supplementary written evidence:

SUPPLEMENTARY WRITTEN SUBMISSION FROM SHERIFF T.A.K.DRUMMOND
QC

Preamble:
When I appeared before the Committee on 15th September I had no advance notice of the areas of interest or concern for the Committee.

Having now heard the deliberations of the Committee it seemed to me that there were four particular matters on which some additional clarification might be of assistance.

Those appeared to me to be:
(1) “vicarious liability” and poisoning offence
(2) Single witness evidence
(3) Powers of search and entry and
(4) extension of powers to wildlife inspectors.

1. Vicarious Liability
Poisoning Offences
Addendum to my Discussion Paper on Pesticides and WCA.
It may have been clear in my evidence that I was not enthusiastic about an approach being adopted which proposed the creation of some form of vicarious liability.

In my Discussion Paper I had proposed the introduction of an offence of possession of regulated substances “with intent” : this was designed to address the evidential problems which flow from a discovery of noxious substances in circumstances where the evidential link to e.g. the poisoned carcass, cannot be made.

I had further suggested certain control measures which would have the effect of making the employer answerable for noxious substances possessed by his employee.

Those suggestions were based to some extent upon long experience of the operation of the Misuse of Drugs Act 1971.(MDA)

I had not previously considered it necessary to take the WCA as far as the next level on the scale of offences under the MDA.

Having heard some of the representations which were made to the Committee on Wednesday 15th September, an additional charge could usefully be added to those which I suggested in my Discussion Paper which was before the Committee, namely a charge of:-
“...being concerned in the using or placing in position of any prohibited article or substance for the purpose of committing an offence under the WCA…”
The effect of such an addition would be to replicate in the WCA the family of charges which originates in the Misuse of Drugs Act 1971 namely, (1) “bare” possession (2) possession with intent to supply and (3) being concerned in the supply.

“Bare possession “ is already in WCA Section 15A. The logical place for the additional charges in the WCA would be in Section 15A (i) (ii) and (iii).

For the information of the Committee the well established, much used and extremely effective charge of “being concerned “ in the prohibited activity as set out in Section 4(3)(b) of the Misuse of Drugs Act (MDA) is defined in the context of the MDA in the following terms :

“I doubt whether it is altogether helpful to treat such a provision[S.4(3)(b)] in a United Kingdom Statute merely as if it were a form of statutory concert. Under the Criminal Procedure (Scotland) Act 1975 the charge “guilty actor or art and part” is implied in all Scottish indictments. Judging from its terms and the context in which it occurs, I consider that section 4(3)(b) is enacted in the widest terms and was intended to cover a great variety of activities both at the centre and also on the fringes of dealing in controlled drugs. It would, for example, in appropriate circumstances, include the activities of financiers, couriers and other go-betweens, lookouts, advertisers and many links in the chain of distribution. It would certainly, in my opinion, include the activities of persons who take part in the breaking up of bulk, the adulteration and reduction of purity, the separation and division into deals and the weighing and packaging of deals.” (Kerr v HMA 1998 SCCR 81)

A charge of “being concerned in the using or placing in position” of regulated substances or baits, for example, would be available in circumstances where e.g. a number of dead/poisoned birds are found on a particular estate: historic evidence is available demonstrating that the location has previously produced poisoned birds: an employee or employees have been found in possession of noxious substances: samples from different sources around the suspected location produce positive results from swabbings: noxious substances are recovered but ownership/possession cannot be attributed to a specific individual.

In any combination of the foregoing circumstances, or more, it may be possible to establish that there is a course of conduct ongoing (see the Kerr definition above) of which the employer/owner cannot be unaware and could provide an effective foundation for a charge of “being concerned in” the prohibited activity. This would be capable of addressing the kind of “corporate activities” of which the Committee has heard: it would avoid the complexities to which I referred which might arise unnecessarily from an attempt at deploying “vicarious liability” : it would have the advantage of being an operational concept with which every police officer and prosecutor in the country is familiar.

It may also be that the very presence in the WCA armoury of offences of such a sweeping offence would by its very presence operate as a substantial deterrent.
I would be happy to expand on this further if the concept found favour with the Committee but suffice it to say at this stage that this addition could represent the logical completion of a family of charges whose scope is well recognised in law.

It should be borne in mind that the historical foundation for this category of prosecution probably goes back to a time when there was little or no organisational police activity in the more remote rural areas. In addition, such police presence as there may have been could have regarded bicycle transport as the cutting edge of technology.

The principal means of detection and apprehension would have been the local gamekeeper.

There remains scope for the use of “single witness” prosecution but it should be borne in mind that this is very much the exception to the normal Scots Law requirement for corroboration.

As I mentioned in my evidence on 15th September the requirement for corroboration is one of the safeguards against wrongful conviction which is part of a much wider structure within Scots law. It is not a principle which is elected for arbitrarily in selected cases.

If the need for corroboration were to be dispensed with in wholesale categories of cases the question can reasonably be asked why it should exist at all and that is a matter which goes to the heart of our separate legal system.

3. Powers of Search and entry.
This subject is not unrelated to the lack of cohesion to which I pointed in part of my evidence. In order to illustrate just one part of the difficulties which can be experienced in practice I have now extracted from the statutes to which I referred, a number of the provisions relating to the powers of entry and search granted to Constables and Inspectors respectively.

In the interests of brevity I have not extracted them all and for the assistance of the Committee.

I append those extracts as Appendix 1 to this supplementary submission.

I would urge the Committee to cast an eye over these purely to gain some appreciation of their scale and complexity.

Even a cursory examination of the relevant provisions demonstrates that these are extremely detailed and have been crafted with care.
Within those powers distinctions are drawn between separate operational functions: the statutory provisions themselves, in most cases, are specific to particular sections of the relevant legislation as opposed to the grant of general powers.

One would be entitled to conclude from the careful drafting that proportionate balances were at least under consideration and were being reconciled between (i) the powers necessary for the enforcement of the statutory enactment and (ii) the fundamental freedoms being encroached upon.

I was accordingly a little surprised to find that it was being suggested before the Committee, if I understood the position correctly, that one of the levels of Inspectors in terms of the 2006 Act should be given the powers of police officers.

Again, if I understood matters correctly, it was being suggested at one stage that such a course would not require amending legislation. I did not understand that particular submission.

There is, however, one underlying and important provision in the powers of search and entry to which no specific reference was made viz. S.17 of Schedule 6 Animal Health and Welfare Act 2006.

“17 The powers conferred on constables by this schedule are without prejudice to any powers conferred on constables by law apart from this schedule.”

(I did touch on that matter briefly and indirectly at one stage in my own evidence (2.2.38).)

The reference may not have been clear but it was when I made reference to certain difficulties which are already being encountered in relation to the powers of inspectors, namely, whether or not they competently can, or even require to, administer any form of caution when they are seeking e.g. explanations from a suspect. (I put that in the neutral form of “seeking explanations” for reasons which follow immediately below.)

This particular issue has already arisen indirectly in one animal welfare case of which I am aware and I understand was a live issue in one other.

4. The Powers:
The powers granted to Inspectors under the 2006 Act have not yet “bedded down” in practice: some areas of potential conflict have been flagged as mentioned above.

It will be appreciated, however, that the Inspectors rightly have no power to arrest or detain a suspect and, on the face of the statutory provisions, have no power to interview or question them.
These powers of detention, arrest and questioning are, of course, inherent powers of a constable and are the very matters “…without prejudice to any powers conferred on constables by law apart from this schedule…” envisaged by S.17 of Schedule 6 above. The consequences for successful prosecutions resulting from investigative excesses by non-police “investigators” are all too well known.

In the interests of brevity I will not dwell on this matter further other than to point out below :-

An Additional Relevant Consideration:
One other significant matter arises in this connection namely, that it is probably the case that notwithstanding that the SSPCA is a reporting agency in Scotland, neither of the Charities mentioned in evidence before the Committee (RSPB and SSPCA) is a “public authority” and “…has no public functions within the meaning of Section 6 of the Human Rights Act…” (RSPCA v Attorney General [2001] 3 All ER 530 (at para 27) (Copy attached at Appendix 2) being private bodies regulated by their own respective Councils.

The grant of the equivalent powers of police to private individuals or organisations which are outwith the accountability of the ordinary Parliamentary process is a matter which should be viewed by legislators with some anxiety.

It is not simply a matter of “training” as was mentioned at one stage: it is a matter of accountability.

In the context of accountability I would invite the Committee to consider the issue for the moment from an alternative standpoint viz. each of the organisations concerned is undoubtedly today wholly benevolent. What if one of those organisations decided as a matter of perfectly proper private internal policy to target an activity which was otherwise lawful but contrary to their own internal policy?

e.g. 1. the Guga cull off the Butt of Lewis (August 2010) which is Licenced by SNH but is currently opposed by SSPCA.

e.g. 2. snaring, of which the Committee has already heard something on their respective private policy considerations

e.g. 3. What if the Directorate or Council of either of the organisations were at any time to be represented by, or influenced by, more extreme elements of the Animal Rights spectrum?

These are private organisations controlled by the membership. Would “their” inspectors in their employment be entitled to act in a manner which was contrary to organisational policy of thir employer?

The foregoing may sound unlikely or even hypothetical events but that is the very category of conflict which was under consideration as recently as 2001 in RSPCA V Attorney General (cit above) where the expulsion of members of the RSPCA for activities related to the English Hunting legislation was under consideration.
I raise the above matter simply to introduce a note of caution that careful consideration requires to be given by the legislature before the granting of equivalent powers of police to private organisations or to individuals which are outwith the recognised processes of public accountability.

The Legislature is supreme and is entitled to take whatever view on these matters that it considers appropriate but it is necessary, in my opinion, that it should take into account considerations such as accountability when contemplating the kind of step which was advanced in evidence before it.

It would equally be unfortunate if principle were to be obscured in the tensions which inevitably arise when budgets and resources enter the equation.

**Conclusion**
Finally I make brief reference to two separate additional matters viz: -

**The Licensing System under the WCA.**
Some passing references to the issuing of licences under the WCA were made before the Committee in a number of different contexts.
I simply wish to add that the licensing system which began its life as a relatively modest approval scheme has developed in recent years into a minor body of law in its own right. One recent example purported to amend the substantive criminal law.

I simply suggest to the Committee that the Licensing system under the WCA is in need of attention.

The WCA Licensing system is one of the subjects on the present programme of work for the Legislation Regulation and Guidance Committee of PAWS but no work has yet been done on it.

**Codification of Wildlife Penal Provisions** :
In the course of my evidence I was invited at one stage by a member of the Committee to reflect on the possibility of codification of the penal elements of our wildlife legislation.

I have given the matter some thought and contrary to a view which I may have expressed in evidence I am of the opinion that it could be done.

I would not expect that the Committee would require further specification at this time.

T.A.K.Drummond QC
24 September 2010
Appendix 1

COMPILATION OF POWERS OF ENTRY AND SEARCH
Appendix 1.

Compilation of Search and Entry powers under Relevant Legislation

(All Emphasis is mine for ease of reference)

Original Section 19 WCA

19.- (1) If a constable suspects with reasonable cause that any person is committing or has committed an offence under this Part, the constable may without warrant—

(a) stop and search that person if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that person;

(b) search or examine any thing which that person may then be using or have in his possession if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that thing;

(c) arrest that person if he fails to give his name and address to the constable's satisfaction;

(d) seize and detain for the purposes of proceedings under this Part any thing which may be evidence of the commission of the offence or may be liable to be forfeited under section 21.

(2) If a constable suspects with reasonable cause that any person is committing an offence under this Part, he may, for the purpose of exercising the powers conferred by subsection (1), enter any land other than a dwelling-house.

(3) If a justice of the peace is satisfied by information on oath that there are reasonable grounds for suspecting that—

(a) an offence under section 1, 3, 5, 7 or 8 in respect of which this Part or any order made under it provides for a special penalty; or

(b) an offence under section 6, 9, 11(1) or (2), 13 or 14, has been committed and that evidence of the offence may be found on any premises, he may grant a warrant to any constable (with or without other persons) to enter upon and search those premises for the purpose of obtaining that evidence.

In the application of this subsection to Scotland, the reference to a justice of the peace includes a reference to the sheriff.

Protection of Wild Mammals (Scotland) Act 2002

7 Arrest, search and seizure

(1) A constable who suspects with reasonable cause that a person has committed or is committing an offence under this Act may without warrant—
(a) arrest that person;
(b) stop and search that person, if the constable suspects with reasonable cause that evidence in connection with the offence is to be found on that person;
(c) search or examine a vehicle, animal or article which appears to belong to, or be in the possession or control of, that person, if the constable suspects with reasonable cause that evidence in connection with the offence is to be found in or on it;
(d) seize and detain for the purpose of proceedings under this Act a vehicle, animal or article which may be evidence in connection with the offence or which may be made the subject of an order under Part II of the Proceeds of Crime (Scotland) Act 1995 (c. 43).

(2) A vehicle, animal or article seized under subsection (1)(d) above shall be returned to the person from whom it was seized as soon as any proceedings under this Act are concluded without the conviction of the person accused.

(3) A constable may enter land (but not a dwelling house) in order to exercise a power given by subsection (1).

Section 19 WCA as amended by Nature Conservation (Scotland) Act 2004

43 Powers of investigation etc.: police

(1) A constable who suspects with reasonable cause that any person is committing or has committed an offence under this Part may, without warrant—
(a) stop and search that person if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that person,
(b) search for, search or examine any thing which that person may then be using or may have used, or may have or have had in the person’s possession, if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found in or on that thing,
(c) seize and detain for the purposes of proceedings under this Part any thing which may be evidence of the commission of the offence.

(2) A constable who suspects with reasonable cause that any person is committing or has committed an offence under this Part may, for the purpose of exercising the powers conferred by subsection (1), enter any land other than a dwelling or lockfast premises.

(3) If a sheriff or justice of the peace is satisfied, by evidence on oath, that there are reasonable grounds for suspecting that an offence under this Part has been committed and that evidence of the offence may be found on any premises, the sheriff or justice may grant a warrant authorising a constable to enter those premises, if necessary using reasonable force, and search them for the purposes of obtaining that evidence.
(4) A warrant under subsection (3) continues in force until the purpose for which the entry is required has been satisfied or, if earlier, the expiry of such period as the warrant may specify.

(5) A constable authorised by virtue of this section to enter any land must, if required to do so by the occupier or anyone acting on the occupier’s behalf, produce evidence of the constable’s authority.

(6) **A constable who enters any land in the exercise of a power conferred by this section—**

(a) may—

(i) be accompanied by any other persons, and

(ii) take any machinery, other equipment or materials on to the land, for the purpose of assisting the constable in the exercise of that power,

(b) may take samples of any articles or substances found there and remove the samples from the land.

(7) A power specified in subsection (6)(a) or (b) which is exercisable under a warrant is subject to the terms of the warrant.

(8) **A constable leaving any land** which has been entered in exercise of a power conferred by subsection (2) or by a warrant under subsection (3), being either unoccupied land or land from which the occupier is temporarily absent, **must leave it as effectively secured against unauthorised entry as the constable found it.**

(1) **Any person authorised in writing by SNH may, at any reasonable time, enter any land** for any of the following purposes—

(a) to determine whether to give or confirm an SSSI notification or a notification under section 5(1), 6(5), 7(3), 8(1) or 9(1) in relation to the land,

(b) to assess the condition of any protected natural feature of the land,

(c) to determine whether or not to offer to enter into a management agreement in relation to the land or to ascertain the terms on which it should offer to enter into such an agreement,

(d) to ascertain whether a management agreement is being, or has been, complied with,

(e) to determine whether or not to formulate a proposal under section 29(2) for a land management order,

(f) to ascertain whether an offence under section 19(1) or (3), 27(1) or 36(1) or (2) or under byelaws made by virtue of section 20 is being, or has been, committed on or in relation to the land,

(g) to ascertain whether an operation required to be carried out by a land management order or an order under section 40(1) has been carried out in accordance with the order,
(h) to carry out operations in pursuance of section 37 or 40(5),
(i) to determine any question in relation to the acquisition of the land by agreement or compulsorily,
(j) to determine any question in relation to compensation under section 20(3) of the National Parks and Access to the Countryside Act 1949 (c. 97) as it applies in relation to byelaws made under section 20 of this Act,
(k) to put up, maintain or remove signs, or to do anything else, for the purposes of section 41,
(l) where SNH is not aware of the name or address of an owner or occupier of the land, to affix a notice to a conspicuous object on the land for the purposes of section 48(10).

(2) Any person authorised in writing by the Scottish Ministers may, at any reasonable time, enter any land for any of the following purposes—

(a) to determine whether a nature conservation order, or an amending order or revoking order, should be made in relation to the land,
(b) to determine whether a land management order, or an order under section 32(3) amending or revoking such an order, should be made in relation to the land,
(c) where the Scottish Ministers are not aware of the name or address of an owner or occupier of the land, to affix a notice to a conspicuous object on the land for the purposes of section 48(10).

(3) The powers conferred by subsections (1) and (2) to enter land for any purpose mentioned in those subsections include power to enter for the same purpose any land other than that referred to in the subsection in question.

(4) Nothing in this section authorises any person to enter a dwelling or lockfast premises.

(5) Any person who intentionally obstructs a person acting in the exercise of any power conferred by this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) Schedule 4 makes further provision about the exercise of the powers conferred by this section; and references in this section and that schedule to a power conferred by this section include references to such a power exercisable by virtue of a warrant under that schedule.

2004 Act Schedule 6

19ZC Wildlife inspectors: Scotland

(1) The Scottish Ministers may authorise any person to carry out the functions conferred by this section and section 19ZD(3), (4) and (8) (and any person so authorised is to be known as a “wildlife inspector”).

(2) An authorisation under subsection (1)—
(a) shall be in writing, and
(b) is subject to any conditions or limitations specified in it.

(3) A wildlife inspector may, at any reasonable time and (if required to do so) upon producing evidence of authorisation, enter and inspect—

(a) any premises for the purpose of ascertaining whether an offence under section 6, 9(5) or 13(2) is being, or has been, committed on those premises;

(b) any premises where the inspector has reasonable cause to believe that any birds included in Schedule 4 are kept, for the purpose of ascertaining whether an offence under section 7 is being, or has been, committed on those premises;

(c) any premises where the inspector has reasonable cause to believe that any birds are kept, for the purpose of ascertaining whether an offence under section 8(1) is being, or has been, committed on those premises;

(d) any premises for the purpose of ascertaining whether an offence under section 14 or 14A is being, or has been, committed on those premises;

(e) any premises for the purpose of verifying any statement or representation which has been made by an occupier, or any document or information which has been furnished by the occupier, and which the occupier made or furnished—

(i) for the purposes of obtaining (whether for the occupier or another person) a relevant registration or licence; or

(ii) in connection with a relevant registration or licence held by the occupier.

(4) In subsection (3)—

(a) paragraphs (a) to (c) do not confer power to enter a dwelling except for purposes connected with—

(i) a relevant registration or licence held by an occupier of the dwelling; or

(ii) an application by an occupier of the dwelling for a relevant registration or licence,

(b) paragraph (d) does not confer power to enter a dwelling.

(5) A wildlife inspector may, for the purpose of ascertaining whether an offence under section 6, 7, 8(1), 9(5), 13(2), 14 or 14A is being, or has been, committed in respect of any specimen, require any person who has possession or control of the specimen to make it available for examination by the inspector.

(6) Any person who has possession or control of any live bird or other animal shall give any wildlife inspector acting in the exercise of powers conferred by this section such assistance as the inspector may reasonably require for the purpose of examining the bird or other animal.

(7) Any person who—

(a) intentionally obstructs a wildlife inspector acting in the exercise of powers conferred by subsection (3) or (5); or
(b) fails without reasonable excuse to give any assistance reasonably required under subsection (6), shall be guilty of an offence.

(8) Any person who, with intent to deceive, falsely pretends to be a wildlife inspector shall be guilty of an offence.

(9) In this section—

- “relevant registration or licence” means—
  (a) a registration in accordance with regulations under section 7(1); or
  (b) a licence under section 16 authorising anything which would otherwise be an offence under section 6, 7, 8(1), 9(5), 13(2), 14 or 14A;
- “specimen” means any bird, other animal or plant or any part of, or anything derived from, a bird, other animal or plant.

19ZD Power to take samples: Scotland

(1) A constable who suspects with reasonable cause that a specimen found by the constable in the exercise of powers conferred by section 19 is one in respect of which an offence under this Part is being or has been committed may require the taking from it of a sample of blood or tissue in order to determine its origin, identity or ancestry.

(2) A constable who suspects with reasonable cause that an offence under this Part is being or has been committed in respect of any specimen (“the relevant specimen”) may require any person to make available for the taking of a sample of blood or tissue any specimen (other than the relevant specimen) in that person’s possession or control which is alleged to be, or which the constable suspects with reasonable cause to be, a specimen a sample from which will tend to establish the origin, identity or ancestry of the relevant specimen.

(3) A wildlife inspector may, for the purpose of ascertaining whether an offence under section 6, 7, 9(5), 13(2), 14 or 14A is being or has been committed, require the taking of a sample of blood or tissue from a specimen found by the inspector in the exercise of powers conferred by section 19ZC(3)(a) to (d) in order to determine its origin, identity or ancestry.

(4) A wildlife inspector may, for the purpose of ascertaining whether an offence under section 6, 7, 9(5), 13(2), 14 or 14A is being or has been committed in respect of any specimen (“the relevant specimen”), require any person to make available for the taking of a sample of blood or tissue any specimen (other than the relevant specimen) in that person’s possession or control which is alleged to be, or which the inspector suspects with reasonable cause to be, a specimen a sample from which will tend to establish the origin, identity or ancestry of the relevant specimen.

(5) No sample from a live bird, other animal or plant shall be taken pursuant to a requirement under this section unless the person taking it is satisfied on reasonable grounds that taking the sample will not cause lasting harm to the specimen.
(6) No sample from a live bird or other animal shall be taken pursuant to such a requirement except by a veterinary surgeon.

(7) Where a sample from a live bird or other animal is to be taken pursuant to such a requirement, any person who has possession or control of the specimen shall give the person taking the sample such assistance as that person may reasonably require for that purpose.

(8) A constable entering premises under section 19(2), and any wildlife inspector entering premises under section 19ZC(3), may take with him a veterinary surgeon if the constable or, as the case may be, inspector has reasonable grounds for believing that such a person will be required for the exercise on the premises of powers under subsection (1) or (2) or, as the case may be, (3) or (4).

(9) Any person who—

(a) intentionally obstructs a wildlife inspector acting in the exercise of the power conferred by subsection (3),
(b) fails without reasonable excuse to make available any specimen in accordance with a requirement under subsection (2) or (4), or
(c) fails without reasonable excuse to give any assistance reasonably required under subsection (7),

shall be guilty of an offence.

(10) In this section—

(a) “specimen” has the same meaning as in section 19ZC;
(b) in relation to a specimen which is a part of, or is derived from, a bird, other animal or plant, references to determining its origin, identity or ancestry are to determining the origin, identity or ancestry of the bird, other animal or plant.”

Protection of Badgers Act (Sched 6)

“11 Powers of constables

(1) A constable who suspects with reasonable cause that any person is committing or has committed an offence under this Act may, without warrant—

(a) stop and search that person if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that person;
(b) search for, search or examine any thing which that person may then be using or may have used, or may have or have had in the person’s possession, if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found in or on that thing;
(c) arrest that person;
(d) seize and detain for the purposes of proceedings under this Act any thing which may be evidence of the commission of the offence or may be liable to be forfeited under section 12(4) below.
(2) A constable who suspects with reasonable cause that any person is committing or has committed an offence under this Act may, for the purpose of exercising the powers conferred by subsection (1) above, enter any land other than a dwelling or lockfast premises.

(3) If a sheriff or justice of the peace is satisfied, by evidence on oath, that there are reasonable grounds for suspecting that an offence under this Act has been committed and that evidence of the offence may be found on any premises, the sheriff or justice may grant a warrant authorising a constable to enter those premises, if necessary using reasonable force, and search them for the purposes of obtaining that evidence.

(4) A warrant under subsection (3) above continues in force until the purpose for which the entry is required has been satisfied or, if earlier, the expiry of such period as the warrant may specify.

(5) A constable authorised by virtue of this section to enter any land must, if required to do so by the occupier or anyone acting on the occupier’s behalf, produce evidence of the constable’s authority.

(6) A constable who enters any land in the exercise of a power conferred by this section—

(a) may—

(i) be accompanied by any other persons; and
(ii) take any machinery, other equipment or materials on to the land, for the purpose of assisting the constable in the exercise of that power;

(b) may take samples of any articles or substances found there and remove the samples from the land.

(7) A power specified in subsection (6)(a) or (b) above which is exercisable under a warrant is subject to the terms of the warrant.

(8) A constable leaving any land which has been entered in exercise of a power conferred by subsection (2) above or by a warrant under subsection (3) above, being either unoccupied land or land from which the occupier is temporarily absent, must leave it as effectively secured against unauthorised entry as the constable found it.”

Animal Health & Welfare 2006 Act

36ZA Seizure of carcases etc.: further provision for Scotland

(1) The Scottish Ministers may by order make provision for—

(a) the seizure of anything (whether animate or inanimate) which appears to them might be capable of carrying or transmitting any disease to which this subsection applies;

(b) the destruction, burial, disposal or treatment of anything seized under the order; and

(c) regulating the matters mentioned in paragraphs (a) and (b).
(2) Subsection (1) does not authorise provision for the seizure of a live animal, bird or amphibian; but an order under that subsection may provide for the seizure of carcases and of anything obtained from or produced by an animal, bird or amphibian.

(3) Subsection (1) applies to the diseases in the case of which any power of slaughter is exercisable under or by virtue of section 16B, Part 2B or Schedule 3A.

(4) A person commits an offence if, without lawful authority or excuse (proof of which lies on the person), that person throws or places, or causes or suffers to be thrown or placed, into—

(a) any river, stream, canal, navigation or other water; or

(b) the sea within 4.8 kilometres of the shore,

the carcase of, or anything obtained from or produced by, an animal, bird or amphibian which has been slaughtered in the exercise of any power conferred by or under section 16B, Part 2B or Schedule 3A.

(5) In this section, the references to an animal mean any kind of mammal (except man).

(8) A person to whom a restriction notice is given must arrange for each creature to which the notice applies and which is owned by the person—

(a) to be castrated or (as appropriate) sterilised within such period, of not less than 21 days, as may be specified in the notice; or

(b) to be slaughtered within such period, of not less than 21 days, as may be specified in the notice,

whichever the person considers appropriate.

(9) But where a request for a review is made under section 36Q(1), the operation of the restriction notice is, so far as relating to the matters subject to review, suspended until the review is determined.

(10) For the purposes of subsection (2), exceptional circumstances include circumstances in which the imposition in relation to the livestock of the restrictions and requirements mentioned in subsections (6) to (8) is likely to—

(a) cause the extinction of the breed or type of which the livestock is a member; or

(b) jeopardise the sustainability of a common or well-established breed.

(11) For the purposes of this Part, “slaughter” includes the killing of a fish.

Enforcement

36U Powers of entry

(1) An inspector may enter any premises in Scotland for the purpose of—

(a) ascertaining whether a function of the Scottish Ministers or inspectors under this Part should be exercised; or

(b) doing anything in pursuance of or in connection with the exercise of that function.
(2) An inspector acting under subsection (1) must, if required, produce evidence of the inspector’s authority.

36X Interpretation

In this Part—

• “keeper” includes an owner;
• “inspector” means—
  (a) a person appointed as an inspector for the purposes of this Act by the Scottish Ministers; or
  (b) a person authorised by the Scottish Ministers for those purposes;
• “livestock” means—
  (a) any creature, including a fish, which is kept, fattened or bred for the production of food, wool, skin or fur;
  (b) any creature, other than a dog, which is kept for use in the farming of land; and
  (c) any equine animal;
• “premises” includes—
  (a) any land or building; or
  (b) any other place, in particular—
    (i) a vehicle or vessel; or
    (ii) a tent or moveable structure;
• “TSE” means transmissible spongiform encephalopathy.”.

12 Powers of entry etc.

After section 62F of the 1981 Act there is inserted—

“62G Powers of entry etc.: Scotland

(1) An inspector may enter any premises in Scotland for the purpose of—
(a) ascertaining whether a **power of slaughter** conferred by or under any provision mentioned in subsection (3) should be exercised; or

(b) doing anything in pursuance of or in connection with the exercise of such a power.

(2) A power of slaughter conferred by or under any provision mentioned in subsection (3) extends to the taking of any action for the purposes of or in connection with the exercise of the power.

(3) The provisions are—

   (a) section 16B of;
   (b) section 32 of;
   (c) Schedule 3 to;
   (d) Schedule 3A to,

this Act.

(4) **An inspector** acting under subsection (1) must, if required, produce evidence of the inspector’s authority.

(5) Where any power of entry conferred on an inspector by this Act is exercised in relation to premises used exclusively as a dwelling-house, 24 hours’ notice of the intended entry is to be given to the occupier unless the inspector thinks the case is one of urgency.

(6) Any power of entry conferred on an inspector by this Act must be exercised at a reasonable hour unless the inspector thinks the case is one of urgency.

(7) In this section and sections 62H and 62I, an **“inspector” means**—

   (a) a person appointed as an inspector for the purposes of this Act by the Scottish Ministers; or
   (b) a person authorised by the Scottish Ministers for those purposes.

(8) In this section and sections 62H and 62I, “premises” includes—

   (a) any land or building; or
   (b) any other place, in particular—
       (i) a vehicle or vessel; or
       (ii) a tent or moveable structure.

**62H Warrants**

(1) A sheriff or justice of the peace may issue a warrant authorising an inspector to enter (if necessary using reasonable force) any premises in Scotland for the purpose mentioned in subsection (2), if satisfied by evidence on oath that—

   (a) the first condition is satisfied; and
   (b) either the second or the third condition is satisfied.
(2) The purpose is that of—

(a) ascertaining whether a function of the Scottish Ministers or inspectors under this Act should be exercised; or

(b) doing anything in pursuance of or in connection with the exercise of such a function.

(3) The evidence must include—

(a) a statement as to whether any representations have been made by the occupier of the premises to an inspector concerning the purpose for which the warrant is sought;

(b) a summary of any such representations.

(4) The first condition is that there are reasonable grounds for an inspector to enter the premises for that purpose.

(5) The second condition is that each of the following applies—

(a) the occupier has been informed of the decision to seek entry to the premises and of the reasons for that decision;

(b) the occupier has failed to allow entry to the premises on being requested to do so by an inspector; and

(c) the occupier has been informed of the intention to apply for the warrant.

(6) The third condition is that—

(a) the premises are unoccupied or the occupier appears to be absent and (in either case) notice of intention to apply for the warrant has been left in a conspicuous place on the premises; or

(b) the object of entering would be defeated if the occupier were requested to allow entry or informed of an intention to apply for a warrant.

(7) A warrant issued under this section must be executed at a reasonable hour unless the inspector thinks the case is one of urgency.

(8) A warrant issued under this section remains in force for one month starting with the date of its grant.

62I Entry and warrants: supplementary

(1) This section applies to an inspector who enters any premises by virtue of a power conferred on the inspector by or under this Act or under a warrant under section 62H.

(2) The inspector may take on to the premises—

(a) such other persons as the inspector thinks necessary to give the inspector such assistance as the inspector thinks necessary;

(b) such equipment as the inspector thinks necessary.
(3) **The inspector** may require any person on the premises who falls within subsection (4) to give the inspector such assistance as the inspector may reasonably require.

(4) The following persons fall within this subsection—

(a) the occupier of the premises;
(b) a person appearing to the inspector to have charge of animals on the premises;
(c) a person appearing to the inspector to be under the direction or control of a person mentioned in paragraph (a) or (b).

(5) If the inspector enters any premises by virtue of a warrant issued under section 62H the inspector must at the time of entry—

(a) serve a copy of the warrant on the occupier of the premises; or

(b) if the occupier is not on the premises, leave a copy of the warrant in a conspicuous place on the premises.

(6) If the inspector enters any unoccupied premises the inspector must leave them as effectively secured against entry as the inspector found them.”.

### 13 Inspection of vehicles

After section 65A of the 1981 Act there is inserted—

“**65B Inspection of vehicles: Scotland**

(1) If each of the conditions in subsection (2) is satisfied, an inspector may stop, detain and inspect any vehicle to ascertain whether the provisions of any of the following are being complied with—

(a) this Act;

(b) an order under this Act;

(c) a regulation of a local authority made in pursuance of such an order;

(d) regulations made by the Scottish Ministers under this Act.

(2) The conditions are—

(a) that the vehicle is in an infected place or area;

(b) that the inspector is accompanied by a constable in uniform.

(3) In this section, a “vehicle” includes—

(a) a trailer, a semi-trailer or other thing which is designed or adapted to be towed by another vehicle;

(b) anything on a vehicle;

(c) a detachable part of a vehicle;

(d) a container or other structure designed or adapted to be carried by or on a vehicle.”.
32 Taking possession of animals

(1) **An inspector or a constable may**, if it appears that a protected animal is suffering—
(a) take, or
(b) arrange for the taking of,
such steps as appear to be immediately necessary to alleviate the animal’s suffering.

(2) However, subsection (1) does not authorise the destruction of a protected animal (for which section 35 makes provision).

(3) If a veterinary surgeon certifies that a protected animal is—
(a) suffering, or
(b) likely to suffer if its circumstances do not change,
an inspector or a constable may take possession of the animal.

(4) **But an inspector or a constable may** take that step, or arrange for the taking of that step, without the certification of a veterinary surgeon if—
(a) it appears that the animal is—
(i) suffering, or
(ii) likely to suffer if its circumstances do not change, and
(b) it is reasonable in the circumstances not to seek the assistance of, or wait for, a veterinary surgeon.

(5) Where possession is taken of an animal under subsection (3) or (4), **an inspector or constable** may also take possession of any dependent offspring of the animal.

(6) Where possession is taken of an animal under subsection (3), (4) or (5), **an inspector or a constable** may—
(a) remove the animal, or arrange for it to be removed, to a place of safety,
(b) care for the animal, or arrange for it to be cared for—
(i) at the place where it was found,
(ii) at such other place as the inspector or constable considers appropriate.

(7) **An inspector or a constable** may use (or arrange to have used) a mark, microchip or another method for identifying any animal so taken.

(8) **An inspector or a constable may**, in acting under subsection (6)(b)(i), make use of any equipment found at the place.

(9) A veterinary surgeon may examine, and take samples from, an animal for the purpose of determining its condition for the purposes of subsection (3).

(10) In considering, for the purposes of subsection (3) or (4), whether an animal is likely to suffer if its circumstances do not change, account may be taken of any suffering of
other animals that are (or were recently) subject to similar circumstances at the same place.

(11) Any expenses reasonably incurred by an inspector or a constable in consequence of acting under this section are to be reimbursed by the owner or any other person responsible for the animal concerned.

(12) This section is without prejudice to—

(a) the ability of an inspector or a constable to take possession of an animal with the consent of its owner or of any other person who is responsible for it, and

(b) any other authority for taking possession of an animal.

49 Vets, inspectors and constables

(1) In this Part, “veterinary surgeon” means a person registered in the register of veterinary surgeons, or the supplementary veterinary register, kept under the Veterinary Surgeons Act 1966 (c. 36).

(2) In this Part, an “inspector” is, in the context of any particular provision, a person—

(a) appointed as an inspector by the Scottish Ministers, or authorised by them, for the purposes of the provision, or

(b) appointed as an inspector by a local authority for the purposes of the provision.

(3) In subsection (2)(b), a “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39).

(4) An inspector incurs no civil or criminal liability for anything which the inspector does in purported exercise of any functions conferred on the inspector by a provision of this Part, or by regulations made under this Part, where the inspector acts on reasonable grounds and in good faith.

(5) Subsection (4) does not affect any liability of any other person in respect of the thing done.

(6) In this Part, a “constable” means a constable of a police force.

(7) Schedule 1 makes provision in relation to powers of inspectors and constables for the purposes of and in connection with this Part.

SCHEDULE 1

POWERS OF INSPECTORS AND CONSTABLES FOR PART 2

(introduced by section 49(7))

Entry and inspection in connection with Community obligations

1 (1) An inspector may enter and inspect any premises for the purpose of ascertaining compliance with any regulations made under Part 2 which implement a Community obligation.

(2) Sub-paragraph (1) does not apply in relation to domestic premises.

Entry and search where animals in distress

2 (1) A sheriff or justice of the peace may grant a warrant under this sub-paragraph if satisfied—
(a) that there are reasonable grounds for believing that there is at premises a protected animal which—
   (i) is suffering, or
   (ii) is likely to suffer if its circumstances do not change, and
(b) that paragraph 5 is complied with in relation to the premises.

(2) A warrant under sub-paragraph (1) authorises an inspector or a constable to enter and search the premises for the purpose of exercising any power conferred by sections 32 and 35.

(3) An inspector or a constable may—
   (a) enter and search premises for the purpose of exercising any power conferred by sections 32 and 35, and
   (b) do so without a warrant under sub-paragraph (1),
if it appears that immediate entry is appropriate in the interests of an animal.

(4) Sub-paragraph (3) does not apply in relation to domestic premises.

Entry and inspection in connection with offences

3 (1) An inspector may, if there are reasonable grounds for believing that an offence under Part 2 has been committed at premises, enter and inspect the premises for the purpose of ascertaining whether or not an offence under that Part has been committed there.

(2) Sub-paragraph (1) does not apply in relation to domestic premises.

Entry and search etc. in connection with offences

4 (1) A sheriff or justice of the peace may grant a warrant under this sub-paragraph if satisfied—
   (a) that there are reasonable grounds for believing—
      (i) that a relevant offence has been committed at premises, or
      (ii) that evidence of the commission of, or participation in, a relevant offence is to be found at premises, and
   (b) that paragraph 5 is complied with in relation to the premises.

(2) A warrant under sub-paragraph (1) authorises an inspector or a constable to—
   (a) enter the premises, and
   (b) search for, examine and seize any animal (including the carcase of an animal), equipment, document or other thing tending to provide evidence of the commission of, or participation in, a relevant offence.

(3) An inspector or a constable may—
   (a) enter premises and search for, examine and seize any animal (including the carcase of an animal), equipment, document or other thing tending to provide evidence of the commission of, or participation in, a relevant offence, and
   (b) do so without a warrant under sub-paragraph (1),
if it appears that delay would frustrate the purpose for which the search is to be carried out.

(4) Sub-paragraph (3) does not apply in relation to domestic premises.

(5) In this paragraph, a “relevant offence” is—
   (a) an offence under sections 19 to 23,
   (b) an offence under section 24,
   (c) an offence under section 29,
(d) an offence under section 40(11).

Conditions for granting warrants

5 (1) This paragraph is complied with in relation to premises if either of the conditions specified in sub-paragraphs (2) and (3) is met.

(2) The condition is—

(a) that—

(i) admission to the premises has been refused, or
(ii) such a refusal may reasonably be expected, and

(b) that—

(i) notice of the intention to seek a warrant has been given to the occupier of the premises, or
(ii) the giving of such notice would frustrate the purpose for which the warrant is sought.

(3) The condition is that the premises are unoccupied or the occupier is temporarily absent.

Stopping and detaining vehicles etc.

6 (1) A constable in uniform may stop and detain a vehicle or vessel for the purpose of the exercise of a relevant power.

(2) An inspector, if accompanied by a constable in uniform, may stop and detain a vehicle or vessel for the purpose of the exercise of a relevant power.

(3) A vehicle or vessel may be detained under sub-paragraph (1) or (2) for as long as is reasonably required for the exercise of the power concerned.

(4) The power concerned may be exercised either at the place where the vehicle or vessel was first detained or nearby.

Entry and search etc.: supplementary

7 A warrant granted under a provision of this schedule remains in force for one month beginning with the date on which it was granted.

8 (1) A relevant power is exercisable only at a reasonable time.

(2) Sub-paragraph (1) does not apply if it appears that exercise of the power at a reasonable time would frustrate the purpose of exercising the power.

9 (1) A relevant power is exercisable, if necessary, by using reasonable force.

(2) Sub-paragraph (1) does not apply to a power conferred by paragraph 1 or 3.

10 A person exercising a relevant power must, if required, produce evidence of the person's authority.

11 (1) A relevant power includes power to take onto premises—

(a) such persons for assistance, and
(b) such equipment,
as are required for the purpose of the exercise of the power.

(2) A relevant power includes power to secure the taking of any of the steps mentioned in sub-paragraph (3).

(3) Those steps are—

(a) carrying out tests on, and taking samples from—
(i) an animal (including a carcase of an animal),
(ii) any equipment, substance or other thing,
(b) using a mark, microchip or another method of identifying an animal.

12 (1) A qualifying person must—
(a) comply with any reasonable direction made by a person exercising a relevant power, and
(b) in particular, give that person such information and assistance as that person reasonably requires.

(2) In sub-paragraph (1), a “qualifying person” is—
(a) the occupier of premises in relation to which a relevant power is being exercised,
(b) a person who appears to be responsible for animals at the premises,
(c) a person who appears to be under the direction or control of a person referred to in paragraph (a) or (b).

13 A person exercising a relevant power in relation to unoccupied premises must leave the premises as effectively secured against entry as the person found them.

**Offences of obstruction**

14 (1) A person commits an offence if, without reasonable excuse, the person contravenes paragraph 12(1).

(2) A person commits an offence if the person intentionally obstructs a person in the exercise of a relevant power.

15 (1) A person commits an offence if the person intentionally obstructs a person in the exercise of a power conferred by—
(a) section 32,
(b) an order under section 34(1),
(c) section 35.

(2) A person commits an offence if the person intentionally obstructs a person in the carrying out of—
(a) a deprivation order,
(b) a seizure order,
(c) an interim order under section 41(9) or 43(5).

**Powers of constables: supplementary**

16 A constable may arrest without warrant any person whom the constable reasonably believes is committing or has committed an offence under—
(a) sections 19 to 23, or
(b) paragraph 14 or 15.

17 The powers conferred on constables by this schedule are without prejudice to any powers conferred on constables by law apart from this schedule
APPENDIX 2

RSPCA v Attorney General
[2001] 3 All ER 530
BAILII Citation Number: [2001] EWHC 474 (Ch)

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

26th January 2001

BEFORE:
MR JUSTICE LIGHTMAN

BETWEEN:

THE ROYAL SOCIETY FOR THE
PREVENTION
OF CRUELTY TO ANIMALS
Claimant

and

(1) HER MAJESTY'S ATTORNEY GENERAL
(2) RICHARD HANNAY MEADE
(3) NIGEL BARON VINSON OF RODDAM
DENE
(4) GILLIAN ROSEMARY ATKINSON
Defendants

Mr David Unwin QC & Ms Francesca Quint (Instructed by Messrs Nabarro Nathanson, 50 Stratton Street, London W1X 5FL) appeared on behalf of the Claimant.

Mr John Martin QC & Mr Michael Patchett-Joyce (Instructed by Messrs Charles Russell, Killowen House, Bayshill Road, Cheltenham, GL50 3AW) appeared on behalf of the Second, Third and Fourth Defendants.

Mr William Henderson (Instructed by the Treasury Solicitor, Queen Anne's Chambers, 28 Broadway, London SW1H 9JS) appeared on behalf of the Attorney General

Hearing: 15th, 18th & 19th December 2000
INTRODUCTION

1. These are charity proceedings commenced with the leave of the Charity Commissioners by the Royal Society for the Prevention of Cruelty to Animals ("the Society"), a registered charity. The Society has a long established policy opposing hunting with dogs ("the Policy on Hunting"). There have for some years been campaigns to persuade supporters of hunting to join the Society and together to bring about a change in the Policy on Hunting. The Society considers that these campaigns and the activities of members who join the Society for the purpose of bringing about a change in that policy in order to protect field sports (whether or not pursuant to such campaigns) are damaging to the Society and it wishes (if it lawfully can) to adopt: (1) a policy on membership ("the Membership Policy") which will enable the Society to remove and exclude these persons from the Society and (2) an administratively convenient scheme for implementing the Membership Policy ("the Scheme"). Both the Membership Policy and the Scheme are highly contentious, and there is a dispute whether the Rules admit of their adoption and whether (if they do) the members of the Council as the governing body of the Society ("the Council") would be acting properly as charity trustees if they did adopt them. In these circumstances the Society seeks the guidance of the court: (a) to the construction of the relevant rules; and (b) whether it can adopt the Membership Policy and the Scheme. There is also raised as a preliminary issue the question whether existing members and applicants for membership who may be affected by the adoption or implementation of the Membership Policy and the Scheme have the necessary standing to raise questions as to their lawful character and to participate in these proceedings.

2. The Society currently has about 1,400 life members and 53,200 annual members of whom 15,836 are joint members. (Couples living together as partners at the same address may apply for joint membership). To become a member it is necessary to sign a declaration of support for the objects of the Society. Membership subscriptions are not a significant source of income for the Society compared with gifts and legacies. Life membership for an individual costs £500 and for joint members £750. Annual membership costs £17.50 for an individual and £25 for joint members. The administrative costs of processing applications for membership means that the financial benefit to the Society is limited. The direct administrative costs to the Society of individual and joint members paying by cheque total £12.79 and £17.56 respectively in the first year of joining and £11.86 and £16.19 respectively in subsequent years. Legacies are the main source of income for the Society. In 1998, the year's legacy income was £26 million. The members elect the Council and can speak and express their views at Annual and Extraordinary General Meetings and on polls. If they disapprove of the policies adopted by the Council, they can vote in new members of the Council who will adopt different policies. The Council had delegated to its Supporters Care Department ("the Department") as an administrative function the processing of applications for membership.

3. There are 25 members of the Council. They are charity trustees within the meaning of the Charities Act 1993. 15 of the 25 are elected by postal vote of members entitled to vote (one third of the 15 retire each year). 10 are elected regionally by the Society's local branches. These retire every third year. The Council formulates the Society's policies on animal welfare and decides on priorities for its work and expenditure. The Society's work is very broadly based and is carried out by a combination of paid staff and volunteers (who may be, but often are not, members of the Society). There are currently five priority areas: the inspectorate, companion animals, farm
animals, alternative to laboratory animals and international work. In 1998 the Society investigated 124,374 cruelty complaints, leading to 3,114 convictions and 819 banning orders, and treated 180,095 animals. The Society has a long history of campaigning for changes and improvements in animal welfare including campaigns to support legislation. These started in 1826 with a petition to Parliament to abolish bull baiting. Since 1976 the Society has steadfastly maintained the Policy on Hunting which opposes all forms of hunting with dogs or other animals and supports moves to introduce and pass legislation banning foxhunting. The Policy on Hunting has been an issue on which over the years there has been recurrent conflict between members of the Society.

4. The Policy on Hunting is strenuously opposed by the supporters of foxhunting, and these supporters include members of the Society and non-members who support the aims of the Society. The second defendant, Mr Meade, is an annual member of the Society and a former member of the Council who under the names (in 1996-7) of the Country Sports Animal Welfare Group ("CSAWG"), (in 1988) of the Animal Welfare Committee of the Countryside Alliance ("AWCCA") and (in and since 1998) of the Countryside Animal Welfare Group ("CAWG") has campaigned to change the Policy on Hunting and to this end has set out to recruit as new members of the Society persons who, as well as supporting the objects of the Society, are supporters of hunting with the object that these new members will vote at meetings of the Society to bring about the change to the Policy on Hunting which he wants. The Council is anxious to prevent campaigns to recruit supporters of hunting as new members for this specific purpose and pending the determination of the questions raised in this case has placed in abeyance some 600 applications for membership made in the period commencing in December 1999 and ending in March 2000. The third and fourth defendants are two of such applicants. The Society joined the first defendant, the Attorney General, as a defendant to represent the interests of charity. The second to fourth defendants applied to be joined as defendants and were so joined on terms to which I will later refer.

CONSTITUTION OF THE SOCIETY

5. I turn to the constitution of the Society. The Society was founded in 1824 as an unincorporated association having as its objective "the mitigation of animal suffering and the promotion and expansion of the practice of humanity towards the inferior classes of animated beings": see the Recital to the Royal Society for the Prevention of Cruelty to Animals Act 1932 ("the 1932 Act"). By 1932 its membership had grown to over 7,500 and in that year by the 1932 Act (a Private Act) the Society was incorporated. The 1932 Act has been supplemented on administrative and investment matters by two later Acts passed in 1940 and 1958, neither of which is relevant. Section 4 of the 1932 Act provided:

"The objects of the Society shall be to promote kindness and to prevent or suppress cruelty to animals and to do all such lawful acts as the Society may consider to be conducive or incidental to the attainment of those objects."

6. The Rules of the Society have undergone a series of changes over the years. A resolution at a general meeting is required for any change in the Rules. Since the history of a provision in the Rules can in rare cases be relevant on construction when the Rules are ambiguous or uncertain (see National Grid Plc v. Laws (1997) PLR 157 at para 73), I shall shortly set out the history of the relevant provisions in the Rules, adding a few comments as I proceed.

7. The 1932 Rules provided (in Rule IV) that the Council shall have the management of the Society which may delegate its powers and duties to a committee of the Council ("a Committee"). This continues to be the position under the current rules. The 1932 Rules further provided (in Rule III(1)) that a donation of £20 constituted the donor a life member and (in Rule III(2)) that the payment of an annual subscription of £1 constituted the subscriber an annual member. Rule III(3)
placed a safeguard in respect of such donation or payment giving rise to automatic membership of the Society:

"(3) Provided always that the Council shall have power to refuse any donation or annual subscription at any time if the Council shall be of the opinion that it would not be advisable to accept such donation or subscription having regard to the objects of the Society and the Council shall not be under any obligation to give any reason for such refusal to the individual firm, corporation, association of persons or other body presenting the same"

Rule III(3) is the predecessor of the current rule (Rule III.7) whose meaning and effect lies at the heart of this dispute, but there are changes in the terms of the rule and the context. The effect of Rule III(3) was to confer on the Council a power delegable to a Committee not to accept a donor or subscriber as a life or annual member by refusing to accept the donation or subscription, but this power existed only so long as the donation or subscription had not been paid over and could only be exercised if the Council considered that it would not be advisable to accept the donation or subscription "having regard to the objects" (and not any policy) "of the Society". At that time there was no provision for automatic renewal of annual membership (first introduced in the January 1976 Rules): an existing annual member had to apply for membership in the succeeding year in the same way as a non-member and in this context Rule III.3 was clearly applicable on a renewal of annual membership. The words "at any time" made plain that a donation or subscription from an applicant for membership might be refused though a subscription had been accepted from him in previous years. Rule XXVIII, which is much in the same terms as the current rule, made provision for the expulsion of a member whose conduct was prejudicial to the interests of the Society.

8. The 1964 Rules made no material change save that in Rule III(3) there was added to the words "shall have power to refuse" the words "and/or to return" (the wording in the current rule) and Rule III(6) provided that no persons should become a life or annual member under the age of 18. The amendment to Rule III(3) extended the power of the Council to refuse membership where the donation or subscription had been paid over: the Council could return it and such return had the same effect as if it had been refused.

9. In 1973, Charles Sparrow QC conducted an inquiry into the affairs of the Society. It is plain from contemporary documents that Rule III(3) was viewed as exercisable to prevent any annual member renewing his membership: there was (as I have said) at the time no provision for automatic renewal. His report ("the Sparrow Report") made certain recommendations which the Society accepted and implemented.

10. The January 1976 Rules made significant changes which are reflected in the current rules:

"III(1) (a) Completion of a form of application supplied by the Society for life membership and payment to headquarters of a subscription of £… shall, subject as hereinafter mentioned, constitute the applicant a life member of the Society as from the date his application shall in the absolute discretion of the Council have been accepted and his name entered on the register of members

... 

(2) (a) Completion of a form of application supplied by the Society for annual membership and payment to headquarters of a subscription of £… shall subject as hereinafter mentioned constitute the applicant an annual member of the Society as from the date his application shall in the absolute discretion of the Council have been accepted and his name entered on the register of members..."
Such person shall continue to be an annual member for twelve months from the date on which his application shall have been accepted and his name entered on the register of members and thereafter from year to year upon payment of the appropriate annual subscription.

The Council shall have power to refuse and/or to return any membership subscription at any time if the Council shall be of the opinion that it would not be advisable to accept or retain it. This power shall be exercised only by resolution of and after full consideration by the Council.

A member shall cease to be a member of the Society and his name shall be removed from the register of members

(a) If his annual subscription is in arrear for three months.

(b) If by notice in writing addressed to the Society he resigns his membership.

(c) If he is removed from membership of the Society by the Council under powers conferred by the Rules.

(d) If he becomes of unsound mind."

The significant changes effected were that there was no longer automatic membership upon payment of the subscription only to the power of the Council to refuse or return the subscription: there is conferred upon the Council an absolute discretion delegable to a Committee whether to accept the application for membership; the annual member is given a right to renewal of his membership upon payment of the appropriate subscription; and the delegable power of the Council to refuse to accept or to return a subscription becomes a non-delegable power exercisable subject to the important procedural safeguards in favour of the person affected. This fundamental change in the structure of the Rules (as it seems to me) renders it unhelpful when construing the relevant January 1976 and later Rules to have regard to the terms of their predecessors before 1976.

11. The August 1976 Rules reduced the age for eligibility for membership to 17. Otherwise they made no relevant change.

12. The August 1979 Rules added a provision to Rule III(1)(a) that the completed form of application should contain a declaration of support for the objects of the Society.


14. The current Rules were adopted in 1997 and will be referred to as "the Rules". The Rules (like their predecessors) provide for the management of the affairs of the Society as follows:

"IV The Society shall be under the management of a Council hereinafter called the Council which shall subject to these Rules control the affairs, funds, property and proceedings of the Society and without prejudice to such general powers shall in particular have power —

...4. To appoint Committees of the Council and to entrust to such Committees such powers and duties as the Council thinks fit...

5. To make Bye-laws (not inconsistent with these Rules) for the management of the affairs of the Society and the regulation of the proceedings of the Council and the Committees...
By-laws made by the Council provide that the quorum for a meeting of a Committee of the Council shall be four.

15. Rule III provides that the Society shall consist of life members, annual members, ex officio members and junior members. The sub-rules to this rule read (so far as material) as follows:

"1. Life Members:

(a) Completion of a form of application supplied by the Society for life membership, which form shall contain a declaration of support for the objects of the Society, and payment to Headquarters of a minimum subscription of two hundred and fifty pounds or such higher sum as may from time to time be determined by resolution of the Council shall, subject as hereinafter mentioned, constitute the applicant a life member of the Society as from the date his application shall in the absolute discretion of the Council have been accepted and his name entered on the register of members maintained at the Headquarters of the Society…

2. Annual Members

(a) Completion of a form of application supplied by the Society for annual membership, which form shall contain a declaration of support for the objects of the Society, and a payment in whole or committed part to the National Charity, Registered Charity No 219099 of a minimum subscription of eight pounds or such higher sum as may from time to time be determined by resolution of the Council shall, subject as hereinafter mentioned, constitute the applicant an annual member of the Society as from the date his application shall in the absolute discretion of the Council have been accepted and his name entered on the register of members maintained at the Headquarters of the Society.

(b) such person shall continue to be an annual member for twelve months from the date on which his application shall have been accepted and his name entered on the register of members and thereafter from year to year upon payment in whole or committed part to the National Charity, Registered Charity No 219099 of the appropriate annual subscription provided that he shall not be entitled unless otherwise qualified to any of the rights and privileges of membership or speak or vote at any annual or extraordinary general meeting of the Society until three months after payment in whole or committed part (whichever is the case) of his first subscription.

…

5. The Society may establish and maintain a junior membership in accordance with the arrangements from time to time approved by the Council provided that such arrangements shall not confer any privileges or rights in relation to the conduct of the affairs of the Society.

6. No person shall be eligible for membership, other than junior membership, of the Society who has not attained the age of seventeen years.

7. The Council shall have power to refuse and/or to return any membership subscription at any time if the Council shall be of the opinion that it would not be advisable to accept or retain it. This power shall be exercised only by resolution of and after full consideration by Council.

8. A member shall cease to be a member of the Society and his name shall be removed from the register of members, and he shall thereupon forfeit all rights and privileges of membership.

(a) If his annual subscription is in arrear for three months.
(b) If by notice in writing addressed to the Society he resigns his membership.

(c) If he is removed from membership of the Society by the Council under powers conferred by the Rules.

16. Rule XI.16 provides:

"It shall be deemed conduct prejudicial to the interests of the Society if any officer or member of the Society or of any Branch at any time publicly misrepresents [the policy of the Society] in any communication of a public nature unless the said officer or member satisfied the Council that such misrepresentation was intentional or accidental…"

17. Provision for the expulsion of members is made in Rule XXVIII which (so far as material) reads as follows:

"A member of the Society as defined by Rule III shall cease to be a member and shall thereupon forfeit all rights and privileges as such if his conduct, in the opinion of not less than two thirds of the members of the Council present and voting at a meeting of the Council, has been prejudicial to the interests of the Society provided that prior to such meeting reasonable notice in writing shall have been given to the member of the intention of the Council to consider his conduct and an opportunity afforded him to submit any explanation either personally or in writing... The members of any Committee of the Council which has recommended the Council to exercise the power contained in this Rule in any particular case shall not be entitled to vote when any resolution in that case is put to the Council."

In answer to a question raised before me I should make it clear (a) that conduct "prejudicial to the interests of the Society" for the purposes of Rule XXVIII is not confined to conduct so described in Rule XI.16; and (b) that the fact that the Rules deem the specified conduct as prejudicial does not mean that the Society could not have held it to be prejudicial in the absence of Rule XI.16: Rule XI.16 merely underlines the seriousness of such conduct and removes any possible doubt that it can trigger the exercise of the power of expulsion.

18. For completeness I should add that in 1996 a resolution was passed to expand the declaration of support for and compliance with the objects of the Society required of applicants for membership to include a declaration that the applicant for membership does not participate in any activity which is considered by the Society to involve avoidable suffering to animals. Lloyd J. on the 31st March 1999 held that this proposed rule change designed to require compliance with the Policy on Hunting was void for uncertainty.

**STATUS OF THE SECOND, THIRD AND FOURTH DEFENDANTS**

19. The first question which arises is the status of Mr Meade, Baron Vinson and Ms Atkinson in these proceedings. Each of them may be affected by the outcome of the proceedings. Mr Meade has been an annual member since 1970. He applied to be joined as a defendant and was made a defendant by a consent order dated the 5th June 2000. Baron Vinson and Ms Atkinson are applicants for membership whose applications are being held in abeyance. They likewise applied to be joined, and by a consent order dated the 2nd October 2000 they were also joined, but without prejudice to the right of the Society and the Attorney General to contend, if they wished to do so, that:

(a) Baron Vinson and Ms Atkinson are not persons interested in the Society or persons who would have all right to complain to the court about their exclusion from membership irrespective of the reasons for exclusion and
(b) depending on the answer to (a) above, they should not be parties to the proceedings.

In the case of all three added defendants (to whom I shall refer collectively as "the Added Defendants") all questions of costs were reserved.

20. The question of the status of the Added Defendants may be of limited significance on this application, since at the hearing the Society and the Attorney General raised no objection to their full participation in the hearing. But in view of the request by the Society and the Attorney General that I should provide some guidance on this question in case it arises again in relation to the Society, I shall do so.

21. The first issue is whether the Added Defendants are persons interested in the Society within the meaning of section 33(1) of the Charities Act 1993 and accordingly persons entitled (with the requisite permission of the Charity Commission) to commence charity proceedings challenging the propriety of any decision of the Society to remove them from membership or refuse them membership or renewal of membership. Section 33(1) provides that charity proceedings may be taken with reference to a charity either by the charity or by any of the charity trustees or by any person interested in the charity. In the case of In re Hampton Charity [1989] 1 Ch 484 at 494 G, Nicholls LJ (giving judgment of the Court of Appeal) said as follows:

"If a person has an interest in securing the due administration of a trust materially greater than, or different from, that possessed by ordinary members of the public..., that interest may, depending on the circumstances, qualify him as a 'person interested'. It may do so because that may give him …

'some good reason for seeking to enforce the trusts of a charity or secure its due administration.'"

The circumstances referred to by Nicholls LJ include the particular respect in which the person in question is seeking to secure due administration: he may have the requisite interest in the due administration of the provisions of the trust e.g. in respect of his membership whilst at the same time having no such requisite interest in the due administration of provisions e.g. concerning the purchase or sale of land. The rule (like the parallel rule requiring the applicant for judicial review to have a sufficient interest) is not a technical rule of law, but a practical rule of justice affording a degree of flexibility responding to the facts of each particular case. The answer is clear in the case of Mr Meade. Rule III 2(b) makes provision for renewal of the membership of an annual member: the annual member has a special interest in the proper construction of that provision and of Rule III.7 and their due implementation so far as it may affect him. In respect of renewal he has an interest going beyond that of ordinary members of the public. He has likewise such an interest if the Council purported to exercise its power under Rule XXVIII to expel him. A life member also has such an interest in the construction and implementation of Rules III.7 and XXVIII so far as it may affect him. But I do not think that a disappointed applicant for membership has any such sufficient interest. Any member of the public is free to apply for membership: the exercise of that liberty cannot elevate the status of a non-member into that of a person interested. To extend the right of suit to any such applicant would be to cast the net too wide: consider Scott v. National Trust [1998] 2 All ER 705 at 715g. I should add, in view of the suggestion by Mr Martin to the contrary, that it does not seem to me to be a factor of any significance on the issue of the status of the Added Defendants that in 1932 by a private Act the Society was transformed from being an unincorporated association into a corporate body. The fact that the Society is now constituted by an Act of Parliament does not give a member or prospective member any greater right of access to the court.

22. The second issue is whether Baron Vinson and Ms Atkinson are able to challenge the Society's decision on their applications for membership in judicial review proceedings in the Administrative Court. It is well established that judicial review proceedings are inappropriate where the issue can
be the subject matter of charity proceedings. The question raised is whether Baron Vinson and Ms Atkinson are able to bring judicial review proceedings if they do not have the necessary interest to bring charity proceedings. The answer to this question is in the negative. There is a serious question whether the Society is the sort of public body which is amenable to judicial review, most particularly in respect of decisions made in relation to its membership: consider Scott v. National Trust at p.716 F-G. The fact that a charity is by definition a public, as opposed to a private, trust means that the Trustees are subject to public law duties and judicial review is in general available to enforce performance of such duties. There is therefore a theoretical basis for allowing recourse to judicial review. It is also true that the Society is a very important charity and its activities (in particular the inspectorate and its prosecutions for cruelty to animals) are of great value to society. In particular its inspectorate is the largest non-Governmental law enforcement agency in England and Wales. But in carrying out these activities the Society is in law in no different position from that of any citizen or other organisation. Unlike the National Trust, the subject of consideration by Walker J. in Scott v. The National Trust above, the Society has no statutory or public law role. All I will say is that, though theoretically and in a proper case an application for judicial review may lie, it would not (at any rate in any ordinary case) lie at the instance of disappointed applicants for membership whose interest was insufficient to meet the statutory standard for the institution of charity proceedings. The statutory standard is laid down as a form of protection of charity trustees and the Administrative Court would rarely (if ever) be justified in allowing that protection to be circumvented by the expedient of commencing (in place of charity proceedings) judicial review proceedings. That does not mean that a disappointed applicant for membership is without recourse, for he can complain to the Charity Commission or the Attorney General and request them to take action.

23. The third issue is the status of Baron Vinson and Ms Atkinson to participate in these proceedings. It is open to the court in any proceedings, and this includes charity proceedings commenced by the trustees of a charity, to permit persons interested in the widest sense of the term to be joined as parties and (whether or not so joined) to permit such persons to make representations to the court. That is the situation in this case. I have permitted counsel for the Added Defendants to address me and I have found their contribution of the greatest value.

REFUSAL AND RETURN OF SUBSCRIPTIONS

24. The second question is whether upon the true construction of Rule III.7 the Council is vested with power on repayment of the member's subscription to remove a life or annual member from membership and to refuse renewal of his membership by an annual member.

25. The Rules have grown over the years like Topsy and the patchwork that exists today is a puzzle to construe. The overriding principle of construction must be, so far as the language used admits, (as may be presumed to have been intended by the draftsman) to make a coherent and sensible scheme by giving (so far as this is possible) effect to all of its provisions and avoiding any contradiction or logical inconsistency or any reading which deprives a provision of any legal effect.

26. Rule III 2(a) in the case of an annual member (as Rule III.1 in case of a life member) provides that on completion of the application form and payment of the required subscription "subject as hereinafter mentioned" the applicant shall become a member as from the date the Council in its absolute discretion accepts the application and his name is entered on the register of members. On their face Rule III.1(a) and Rule III.2(a) provide that the applicant's membership is made subject to the later provisions in the Rules and to the exercise by the Council of an absolute discretion exercisable according to the best interests of the Society whether or not to accept his application. It is clear from the language of the Rules that the Council can delegate the exercise of this absolute discretion to a Committee. (I shall say something later on the power of delegation). On its face Rule III.2(b) provides that renewal of annual membership is automatic on payment of the required subscription. On its face Rule III(7) is a free-standing provision. It says
nothing about the effect on membership of the exercise of the power conferred, but the required formalities attaching to the exercise of the power make it highly probable that it is not simply and solely concerned with individual repayments of subscriptions, but was intended to have a substantive effect on membership. It is common ground that the language of Rule III.7 precludes any delegation by the Council to a Committee of the exercise of the power conferred by Rule III.7: the Council must alone exercise it. To make sense of the provision it must be implicit in the decision to refuse or return subscriptions that there is the refusal of, or removal from, membership of the person whose subscription is refused or returned.

27. The Society contend that Rule III.7 confers on the Council a free-standing right at any time to refuse to accept or (if paid) to return the subscription tendered or paid by a life or annual member, and in particular by an annual member exercising his right of renewal of his membership, and thereby remove him from membership. The Added Defendants contend that the rule is an addendum to, or qualification of, the absolute discretion of the Council to accept or refuse applications for membership stipulating how that discretion to refuse an application is to be exercised. I find answering this question exceptionally difficult. The second alternative involves holding that the Council itself must make the decision in every case where an application for membership is refused, a scarcely practicable and improbable scenario; it requires reading the words "subject as hereinafter contained" as a gloss, not on the provisions constituting the applicant a member (where the words are to be found), but on the provision conferring an absolute discretion on the Council to accept applications for membership (a provision to which the words have no such connection); and it imposes on the provision conferring on the Council a delegable absolute discretion whether to accept a member the qualification that the Council is not to refuse any application unless the Council itself decides that it is contrary to the interests of the Society to accept it. These appear to me to be the most serious obstacles to accepting this construction. When I turn to the Society's construction, I am troubled construing Rule III.7 as conferring on the Council a freestanding right to return life and annual members' subscriptions and to refuse to accept renewal subscriptions by annual members, for this is tantamount to conferring a power to remove them from membership without recourse to the expulsion provisions contained in rule XXVIII with the important safeguards there provided. I am also troubled that it means that the exercise of the power in respect of life members operates to require repayment of their entire subscription with no allowance for their membership to date.

28. After anxious consideration I have concluded that Rule III.7 confers upon the Council (in addition to the absolute discretion conferred by Rule III.1 and 2(a) whether to accept any new applicant for life or annual membership) a power at any time to remove from membership and prevent the renewal of any annual membership by returning any subscription paid and refusing any subscription proffered. Rules III.1 and III.2 made plain that an applicant's life or annual membership constituted by payment of subscription and acceptance of his application for membership is "subject as hereinafter mentioned" and this must include being subject to Rule III.7; and though the formula "subject as hereinafter mentioned" is not to be found in Rule III.2(b), even as the yearly member's first year of membership is subject to Rule III.7, so must his annual membership in subsequent years. The possibility of removal from membership under Rule III.7 is an incident of annual membership whether original or renewed. The exercise by the Council of its power under Rule III.7 constitutes (for the purposes of Rule III.8(c)) the removal of the member from membership of the Society by the Council under a power conferred by the Rule III.7. It is of critical importance in this context to underline the procedural safeguards in respect of the exercise of this power which date back to the January 1976 Rules. Before this power can be exercised in respect of any member, the Council itself must give full consideration whether it would not be advisable to accept or retain the subscription and accordingly to continue that member's membership and must have passed a resolution to that effect. This procedure requires the Council as part of its full consideration to take into account any representations made to it by the individual to be removed from membership. The merit of each individual's case requires separate consideration as it does in the case and/or exercise of the parallel power under Rule
XXVIII. The existence of these procedural safeguards, which do not fall far short of the safeguards provided by Rule XXVIII, provide comfort in reaching this conclusion.

DELEGATION

29. I have already said that the Council has no power to delegate any part of the decision-making under Rule III.7, in contrast with the power of the Council to delegate to a Committee its discretion whether to accept or reject an application for annual or life membership under Rules III.1 and 2(a). It is however important to recognise the limits under the Rules on this latter power of delegation to a Committee. The power is limited to delegating the exercise of the discretion to a Committee: the Council cannot delegate the discretion to anyone else (e.g. the Department) and the Committee has itself no power to delegate any discretion delegated to it by the Council. The Council (or a Committee as its delegate) can exercise its discretion by deciding to accept all applicants and giving instruction to this effect to the Department; it can lay down fixed criteria for acceptance or rejection which leave no discretion for the Department and require the Department to refer to the Council or a Committee all applications where a discretion (or judgment) has to be exercised. The administrative inconvenience occasioned by these constraints can be ameliorated. The Byelaws may be amended to reduce the quorum for a Committee to which the exercise of the powers and duties arising under rules III.1 and III.2(a) is delegated; or the Rules maybe changed to permit delegation by the Council of these powers and duties to another body or official (e.g. the Department).

JURISDICTION OF THE COURT

30. I must now turn to the question raised whether the court should on this application authorise the Council to exercise its powers under the Rules to exclude from membership in order to safeguard the Society from damage. There are three stages to be gone through. The first is to decide what is the proper approach of the court on this application for guidance. The second is to decide whether the Council can adopt the Membership Policy. The third is how far the Council can implement the Membership Policy by adopting the Scheme.

31. I turn first to the question of the correct approach to be adopted by the court on this application for guidance and approval. There is a stream of authority to the effect there is a distinction between cases where trustees seek the approval by the court of a proposed exercise by them of their discretion and where they surrender their discretion to the court: see e.g. In re Allen Meyricks Will Trust [1966] 1 WLR 499 at 503. In cases where there is a surrender, the court starts with a clean sheet and has an unfettered discretion to decide what it considers should be done in the best interests of the trust. In cases where there is no surrender, the primary focus of the court's attention must be on the views of the trustees and the exercise of discretion proposed by the trustees. Though not fettered by those views, the court is bound to lend weight to them unless tested and found wanting and it will not without good reason substitute its own view for those of the trustees. Mr Henderson for the Attorney General however submitted that there is no difference between the two solicitors and that in both cases the court is vested with the discretion previously vested in the trustees. In support of this proposition he relies on the speech of Lord Oliver in Marley v Mutual Security [1991] 3 All ER 198. In that case the trustees entered into a contract for sale whose binding effect was made conditional upon obtaining the prior approval of the court. The question raised for judicial guidance was rather the question of fact whether the price agreed was the best price reasonably obtainable than how a discretion should be exercised. Lord Oliver (giving opinion of the Privy Council) held that in that case the trustees had surrendered their discretion to the court and that the court in such a situation was engaged solely in considering what ought to be done in the best interests of the trust and the beneficiaries, and that for that purpose the parties were obliged to put before the court all the material appropriate to enable it to exercise that discretion. By the terms of the contract, the trustees reposed in the court the decision whether the price was such that the contract should become unconditional and be completed. No question arose as to the distinction between a case where there was a surrender
of discretion (as was held to have occurred in that case) and a case where there is no such surrender. My view that Lord Oliver's speech lends no support to Mr Henderson's proposition accords with that expressed by Hart J. in Public Trustees v. Cooper (unreported 20 December 1999). I shall accordingly proceed on the basis that there is no surrender of discretion in this case and that my primary focus should be on the views of the Council and the exercise of discretion proposed by them.

THE MEMBERSHIP POLICY

32. The Council take the view that it is in the best interests of the Society to exclude from membership anyone whose application for membership is, was or in the future will be made for the real or predominant purpose to protect field sports for their own sake and not in order to promote animal welfare and that as a means of achieving this there should be excluded anyone whose application for membership is, was or in the future will be the result of a campaign by CAWG or any other pro-hunting body to recruit members of the Society. The Council accordingly propose to adopt the Membership Policy, that it should treat the existence of the purpose referred to or the fact of such recruitment as constituting grounds for not accepting the applicant as a member under Rules III(1)(a) and III(2)(a), for removing life and annual members from membership and for preventing renewal of annual membership under Rule III.7. (I shall consider later separately how the Council propose to implement the Membership Policy by use of the Scheme). The thinking of the Council lying behind the Membership Policy (as reduced to writing in the course of the hearing) is as follows:

"The Society exists for the purpose of its objects and not for the benefit of its members.

The Society does not wish to have as members those who apply to join for an ulterior purpose in circumstances in which damage is being or likely to be caused to the Society.

An applicant has an ulterior purpose if his/her real or predominant purpose for applying is to protect field sports for their own sake and not in order to promote animal welfare.

Applying to join in response to a Campaign as defined in the Schedule to the Claim Form is evidence of such an ulterior purpose.

Damage is caused by the Campaign itself and by those who join in response to it. The damage relied on is that set out in Mr Tomlinson's witness statement.

The Society does not wish to exclude those who disagree with it, or wish to change, its policies, provided they are motivated by animal welfare reasons."

I shall refer to this writing as "the Policy Document".

33. Mr Tomlinson's witness statement sets out the history of the Society's relationship with Mr Meade and the damage occasioned to the Society by campaigns orchestrated by him. Mr Meade has filed evidence in answer. The position may be stated as follows. Since early 1996 Mr Meade (either alone or with a few others) has under a variety of names led a campaign directed at persuading the Society to abandon the Policy on Hunting and expend its energies so released elsewhere, and as the means to this end has encouraged those who support hunting with dogs to join the Society and use their votes and voices as members to this end. The names he has used include the CSAWG, the AWCCA and the CAWG. It is the firmly held belief of Mr Meade and many others (including a substantial number of members of the Society) that the Policy on Hunting is highly damaging to the Society and that in particular it creates a divide between the Society and those concerned with the countryside. **The debate between the two sides on the question whether the Society should abandon the Policy on Hunting has been**
acrimonious both within the Society and outside. So long as the policy on Hunting continues to be followed, this debate is likely to continue. I may add that no doubt, if the Society at any time abandoned the Policy on Hunting, that change would likewise be the catalyst for further equally acrimonious debate whether the Policy on Hunting should again be adopted.

34. The Council consider that the campaigns and the activities pursued in advancement of the campaigns are damaging to the Society in four ways:

(a) they damage the reputation of the Society, most particularly damaging being claims made in the course of the campaigns that the Society is in the hands of a small group of Animal Rights supporters and is no longer focused on its proper concerns of animal welfare;

(b) they hinder the work of the Society, most particularly by diluting the impact of the Society’s support for a legislative ban on hunting, presenting the Society as divided as to the Policy on Hunting and obstructing the achievement by the Society of the goal of the Policy on Hunting, namely procuring the legislative ban;

(c) they lead to a waste of the Society’s resources in countering the campaigns, and in particular answering unfair criticism, complaining about unfair advertisements or investigating the genuineness of applications for membership.

(d) the admission of new members, whose reason for joining the Society is to obstruct the widely supported Policy on Hunting, is calculated to damage the morale of members, volunteers and staff.

35. The Added Defendants can, as it seems to me, argue with force that the Society is exaggerating the damage occasioned by the campaigns and underestimates the extent to which the damage of which the Society complains is attributable to the underlying public debate as to the merits of a ban on hunting; and that there is indeed a debate and division amongst members of the Society as to the merits of the Policy on Hunting the existence of which cannot and should not be covered up. It does appear to me to be questionable whether the damage to the Society as perceived by the Council will be greatly alleviated by the steps which the Council proposes to take. The division amongst the Society’s membership on the Policy on Hunting will continue nonetheless, for the supporters of hunting include members who are outside the reach of the Council’s proposals for exclusion. But having read the whole of the evidence I think that the material before me requires me to find that the Council has grounds (rightly or wrongly) for taking the view that the campaigns are damaging to the Society; that the Society is seriously at risk of damage caused by members whose overriding concern is to support hunting with animals and to change the Policy on Hunting; that the Society should take steps designed to protect itself from this damage; and that a step to this end would be to exclude from membership those members at whom the Membership Policy is directed. The Council can fairly take the view (which may or may not be correct) that this course is in the interests of the Society (amongst others) for two reasons:

(1) the incentive for the conduct of campaigns may be seriously reduced if membership is withheld from applicants whom the campaigns persuade to apply for membership to further their objects; and

(2) the exclusion of members who join for this purpose may keep out those who as members would prove to be what the Council considers to be trouble makers.

36. The powers of the Council to exclude from membership are conferred by Rule III.1 and III.2(a) (where the power is expressed to be exercisable at the absolute discretion of the Council) and by Rule III.7 (where the power is expressed in terms of a discretion
exercisable “if the Council shall consider that it would not be advisable to accept or retain the subscription”). In both cases the powers are fiduciary and accordingly the obligation is upon the Council to exercise the powers for the purposes for which they are conferred in what they consider to be the best interests of the Society. I am satisfied that the Council is acting in good faith and in what it considers to be the best interests of the Society in deciding that it should adopt the Membership Policy. It seems to me that, if the Trustees honestly take this view and it is one which they can honestly and reasonably take, (subject only to one question to which I will next turn) this is a course which they are entitled to take and which I can and should endorse; see e.g. Gaiman v. National Association for Mental Health [1971] Ch 317.

37. The one question which I must consider is whether this proposed course on the part of the Council is open to objection under the provisions of the Human Rights Act 1998 (“the HRA”). Mr Martin has submitted that the provisions of the HRA requires the Council in the exercise of its powers under the Rules to respect the human rights of members and applicants for membership, and most particularly their freedom of speech and thought; and the Rules must accordingly be read as prohibiting the adoption of the Membership Policy and the Scheme since they contravene those rights. I shall consider in turn the two avenues by which this conclusion is reached.

(a) The first is Article 6(1) which makes it unlawful for a "public authority" to act in a way which is incompatible with a Convention right. Article 6(3) provides that "public authority" includes a court and any person certain of whose functions are of a public nature. Article 6(5) provides that a person is not a public authority by virtue only of Article 6(3) if the nature of the act is private. I do not think that section 6 of the HRA is of any assistance. The Society is not a public authority and has no public functions within the meaning of section 6 (see para 21 above); and in any event the acts in question relate to its regulation of membership and that is a private act within the meaning of section 6(5). The court is a public authority, but that status does not impinge on the question whether one party to the proceedings before it has a Convention right to which another party is bound to give effect. The court is bound to give effect to such a convention right if established: in this context that is the full extent to which the status of the court as a public authority is engaged.

(b) The second avenue is section 3 which requires that primary and subordinate legislation must be read and given effect in a way which is compatible with Convention rights. Section 21(1) provides that "subordinate legislation" means any:

(f) order, rules, regulations, scheme, warrant, Byelaw or other instrument made under primary legislation."

That section also provides that primary legislation includes a private Act. It is possible that the Rules constitute subordinate legislation within the meaning of section 3(1) of the HRA in so far as they are "an instrument made under primary legislation": and that accordingly they must so far as possible be read and given effect to in a way which is compatible with Convention rights. I have however some difficulty accepting that the Rules are the sort of "instrument" which the legislation was intended to cover. But in any event, the proposed use of the Rules is not directed at or calculated to interfere with the freedom of speech or thought of members or prospective members: both members and prospective members are left to think and say whatever they like. The Council by the Membership Policy is not concerned to muzzle members or applicants for membership or censor what they say or do. This is confirmed by the Policy Document. The Council reserve the right to invoke Rule XXVIII if the conduct of any members is such as to require the Council to invoke the power of expulsion, but that is not a matter of concern today. The proposed criterion for exclusion relates to the reason for joining the Society: the Society has a legitimate interest in excluding those whose reasons for joining may render their membership contrary to the interests of the Society. What really is in question in this case is not the freedom of speech or thought of members or applicants for membership, but the freedom of association.
under Article 11 of the Society itself: that freedom embraces the freedom to exclude from
association those whose membership it honestly believes to be damaging to the interests of the
Society: see Cheall v. UK (1985) 42 DR 178 at 185 and Gaiman at p.331 B-C. For these reasons
the Rules do not require to be read as precluding adoption of the Membership Policy or Scheme:
there is no ground for challenge to either of them or the underlying Rules of the Society on human
rights grounds or other grounds.

THE SCHEME

38. I turn now to the Scheme which the Society proposes to adopt to implement the Membership
Policy. The Society recognises the difficulty of carrying out an investigation into an individual's
reasons for joining the Society. To have to determine whether a particular member had or has the
Ulterior Purpose referred to in the Policy Document is very hard. It is for this reason that the
Membership Policy extends to excluding those who joined as a result of a campaign. But even to
investigate whether a member in fact did join or is joining as a result of a campaign has its
difficulties. For this reason the Society wishes to implement the Membership Policy by adopting
the Scheme which lays down as a convenient rule of thumb the principle that any existing
member who at the date of his original application for membership fell, and any applicant for
membership who now falls, within certain defined categories set out in a schedule to the
amended Claim Form maybe treated as falling within the class of persons to be excluded under
the Membership Policy. The preference of the Council is to be able to treat the fact that in its
opinion a person falls within one or more of the categories as conclusive that he falls within the
class of persons to be excluded from membership under the Membership Policy without any need
for consideration of the merits of any particular case. This means that no regard need be paid to
any representations by the party affected that he does not fall within the category; that,
(notwithstanding the fact that he does fall within a category), he does not meet the criterion for
exclusion under the Membership Policy; or that otherwise he should not be excluded.

39. The categories set out in the Schedule to the Claim Form reads as follows:

"Definitions

In this Schedule the term 'a Campaign' means either of the following:

(i) The CAWG Campaign: i.e. the current campaign organised by the Countryside Animal Welfare
Group ("CAWG"), the immediate aim of which is to increase the number of country sports
supporters who are members of the Society (including any attempt to recruit new members of the
Society by an individual, body or group which supports the aims of CAWG).

(ii) An Associated Campaign: i.e. a campaign organised by any individual, body or group, an aim
of which is similar to the immediate aim of the CAWG Campaign, (including any attempt to recruit
new members of the Society by an individual, body or group which supports such a campaign).

Categories of Applications

A. Where the application was made following a request for an application form made on a
prepared pro forma which is associated with the Campaign.

B. Where the application is received from a person who has made a statement, or on whose
behalf a statement has been made, indicating that the application is being made in response to a
Campaign.
C. Where (a) it appears that the applicant is a member of the same family, or lives at the same
address as an applicant whose application falls within either of the Categories A or B above or
has been assisted to apply by such an applicant.

and

(b) the applications were made with three months of each other.

D. Where the applicant or the person requesting the application form has an address in an area in
respect of which there is evidence of a current local Campaign (which evidence may include an
abnormal number of applications for the area).

E. Where it appears that

(a) the application is one of two or more applications made at the same time by members of the
same family or by persons living at the same address

or

(b) a request was made by one person for two or more application forms

and, in either case,

(c) the request or application was made during a Campaign.

F. Where it appears that

(a) the request for the application form or the application itself was made during a Campaign.

and

(b) either the request or the application shares some unusual attribute or distinguishing feature in
common with other requests or applications made in response to a Campaign.

G. Where the application was made in response to a Campaign on the World Wide Web or by e-
mail.

H. Where it appears that the applicant (or one of them in the case of a joint application) is an
official of a group which is conducting a Campaign either locally or nationally.

I. Where the application is made by a person who has made an application for membership in the
last 2 years which was refused by or on behalf of the Council as falling within one of the
Categories A to H above."

I comment that the inference that a member or applicant who falls within a category had or has
the ulterior purpose or joined or is joining as a result of a campaign is stronger in the case of
some categories than others and in each case the inference may be displaced by evidence of the
existence of some other explanation. Yet in each case the chance that a member or applicant in
the view of the Society falls within a category without more entitles the Society to ban that person
from membership for two years.
40. It is in my view quite clear that the Council cannot apply the Scheme in the exercise of its powers under Rule III.7 and accordingly remove life or annual members or prevent the renewal of membership of annual members. As I have already said, Rule III.7 requires full consideration by the Council whether it would be inadvisable to accept or retain the subscription of the member in question and accordingly to allow his membership to continue. It is implicit in this provision that the full merits in respect of each member must be explored. The sole criterion is whether the continued membership of the individual in question is inadvisable, i.e. against the interests of the Society. For this purpose the Council is entitled to decide that it was inadvisable to renew membership of a person because he originally joined with the ulterior purpose or pursuant to a campaign if the Council consider that this single factor in the individual case in question justifies this extreme course and that there are no sufficient countervailing circumstances. The date that the member joined is highly relevant, in particular because the further back in history the date he joined, the more difficult it is likely to be to prove the necessary circumstances relating to his joinder, the less relevant those circumstances may be in deciding whether his continued membership is inadvisable and the harsher the impact on the member of removing his membership. But in deciding the individual case it cannot be sufficient that he member in question falls within any one of the categories. If he does so, this may (depending on the facts) constitute prima facie evidence of the existence of the ulterior purpose or that his membership resulted from a campaign. But the requirement for full consideration before the power is exercised to remove from membership must imply that the member will be afforded the opportunity to put forward his case (at least in writing) in respect of his categorisation, the existence of the ulterior purpose, whether he joined as the result of a campaign, the countervailing circumstances and whether his continued membership is advisable before the power under Rule III.7 can be exercised. I have the gravest doubt whether the expenditure of time, effort and costs required can ever justify the adoption of this procedure save in the most exceptional cases.

41. I turn now to the question whether in the exercise of the absolute discretion conferred by Rule III.1 and III.2(b) to accept or refuse applications for membership the Council can apply the Scheme in respect of the admission of new members. I have already considered in paragraph 29 the extent of the power of delegation. In any particular case where a discretion has to be exercised the Council or Committee must make the decision. The question raised by the Society is whether the Council or Committee can treat the fact that an applicant falls within one of the categories or appears to fall in one of the categories as conclusive and should be under no obligation to give the applicant the opportunity to establish that he does not fall into the category in question, that his reason for joining is not one to which the Council objects or that in any event his membership application should be accepted. This draconian approach proposed by the Council is very much the first choice of the Council, for it has dual merits of the utmost simplicity and maximum economy in application. It is very much the Council's second choice to use the categories as giving rise only to a prima facie presumption of the existence of grounds for rejection of those who do, or appear to, fall within them on which the Society can act in the absence of rebutting evidence.

42. I have given full weight to the first choice of the Council, but after long and anxious consideration I have concluded that it is not in the interests of the Society or conducive to its good name to adopt such an arbitrary and unattractive method of implementing the Membership Policy. To exclude from membership of this important charity persons to whom (if the full facts were allowed to be taken into account) no conceivable objection could be taken, persons who may not only contribute their subscriptions and services but leave legacies to the Society, must be a method of last resort. The significance of a decision to exclude is accentuated by the provision in the Scheme that any person whose application for membership is rejected is precluded from making a further application for two years. I have in mind that circumstances may arise where emergency action is required calling for the expulsion of a group of members which includes "the innocent" as well as "the guilty" e.g. where there is an imminent threat of a take-over or other irreparable damage: see e.g. Gaiman at p.339. But that is not the situation here. What is in question is a fully considered long term policy, and the plight of the "innocent" must take on greater weight when an
alternative course is available. If the damage done to the Society by the admission of persons whom the Membership Policy is designed to exclude is such as to require measures to preclude them joining the Society, the extra cost and administrative inconvenience involved in adopting the Council’s second choice must likewise be justified. In the context of a charity of the standing, size and substance of the Society, this should not prove in any way disproportionate, having in mind the critical importance of the public image and reputation of the Society for fairness and justice. That public image and reputation must be of critical importance to the success of the Society in particular in respect of its activities and its attraction of support (financial and otherwise). As I read the evidence in this case this important factor has not been taken into account or given any or any sufficient consideration or weight by the Council when making its choice of method of implementation of the Membership Policy. If the Membership Policy is to be adopted in respect of applicants for membership, they should be so informed in the application form or an accompanying document; they should be invited to state whether they fall within any of the categories from which inferences may be drawn; and if they fall within a category, they should be invited to give their reasons why nonetheless they should be admitted to membership. This does mean that a discretion will need to be exercised in any case where an application is refused. This course will meet the real risk of injustice arising from wrong categorisation and of a categorisation giving a false indication. There is a problem that under the Rules as they stand any exercise of discretion whether to admit or reject an applicant must be made by the Council or (as its delegate) a Committee. An amendment of the Rules is clearly called for enabling delegation e.g. to a Committee of less than four or to an executive employed by the Charity to discharge this function. I am far from clear that such an amendment is not called for as matters stand at present irrespective of the adoption of the Membership Policy. At the same time consideration should be given whether and how the Rules should be amended generally so that they no longer represent a patchwork of amendments over the years with the inevitable construction difficulties to which such a patchwork gives rise and whether the Society should adopt in their place a set of Rules which are clear and consistent and enable it to function effectively.

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The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 20(6) of the Clean Air Act 1993 and all other powers enabling them to do so.

Citation, commencement and extent

1. —(1) These Regulations may be cited as the Smoke Control Areas (Authorised Fuels) (Scotland) Regulations 2010 and come into force on 27th September 2010.

(2) These Regulations extend to Scotland only.

Authorised fuels for the purposes of Part III of the Clean Air Act 1993

2. Anthracite, semi-anthracite, electricity, gas, low volatile steam coals and the fuels described in the Schedule are declared to be authorised fuels for the purposes of Part III of the Clean Air Act 1993.

Revocation

3. The Smoke Control Areas (Authorised Fuels) (Scotland) (No. 2) Regulations 2008 are revoked.

R CUNNINGHAM
Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
30th June 2010

(a) 1993 c.11. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) S.S.I. 2008/295.
SCHEDULE

AUTHORISED FUELS

1. Aimcor Excel briquettes, manufactured by Applied Industrial Materials UK Limited, Newfield, County Durham, or manufactured by Oxbow Carbon & Minerals UK Limited, Windsor House, Cornwall Road, Harrogate, North Yorkshire, which—
   (a) comprise petroleum coke (as to 60 to 75 per cent of the total weight), low volatile coal and reactive coke (as to 20 to 25 per cent of the total weight) and cold-setting resin binder (as to the remaining weight);
   (b) were manufactured from those constituents by a process involving roll-pressing;
   (c) are unmarked pillow-shaped briquettes;
   (d) have an average weight of 73 grammes per briquette; and
   (e) have a sulphur content not exceeding 2 per cent of the total weight.

2. Aimcor Pureheat briquettes, manufactured by Applied Industrial Materials UK Limited, Immingham, North East Lincolnshire, or manufactured by Oxbow Carbon & Minerals UK Limited, Windsor House, Cornwall Road, Harrogate, North Yorkshire, which—
   (a) comprise anthracite (as to approximately 60 per cent of the total weight), petroleum coke (as to approximately 25 per cent of the total weight) and binder (as to the remaining weight);
   (b) were manufactured from those constituents by a process involving roll-pressing and heat treatment at about 250°C;
   (c) are pillow-shaped briquettes with a single line indentation on one side and a double line indentation on the reverse side;
   (d) have an average weight of 75 grammes per briquette; and
   (e) have a sulphur content not exceeding 2 per cent of the total weight.

3. Ancit briquettes, manufactured by Coal Products Limited, Immingham Briquetting Works, Immingham, North East Lincolnshire, which—
   (a) comprise anthracite (as to approximately 60 to 95 per cent of the total weight), petroleum coke (as up to approximately 30 per cent of the total weight), bituminous coal (as up to approximately 15 per cent of the total weight) and a molasses and phosphoric acid binder or an organic binder (as to the remaining weight);
   (b) were manufactured from those constituents by a process involving roll-pressing and heat treatment at about 300°C;
   (c) are unmarked cushion-shaped briquettes;
   (d) have an average weight of 48 grammes per briquette; and
   (e) have a sulphur content not exceeding 2 per cent of the total weight.

4. Big K Instant Lighting Fire Logs, manufactured by Allspan B.V., Macroweg 4, 5804 CL Venray, the Netherlands, which—
   (a) comprise slack wax (as to approximately 58 to 59 per cent of the total weight) and hardwood sawdust (as to approximately 41 to 42 per cent of the total weight);
   (b) were manufactured from those constituents by a process of heat treatment and extrusion;
   (c) are firelogs approximately 235 millimetres in length and 80 millimetres in depth, with grooves along their faces;
   (d) have an average weight of 1.1 kilogrammes per firelog; and
   (e) have a sulphur content not exceeding 0.1 per cent of the total weight.
5. Black Diamond Gem briquettes, manufactured by Coal Products Limited, Immingham Briquetting Works, Immingham, North East Lincolnshire, which—

(a) comprise anthracite duff (as to 20 to 30 per cent of the total weight), petroleum coke (as to 40 to 45 per cent of the total weight), bituminous coal (as to 12 to 22 per cent of the total weight) and molasses and phosphoric acid binder (as to the remaining weight);

(b) were manufactured from those constituents by a process involving roll-pressing and heat treatment at about 300°C;

(c) are pillow-shaped briquettes marked with two parallel indented lines running latitudinally around the briquette;

(d) have an average weight of 160 grammes per briquette; and

(e) have a sulphur content not exceeding 1.5 per cent of the total weight.

6. Bord na Móna Firelogs, manufactured by Bord na Móna Fuels Limited, Newbridge, County Kildare, Republic of Ireland, which—

(a) comprise slack wax (as to approximately 55 per cent of the total weight) and hardwood sawdust (as to approximately 45 per cent of the total weight);

(b) were manufactured from those constituents by a process of heat treatment and extrusion;

(c) are firelogs approximately 255 millimetres in length and 75 millimetres in diameter, with grooves along one longitudinal face;

(d) have an average weight of 1.3 kilogrammes per firelog; and

(e) have a sulphur content not exceeding 0.1 per cent of the total weight.

7. Bord na Móna Firepak (also marketed as Arigna Special coal briquettes), manufactured by Bord na Móna Fuels Limited, Newbridge, County Kildare, Republic of Ireland, which—

(a) comprise anthracite (as to approximately 50 per cent of the total weight), petroleum coke (as to approximately 20 to 40 per cent of the total weight), bituminous coal (as to approximately 10 to 30 per cent of the total weight) and starch based binder (as to the remaining weight);

(b) were manufactured from those constituents by a process involving roll-pressing and heat treatment;

(c) are unmarked pillow-shaped briquettes;

(d) have an average weight of 50 grammes per briquette; and

(e) have a sulphur content not exceeding 1.5 per cent of the total weight.

8. Briteflame briquettes, manufactured by Maxibrite Limited, Mwyndy Industrial Estate, Llantrisant, Mid Glamorgan, which—

(a) comprise bituminous coal (as to 10 to 15 per cent of the total weight), petroleum coke (as to 10 to 15 per cent of the total weight), anthracite duff (as to 70 to 80 per cent of the total weight) and a starch binder (as to the remaining weight);

(b) were manufactured from those constituents by a process involving roll-pressing and heat treatment at about 260°C;

(c) are unmarked pillow-shaped briquettes;

(d) have an average weight of 140 grammes per briquette; and

(e) have a sulphur content not exceeding 1.9 per cent sulphur on a dry basis.

9. Briteheat briquettes, manufactured by Coal Products Limited, Immingham Briquetting Works, North East Lincolnshire, which—

(a) comprise anthracite (as to approximately 60 to 85 per cent of the total weight), petroleum coke (up to approximately 30 per cent of the total weight), bituminous coal (up to approximately 15 per cent of the total weight) and a molasses and phosphoric acid binder (as to the remaining weight);
(b) were manufactured from those constituents by a process involving roll-pressing and heat treatment at about 300°C;
(c) are cushion-shaped briquettes with an indented line running longitudinally around the briquette;
(d) have an average weight of 30 grammes per briquette; and
(e) have a sulphur content not exceeding 2 per cent of the total weight.

10. Bryant and May Firelogs manufactured by Swedish Match, Kostenetz, Bulgaria, which—
   (a) comprise paraffin wax (as to approximately 50 per cent of the total weight), ground poplar wood (as to approximately 25 per cent of the total weight), wheatflour (as to approximately 15 per cent of the total weight), ignitable solids dispersed in gelled paraffin wax (as to approximately 1 per cent of the total weight) and water, swelling agents and preservative (as to the remaining weight);
   (b) were manufactured from those constituents by a process involving extrusion;
   (c) have a quadrant shaped cross section with a radius of approximately 80 millimetres, a length of approximately 265 millimetres and an ignition strip along one edge;
   (d) have an approximate weight of 1.15 kilogrammes per firelog; and
   (e) have a sulphur content not exceeding 0.1 per cent of the total weight.

11. Charglow briquettes, manufactured by Polchar Spolka z ograniczona odpowiedzialnoscia Ulica Kuznicka 1, Police, Zachodniepomorskie, Poland, which—
   (a) comprise bituminous coal char (as to approximately 45 to 95 per cent of the total weight), anthracite (as to approximately 0 to 20 per cent of the total weight), petroleum coke (as to approximately 0 to 20 per cent of the total weight), bituminous coal (as to approximately 0 to 10 per cent of the total weight) and an organic binder (as to the remaining weight);
   (b) were manufactured from those constituents by a process involving roll-pressing and heat treatment at about 110°C;
   (c) are unmarked pillow-shaped briquettes;
   (d) have an average weight of 100 grammes per briquette; and
   (e) have a sulphur content not exceeding 1.5 per cent of the total weight.

12. Coalite manufactured by Coalite Products Limited, Bolsover, near Chesterfield, Derbyshire and at Grimethorpe, South Yorkshire using a low temperature carbonisation process.

13. Coke manufactured by—
   (a) Coal Products Limited at Cwm Coking Works, Llantwit Fardre, Pontypridd, Rhondda Cynon Taff, and sold as “Sunbrite”;
   (b) Monckton Coke & Chemical Company Limited at Royston, near Barnsley, South Yorkshire, and sold as “Sunbrite” or “Monckton Boiler Beans”;
   (c) Corus UK Limited at Teesside Works, Redcar and sold as “Redcar Coke Nuts (Doubles)”;
   (d) Coal Products Limited at Cwm Coking Works, Llantwit Fardre, Pontypridd, Rhondda Cynon Taff and sold as “Cwm Coke Doubles”.

14. Cosycoke (also marketed as Lionheart Crusader or Sunbrite Plus) manufactured by Monckton Coke & Chemical Company Limited, Royston, near Barnsley, South Yorkshire, and Aimcor Supercoke (also marketed as Supercoke), manufactured by M & G Fuels Limited, Hartlepool Docks, Hartlepool, which in each case—
   (a) comprise sized hard coke (as to approximately 45 to 65 per cent of the total weight) and sized petroleum coke (as to the remaining weight);
   (b) were manufactured from those constituents by blending;
   (c) are unmarked random shapes; and
(d) have a sulphur content not exceeding 2 per cent of the total weight.

15. Dragonglow briquettes, manufactured by Tower Colliery Limited, Aberdare, Mid Glamorgan, South Wales, which—
(a) comprise tower duff (as to approximately 95 per cent of the total weight) and a resin-based binder (as to the remaining weight);
(b) were manufactured from those constituents by a process involving cold cure roll-pressing;
(c) are unmarked pillow-shaped briquettes;
(d) have an average weight of 100 grammes per briquette; and
(e) have a sulphur content not exceeding 1 per cent of the total weight.

16. Dragonbrite briquettes, manufactured by Tower Colliery Limited, Aberdare, Mid Glamorgan, South Wales, which—
(a) comprise tower duff (as to approximately 95 per cent of the total weight) and a resin-based binder (as to the remaining weight);
(b) were manufactured from those constituents by a process involving cold cure roll-pressing;
(c) are pillow-shaped briquettes marked with the letter “T” on one side;
(d) have an average weight of 50 grammes per briquette; and
(e) have a sulphur content not exceeding 1 per cent of the total weight.

17. Duraflame Firelogs, manufactured by Paramelt B.V., Costerstraat 18, PO Box 86, 1700 AB Heerhugowaard, the Netherlands, which—
(a) comprise mineral-based petroleum wax (as to approximately 55 per cent of the total weight) and ground hardwood fibre (as to approximately 45 per cent of the total weight);
(b) were manufactured from those constituents by a process of heat treatment and extrusion;
(c) are firelogs approximately 320 millimetres in length, 90 millimetres in height and 85 millimetres in width;
(d) have an average weight of 1.45 kilogrammes per firelog; and
(e) have a sulphur content not exceeding 0.1 per cent of the total weight.

18. Ecoal briquettes, manufactured by Coal Products Limited, Immingham Briquetting Works, Immingham, North East Lincolnshire, which—
(a) comprise anthracite fines (as to approximately 40 to 65 per cent of the total weight), petroleum coke (as to approximately 20 to 40 per cent of the total weight), char (as to approximately 0 to 10 per cent of the total weight), bituminous coal (as to approximately 0 to 20 per cent of the total weight), biomass (as to approximately 5 to 20 per cent of the total weight) and a molasses and phosphoric acid binder (as to the remaining weight);
(b) were manufactured from those constituents by a process involving roll-pressing;
(c) are unmarked hexagonal briquettes;
(d) have an average weight of 125 grammes per briquette; and
(e) have a sulphur content not exceeding 2 per cent of the total weight.

19. Ecobrite briquettes, manufactured by Arigna Fuels Limited, Arigna, Carrick-on-Shannon, County Roscommon, Republic of Ireland, which—
(a) comprise anthracite fines (as to approximately 96 per cent of the total weight) and starch as binder (as to the remaining weight);
(b) were manufactured from those constituents by a process involving roll-pressing and heat treatment at about 250°C;
(c) are unmarked pillow-shaped briquettes in two sizes;
(d) have an average weight per briquette of 37 grammes in the case of the smaller size and 48 grammes in the case of the larger size; and
(e) have a sulphur content not exceeding 1.5 per cent of the total weight.

20. Extractite briquettes, manufactured by Sophia-Jacoba Handelsgesellschaft GmbH, Hückelhoven, Germany, which—
(a) comprise anthracite duff (as to approximately 95.5 per cent of the total weight) and ammonium lignosulphonate lye as binder (as to the remaining weight);
(b) were manufactured from those constituents by a process involving roll-pressing and heat treatment at about 260°C;
(c) are cushion-shaped briquettes with a silvery appearance and are marked with the letters “S” and “J”; 
(d) have an average weight of 40 grammes per briquette; and
(e) have a sulphur content of approximately 1.2 per cent of the total weight.

21. Fireglo briquettes, manufactured by Les Combustibles de Normandie, Caen, France, and by La Société Rouennaise de Défumage at Rouen, France, which—
(a) comprise washed Welsh duffs (as to approximately 92 per cent of the total weight) and coal pitch binder (as to the remaining weight);
(b) were manufactured from those constituents by a process involving roll-pressing and heat treatment at about 330°C;
(c) are ovoids with three lines on one side and are smooth on the other side;
(d) have an average weight of 30 grammes per briquette; and
(e) have a sulphur content not exceeding 0.8 per cent of the total weight.

22. Homefire briquettes, manufactured by Coal Products Limited, Immingham Briquetting Works, Immingham, North East Lincolnshire which—
(a) comprise anthracite fines (as to approximately 40 to 70 per cent of the total weight), petroleum coke (as to approximately 20 to 45 per cent of the total weight), char (as to approximately 0 to 10 per cent of the total weight), bituminous coal (as to approximately 5 to 30 per cent of the total weight) and an organic binder or a molasses and phosphoric acid binder (as to the remaining weight);
(b) were manufactured from those constituents by a process involving roll-pressing;
(c) have a volatile matter content in the finished briquette of between 9 and 15 per cent of the total weight on a dry basis;
(d) are unmarked hexagonal briquettes;
(e) have an average weight of 140 grammes per briquette; and
(f) have a sulphur content not exceeding 2 per cent of the total weight.

23. Homefire ovals, manufactured by Coal Products Limited, Immingham Briquetting Works, Immingham, North East Lincolnshire, which—
(a) comprise anthracite duff (as to approximately 57 per cent of the total weight), petroleum coke (as to approximately 17 per cent of the total weight), bituminous coal (as to approximately 13 per cent of the total weight) and a molasses and phosphoric acid binder (as to the remaining weight);
(b) were manufactured from those constituents by a process involving roll-pressing and heat treatment at about 300°C;
(c) are pillow-shaped briquettes with two parallel indented lines running latitudinally around the briquette;
(d) have an average weight of 135 grammes per briquette; and
(e) have a sulphur content not exceeding 2 per cent of the total weight.
24. Homefire Ovals (R), manufactured by Coal Products Limited at Immingham Briquetting Works, Immingham, North East Lincolnshire, which—
(a) comprise anthracite fines (as to approximately 50 to 75 per cent of the total weight), petroleum coke (as to approximately 20 to 45 per cent of the total weight), bituminous coal (as to approximately 5 to 17 per cent of the total weight) and an organic binder (as to the remaining weight);
(b) were manufactured from those constituents by a process involving roll-pressing;
(c) are pillow-shaped briquettes with two parallel indented lines running latitudinally around the briquette;
(d) have an average weight of 130 grammes per briquette; and
(e) have a sulphur content not exceeding 2 per cent of the total weight.

25. Island Lump and Island Nuts, manufactured by Unocal Refinery, California, the United States of America, which—
(a) comprise petroleum coke;
(b) were manufactured from the petroleum coke by a process involving heat treatment and steam injection;
(c) are unmarked random shapes;
(d) have an average weight of 80 grammes (per briquette of Island Lump) or 30 grammes (per briquette of Island Nuts); and
(e) have a sulphur content not exceeding 2 per cent of the total weight.

26. Jewel briquettes, manufactured by Eldon Colliery Limited, Newfield Works, Bishop Auckland, County Durham, which—
(a) comprise anthracite (as to approximately 30 to 50 per cent of the total weight), Long Beach petroleum coke (as to approximately 50 to 70 per cent of the total weight) and a carbohydrate binder (as to the remaining weight);
(b) were manufactured from those constituents by a process involving roll-pressing and heat treatment at about 150°C;
(c) are unmarked pillow-shaped briquettes;
(d) have an average weight of 33 grammes per briquette; and
(e) have a sulphur content not exceeding 1.5 per cent of the total weight.

27. La Hacienda Easy Logs, manufactured by Allspan B.V., Macroweg 4, 5804 CL Venray, the Netherlands, which meet the conditions specified for Big K Instant Lighting Fire Logs at paragraph 4.

28. Long Beach Lump nuts (otherwise known as LBL nuts), manufactured by Aimcor Carbon Corporation, Long Beach, California, the United States of America, or manufactured by Oxbow Carbon & Minerals LLC, 330 Golden Shore, Suite 210, Long Beach, California 90802, the United States of America, which—
(a) comprise petroleum coke (as to approximately 85 to 100 per cent of the total weight), limestone (as to approximately 0 to 10 per cent of the total weight) and coal tar pitch (as to the remaining weight);
(b) were manufactured from those constituents by a process involving heat treatment and steam injection;
(c) are unmarked random shapes; and
(d) have a sulphur content not exceeding 2 per cent of the total weight.
29. Maxibrite briquettes, manufactured by Maxibrite Limited, Llantrisant, Rhondda Cynon Taff, which—
   (a) comprise anthracite fines (as to approximately 84 per cent of the total weight), petroleum coke (as to approximately 12 per cent of the total weight) and starch as binder (as to the remaining weight);
   (b) were manufactured from those constituents by a process involving roll-pressing and heat treatment at 250°C;
   (c) are cushion-shaped briquettes marked with the letter “M”;
   (d) have an average weight of 35 grammes per briquette; and
   (e) have a sulphur content not exceeding 2 per cent of the total weight.

30. Multiheat briquettes, manufactured by Coal Products Limited, Immingham Briquetting Works, Immingham, North East Lincolnshire, which—
   (a) comprise anthracite (as to approximately 60 to 80 per cent of the total weight), petroleum coke (as to approximately 10 to 30 per cent of the total weight) and a molasses and phosphoric acid binder (as to the remaining weight);
   (b) were manufactured from those constituents by a process involving roll-pressing and heat treatment at about 300°C;
   (c) are unmarked pillow-shaped briquettes;
   (d) have average weights per briquette of either 55 or 80 grammes; and
   (e) have a sulphur content not exceeding 2 per cent of the total weight.

31. Newflame briquettes, manufactured by Maxibrite Limited, Llantrisant, Rhondda Cynon Taff, which—
   (a) comprise anthracite fines (as to approximately 84 per cent of the total weight), petroleum coke (as to approximately 12 per cent of the total weight) and a starch binder (as to the remaining weight);
   (b) were manufactured from those constituents by a process involving roll-pressing and heat treatment at about 260°C;
   (c) are unmarked pillow-shaped briquettes;
   (d) have an average weight of 78 grammes per briquette; and
   (e) have a sulphur content not exceeding 2 per cent of the total weight.

32. Optima Fire Logs, manufactured by Allspan B.V., Macroweg 4, 5804 CL Venray, the Netherlands, which meet the conditions specified for Big K Instant Lighting Fire Logs at paragraph 4.

33. Phurnacite briquettes, manufactured by Coal Products Limited, Immingham Briquetting Works, Immingham, North East Lincolnshire, which—
   (a) comprise anthracite duff (as to approximately 65 to 85 per cent of the total weight), petroleum coke (as to approximately 20 per cent of the total weight) and a molasses and phosphoric acid binder (as to the remaining weight);
   (b) were manufactured from those constituents by a process involving roll-pressing and heat treatment at about 300°C;
   (c) are ovoid-shaped briquettes with two parallel indented lines running longitudinally around the briquette;
   (d) have an average weight of 40 grammes per briquette; and
   (e) have a sulphur content not exceeding 2 per cent of the total weight.
34. Pyrobloc Fire Logs, manufactured by Allspan B.V., Macroweg 4, 5804 CL Venray, the Netherlands, which—

(a) comprise slack wax (as to approximately 58 to 59 per cent of the total weight) and hardwood sawdust (as to approximately 41 to 42 per cent of the total weight);
(b) were manufactured from those constituents by a process of heat treatment and extrusion;
(c) are firelogs approximately 265 millimetres in length and 80 millimetres in depth, with grooves along their faces;
(d) have an average weight of 1.3 kilogrammes per firelog; and
(e) have a sulphur content not exceeding 0.1 per cent of the total weight.

35. Safelight Firelogs, manufactured by Advanced Natural Fuels Limited, Pocklington, East Riding of Yorkshire, which—

(a) comprise woodchip (as to approximately 40 to 55 per cent of the total weight) and Palm Wax binder (as to approximately 45 to 60 per cent of the total weight);
(b) were manufactured from those constituents by a process involving pressing of the mixed ingredients at about 40°C to 50°C;
(c) are rectangular hard finish firelogs with two deep overlapping slots in the top surface and a single continuous slot in the base surface;
(d) have an average weight of 1.8 kilogrammes per firelog; and
(e) have a sulphur content not exceeding 2 per cent of the total weight.

36. Sovereign briquettes, manufactured by Monckton Coke & Chemical Company Limited, Royston, near Barnsley, South Yorkshire, which—

(a) comprise anthracite (as to approximately 75 per cent of the total weight), coal and reactive coke (as to approximately 21 per cent of the total weight) and cold-setting resin binder (as to the remaining weight);
(b) were manufactured from those constituents by a process involving extrusion;
(c) are unmarked hexagonal briquettes;
(d) have an average weight of 130 grammes per briquette; and
(e) have a sulphur content not exceeding 2 per cent of the total weight.

37. Stoveheat Premium briquettes, manufactured by Coal Products Limited, Immingham Briquetting Works, Immingham, North East Lincolnshire, which—

(a) comprise anthracite duff (as to approximately 65 to 85 per cent of the total weight), petroleum coke (as to approximately 20 per cent of the total weight) and a molasses and phosphoric acid binder (as to the remaining weight);
(b) were manufactured from those constituents by a process involving roll-pressing and heat treatment at about 300°C;
(c) are unmarked ovoid-shaped briquettes;
(d) have an average weight of 40 grammes per briquette; and
(e) have a sulphur content not exceeding 2 per cent of the total weight.

38. Supabrite Coke Doubles, manufactured by H.J. Banks and Company Limited, Inkerman Road Depot, Tow Law, County Durham, which—

(a) comprise metallurgical coke (as to approximately 40 to 60 per cent of the total weight) and petroleum coke (as to the remaining weight);
(b) were manufactured from those constituents by a process involving blending and screening;
(c) are unmarked random shapes; and
(d) have a sulphur content not exceeding 1.95 per cent of the total weight.
39. Supacite briquettes, manufactured by Maxibrite Limited, Llantrisant, Rhondda Cynon Taff, which—
(a) comprise anthracite fines (as to approximately 84 per cent of the total weight), petroleum coke (as to approximately 12 per cent of the total weight) and a starch binder (as to the remaining weight);
(b) were manufactured from those constituents by a process involving roll-pressing and heat treatment at 240°C;
(c) are unmarked ovoids;
(d) have an average weight of 45 grammes per briquette; and
(e) have a sulphur content not exceeding 2 per cent of the total weight.

40. Supertherm briquettes, manufactured by Coal Products Limited, Immingham Briquetting Works, Immingham, North East Lincolnshire, which—
(a) comprise a blend (in the proportion of 19:1 by weight) of anthracite and medium volatile coal (as to approximately 93 per cent of the total weight) and a cold-setting organic binder or a molasses and phosphoric acid binder (as to the remaining weight);
(b) were manufactured from those constituents by a process involving roll-pressing;
(c) are unmarked ovoids;
(d) have an average weight of 160 grammes per briquette; and
(e) have a sulphur content not exceeding 1.5 per cent of the total weight.

41. Supertherm II briquettes, manufactured by Coal Products Limited, Immingham Briquetting Works, Immingham, North East Lincolnshire, which—
(a) comprise anthracite (as to approximately 36 to 51 per cent of the total weight), petroleum coke (as to approximately 40 to 55 per cent of the total weight) and an organic binder or a molasses and phosphoric acid binder (as to the remaining weight);
(b) were manufactured from those constituents by a process involving roll-pressing;
(c) are unmarked ovoids;
(d) have an average weight of 140 grammes per briquette; and
(e) have a sulphur content not exceeding 2 per cent of the total weight.

42. Taybrite briquettes (otherwise known as Surefire briquettes), manufactured by Coal Products Limited, Immingham Briquetting Works, Immingham, North East Lincolnshire, which—
(a) comprise anthracite (as to approximately 60 to 80 per cent of the total weight), petroleum coke (as to approximately 10 to 30 per cent of the total weight) and a molasses and phosphoric acid binder (as to the remaining weight);
(b) were manufactured from those constituents by a process involving roll-pressing and heat treatment at about 300°C;
(c) are pillow-shaped briquettes marked with a single indented line running longitudinally along each face, offset from its counterpart by 10 millimetres or unmarked;
(d) have an average weight of 80 grammes per briquette; and
(e) have a sulphur content not exceeding 2 per cent of the total weight.

43. Therma briquettes, manufactured by Maxibrite Limited, Llantrisant, Rhondda Cynon Taff, which—
(a) comprise anthracite fines (as to approximately 84 per cent of the total weight), petroleum coke (as to approximately 12 per cent of the total weight) and starch as binder (as to the remaining weight);
(b) were manufactured from those constituents by a process involving roll-pressing and heat treatment at about 250°C;
(c) are oval or tear shaped briquettes with a line through the centre;
(d) have an average weight of 26 grammes per briquette; and
(e) have a sulphur content not exceeding 2 per cent of the total weight.

44. Thermac briquettes, manufactured by Coal Products Limited, Immingham Briquetting Works, Immingham, North East Lincolnshire, which—
(a) comprise anthracite (as to approximately 90 per cent of the total weight) and a cold-setting organic binder (as to the remaining weight);
(b) were manufactured from those constituents by a process involving roll-pressing;
(c) are unmarked pillow-shaped briquettes;
(d) have an average weight of 48 grammes per briquette; and
(e) have a sulphur content not exceeding 1.5 per cent of the total weight.

45. Tiger Tim Firelogs, manufactured by De Lange B.V., Rustenburgerweg 3, 1646 WJ Ursem, the Netherlands, which—
(a) comprise slack wax (as to approximately 50 per cent of the total weight) and sawdust (as to approximately 50 per cent of the total weight);
(b) were manufactured from those constituents by a process of heat treatment and extrusion;
(c) are firelogs approximately 280 millimetres in length and 75 millimetres in both height and width with a single groove running along each of the four 280 millimetre length faces;
(d) have an average weight of 1.1 kilogrammes per firelog; and
(e) have a sulphur content not exceeding 0.2 per cent of the total weight.

46. Unicite, manufactured by D.J. Davies Fuels Ltd, Blaenau Fuel Depot, Ammanford, Carmarthenshire, or manufactured by A.I. Simson, Cabby Latch, Logie by Kirriemuir, Angus, which—
(a) is a mixture of the following separate fuels—
   (i) anthracite large nuts; and
   (ii) Union briquettes of the description in sub-paragraph (d) manufactured by RWE Power A.G. at Cologne, Germany (as to no more than approximately 40 to 42 per cent of Unicite’s total weight);
(b) has an overall sulphur content not exceeding 0.5 per cent of the total weight; and
(c) in so far as it is constituted by the Union briquettes referred to in sub-paragraph (a)(ii), must consist of compressed lignite with each briquette measuring approximately 75 millimetres in width, 60 millimetres in height and 55 millimetres in length.

47. ZIP Crackleglog firelogs, ZIP Crackle-log firelogs and ZIP Crackling Log firelogs, manufactured by Allspan B.V., Macroweg 4, 5804 CL Venray, the Netherlands, which—
(a) comprise slack wax (as to approximately 55 per cent of the total weight), hardwood sawdust (as to approximately 42 per cent of the total weight) and crackle seeds (as to approximately 3.2 per cent of the total weight);
(b) were manufactured from those constituents by a process of heat treatment and extrusion;
(c) are firelogs approximately 235 millimetres in length and 80 millimetres in diameter, with grooves along the faces;
(d) have an average weight of 1.1 kilogrammes per firelog; and
(e) have a sulphur content not exceeding 0.1 per cent of the total weight.

48. ZIP Firelogs, manufactured by Allspan B.V., Macroweg 4, 5804 CL Venray, the Netherlands, which—
(a) comprise slack wax (as to approximately 58 to 59 per cent of the total weight) and hardwood sawdust (as to the remaining weight);
(b) were manufactured from those constituents by a process of heat treatment and extrusion;
(c) are firelogs approximately 265 millimetres in length and 80 millimetres in depth, with grooves along the faces;
(d) have an average weight of 1.3 kilogrammes per firelog; and
(e) have a sulphur content not exceeding 0.1 per cent of the total weight.

49. ZIP Firelogs, manufactured by Woodflame Moerdijk B.V., Apolloweg 4, Harbour No: M189A, 4782 SB Moerdijk, the Netherlands, which—
   (a) comprise slack wax (as to approximately 55 to 60 per cent of the total weight) and hardwood sawdust (as to approximately 40 to 45 per cent of the total weight);
   (b) were manufactured from those constituents by a process of heat treatment and extrusion;
   (c) are firelogs approximately 255 millimetres in length and 75 millimetres in diameter, with grooves along one longitudinal face;
   (d) have an average weight of 1.3 milogrammes per firelog; and
   (e) have a sulphur content not exceeding 0.1 per cent of the total weight.

50. ZIP Firelogs, manufactured by Allspan B.V. at Macroweg 4, 5804 CL Venray, the Netherlands, which meet the conditions specified for Big K Instant Lighting Fire Logs at paragraph 4.
EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, declare the fuels which are authorised fuels for the purposes of Part III of the Clean Air Act 1993. The authorised fuels are described in regulation 2 and the Schedule.

In effect these Regulations re-enact the Smoke Control Areas (Authorised Fuels) (Scotland) (No. 2) Regulations 2008, with the addition of a further authorised fuel, Tiger Tim Firelogs (paragraph 45 of the Schedule). Regulation 3 of these Regulations revokes the 2008 Regulations.

No Regulatory Impact Assessment has been prepared for this instrument as it has no impact on the costs of business.
The Scottish Ministers make the following Order in exercise of the powers conferred by section 21 of the Clean Air Act 1993(a) and all other powers enabling them to do so.

In accordance with that section, they are satisfied that the classes of fireplace exempted by this Order can be used for burning fuel other than authorised fuels(b) without producing any smoke or a substantial quantity of smoke.

Citation, commencement and extent

1.—(1) This Order may be cited as the Smoke Control Areas (Exempt Fireplaces) (Scotland) Order 2010 and comes into force on 27th September 2010.

(2) This Order extends to Scotland only.

Fireplaces exempted from section 20 of the Clean Air Act 1993

2. The fireplaces described in the Schedule that comply with the conditions specified in relation to each of them are exempt from the provisions of section 20 (prohibition on emission of smoke in smoke control area) of the Clean Air Act 1993.

(a) 1993 c.11. The functions of the Secretary of State under section 21 were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) Fuels declared by the Scottish Ministers to be authorised fuels for the purposes of Part III of the Clean Air Act 1993 under section 20(6) of that Act are specified in S.S.I. 2010/271.
Revocation

3. The Smoke Control Areas (Exempt Fireplaces) (Scotland) Order 2009(a) is revoked.

St Andrew’s House,  
Edinburgh  
30th June 2010

R CUNNINGHAM
Authorised to sign by the Scottish Ministers

(a) S.S.I. 2009/214.
## SCHEDULE

**Article 2**

### Exempted fireplaces

<table>
<thead>
<tr>
<th>Fireplace</th>
<th>Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The fireplace must be installed, maintained and operated in accordance with the following specifications</strong></td>
<td><strong>Fuels that must be used (other than authorised fuels)</strong></td>
</tr>
<tr>
<td>1. Any fireplace specially designed or adapted for combustion of liquid fuel and equipped with mechanical stokers.</td>
<td>The fuel for which the mechanical stoker was designed.</td>
</tr>
<tr>
<td>2. Any fireplace (other than a fireplace fired by pulverised fuel) constructed on or after 31st December 1956 and installed before 28th April 1982 and equipped with mechanical stokers, or adapted between those dates for use with such stokers.</td>
<td>The fuel for which the mechanical stoker was designed.</td>
</tr>
<tr>
<td>3. Any fireplace designed to burn coal (other than a fireplace fired by pulverised coal) with a heating capacity exceeding 150,000 British thermal units per hour constructed and installed on or after 31st December 1956 and equipped with mechanical stokers or adapted on or after that date for use with such stokers.</td>
<td>The fuel for which the mechanical stoker was designed.</td>
</tr>
<tr>
<td>Fireplace</td>
<td>Conditions</td>
</tr>
<tr>
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</tr>
<tr>
<td><strong>The fireplace must be installed, maintained and operated in accordance with the following specifications</strong></td>
<td><strong>Fuels that must be used (other than authorised fuels)</strong></td>
</tr>
<tr>
<td>4. The APE Saffire Boiler (in the sizes, expressed in British Thermal Units (BTUs) per hour, as 1M to 8M, 10M and 12M) manufactured by Air Pollution Engineering Limited.</td>
<td>The manufacturer’s instructions dated 27th August 1982 and bearing the reference “SAF 250-3000/HW &amp; /S.”.</td>
</tr>
<tr>
<td>6. Arimax Bio 300 kW, Arimax Bio 400 kW and Arimax Bio 500 kW, manufactured by Artierm Oy, PO Box 59, Fin — 43101, Saarijarvi, Finland.</td>
<td>Instruction manual reference “INSTALLATION AND OPERATION MANUAL Arimax Bio 120-3000 kW” dated 30/03/2010.</td>
</tr>
<tr>
<td>The fireplace must be operated as a single unit with—</td>
<td></td>
</tr>
<tr>
<td>(a) the Tollemache Drier manufactured by Newell Dunford Limited; and</td>
<td></td>
</tr>
<tr>
<td>(b) The Venturi Scrubber manufactured by Air Pollution Control Limited.</td>
<td></td>
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<tr>
<td>Fireplace</td>
<td>Conditions</td>
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<tr>
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</tr>
<tr>
<td><strong>The fireplace must be installed, maintained and operated in accordance with the following specifications</strong></td>
<td>Fuels that must be used (other than authorised fuels)</td>
</tr>
<tr>
<td>8. The B9 Energy Wood Chip Gasifier Unit manufactured by B9 Energy Biomass Limited, Unit 22, Northland Road Industrial Estate, Londonderry, Northern Ireland.</td>
<td>The manufacturer’s instructions dated 2002 and bearing the reference “001/B9ENERGYBIOMASS”.</td>
</tr>
<tr>
<td>10. The Binder Wood Fired Boiler models RRK 22-49 (49 kW output) manufactured by Binder Gesellschaft mit beschränkter Haftung (GmbH) of Austria.</td>
<td>The manufacturer’s and Wood Energy Limited’s instructions ‘Binder Equipment Installation, Commissioning and Maintenance’ dated 17th May 2005, reference WELBinderManualrev0.doc, revision 0.</td>
</tr>
<tr>
<td>11. The Binder Wood Fired Boiler models RRK 80-175 (75–149 kW output) with cyclone models ZA 80–175 manufactured by Binder Gesellschaft mit beschränkter Haftung (GmbH) of Austria.</td>
<td>The manufacturer’s and Wood Energy Limited’s instructions ‘Binder Equipment Installation, Commissioning and Maintenance’ dated 17th May 2005, reference WELBinderManualrev0.doc, revision 0.</td>
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<td>Fireplace</td>
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<td><strong>The fireplace must be installed, maintained and operated in accordance with the following specifications</strong></td>
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<tr>
<td><strong>Fuels that must be used (other than authorised fuels)</strong></td>
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<tr>
<td>12. The Binder Wood Fired Boiler models RRK 130-250 (185-230 kW output), RRK 200-350 (250-300 kW output), RRK 400-600 (350-500 kW output) and RRK 640-850 (650-840 kW output) with cyclone model type ZA manufactured by Binder Gesellschaft mit beschränkter Haftung (GmbH) of Austria.</td>
<td>The manufacturer’s and Wood Energy Limited’s instructions ‘Binder Equipment Installation, Commissioning and Maintenance’ dated 17th May 2005, reference WELBinderManualrev0.doc, revision 0.</td>
</tr>
<tr>
<td><strong>13. The Binder Wood Fired Boiler model RRK 1000 (1200 kW output) with multi-cyclone model MZA manufactured by Binder Gesellschaft mit beschränkter Haftung (GmbH) of Austria.</strong></td>
<td>The manufacturer’s and Wood Energy Limited’s instructions ‘Binder Equipment Installation, Commissioning and Maintenance’ dated 17th May 2005, reference WELBinderManualrev0.doc, revision 0.</td>
</tr>
<tr>
<td>Fireplace</td>
<td>Conditions</td>
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<tr>
<td><strong>16. The Binder Wood Fired Boiler model RRK 2500-3000 with Binder model MZA multi-cyclone and automatic ignition manufactured by Binder Gesellschaft mit beschränkter Haftung (GmbH) of Austria.</strong></td>
<td><strong>The fireplace must be installed, maintained and operated in accordance with the following specifications</strong></td>
</tr>
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<td></td>
<td><strong>Fuels that must be used (other than authorised fuels)</strong></td>
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<td></td>
<td>Wood pellets or wood chips.</td>
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<td></td>
<td><strong>Chipped wood, wood pellets or planed wood shavings.</strong></td>
</tr>
<tr>
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<td><strong>Chipped wood, wood pellets or planed wood shavings.</strong></td>
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<tr>
<td>Fireplace</td>
<td>Conditions</td>
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</tr>
<tr>
<td>The fireplace must be installed, maintained and operated in accordance with the following specifications</td>
<td>Fuels that must be used (other than authorised fuels)</td>
</tr>
<tr>
<td>22. The CBR Flexifuel Heater, models 150 and 200 manufactured by CBR Fabrications Limited.</td>
<td>The manufacturer’s instructions, which bear the reference “FF/CBR FLEXIFUEL 150/200 1989”. The fireplace must not be used to burn sawdust in bulk. Hardwood or softwood offcuts, chipboard or plastic coated chipboard.</td>
</tr>
<tr>
<td>23. The CBR Flexifuel Heater, models 300, 400 and 600 manufactured by CBR Fabrications Limited.</td>
<td>The manufacturer’s instructions, which bear the reference “FF/CBR FLEXIFUEL 1987”. The fireplace must not be used to burn sawdust in bulk. Hardwood or softwood offcuts, chipboard or plastic coated chipboard.</td>
</tr>
<tr>
<td>Fireplace</td>
<td>Conditions</td>
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<td>-----------</td>
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</tr>
<tr>
<td><strong>The fireplace must be installed, maintained and operated in accordance with the following specifications</strong></td>
<td>Fuels that must be used (other than authorised fuels)</td>
</tr>
<tr>
<td>24. The CBR Turbo Heat, models 200, 300, 400, 500, 600 and 800 manufactured by CBR Fabrications Limited.</td>
<td>The manufacturer’s instructions, which bear the reference “CBR Turbo Heat 88”. The fireplace must not be used to burn sawdust in bulk. Hardwood or softwood offcuts, chipboard or plastic coated chipboard.</td>
</tr>
<tr>
<td>25. The Charnwood Cove 1SR stove manufactured by A.J. Wells and Sons Limited, Bishops Way, Newport, Isle of Wight, PO30 5WS.</td>
<td>Installation and Use Instruction manual reference “COVE1SR01.10 Issue A”. The air control must be adjusted so that it is 15 mm or more from the fully open position. Wood logs.</td>
</tr>
<tr>
<td>26. The Charnwood Tor stove manufactured by A.J. Wells and Sons Limited, Bishops Way, Newport, Isle of Wight, PO 30 5WS.</td>
<td>Installation and Use instruction manual reference “Tor 02.10 Issue A”. Wood logs.</td>
</tr>
<tr>
<td>28. The Clearview models 650 and 750, and the Vision 500 model, manufactured by Clearview Stoves of More Works, Bishops Castle, Shropshire, SY9 5HH.</td>
<td>The manufacturer’s instructions dated 1st January 1993 and, in the case of the Clearview models 650 and 750, bearing the reference “1/42” and, in the case of the Vision 500 model, bearing the reference “V1/42”. Firewood which has been split, stacked and air dried.</td>
</tr>
<tr>
<td>Fireplace</td>
<td>Conditions</td>
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</tr>
<tr>
<td><strong>The fireplace must be installed, maintained and operated in accordance with the following specifications</strong></td>
<td><strong>Fuels that must be used (other than authorised fuels)</strong></td>
</tr>
<tr>
<td><strong>29. The Clearview Pioneer 400, Solution 400 and Pioneer Oven wood burning stoves fitted with a tamperproof mechanical stop on the air slide/damper manufactured by Clearview Stoves of More Works, Bishops Castle, Shropshire, SY9 5HH.</strong></td>
<td><strong>The manufacturer’s instructions ‘Operating Instructions Clearview Vision/Vision Inset/Pioneer &amp; Solution’ dated 1st July 2006, reference V1/42, stamped and signed “Smoke Control”.</strong></td>
</tr>
<tr>
<td><strong>30. The Contura 510, Contura 520T, Contura 550, Contura 550A, Contura 550W, Contura 560T, Contura 560K, Contura 570, Contura 580, Contura 585, Contura 590, and Contura 590T, manufactured by NIBE AB, Box 134, 285 23, Markaryd, Sweden.</strong></td>
<td><strong>Installation Instruction IAV SE/EX 0726-6 611821.</strong></td>
</tr>
<tr>
<td><strong>31. Contura 580W manufactured by NIBE AB, Box 134, 285 23, Markaryd, Sweden.</strong></td>
<td><strong>Installation Instruction IAV SE/EX 0740-1 511911.</strong></td>
</tr>
<tr>
<td><strong>32. The Corsair 300HW, 500HW and 750HW boilers manufactured by Erithglen Limited.</strong></td>
<td><strong>The manufacturer’s instructions: reference “001 August 1985”.</strong></td>
</tr>
<tr>
<td><strong>33. The Cove 2 SR manufactured by A.J.Wells &amp; Sons Limited, Bishops Way, Newport, Isle of Wight, PO30 5WS.</strong></td>
<td><strong>Instruction manual reference “Cove2SR 07.09 IssB” dated July 2009.</strong></td>
</tr>
<tr>
<td>Fireplace</td>
<td>Conditions</td>
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<td><strong>The fireplace must be installed, maintained and operated in accordance with the following specifications</strong></td>
<td>Fuels that must be used (other than authorised fuels)</td>
</tr>
<tr>
<td>34. The Cronspisen stove, using the five channel chimney system, manufactured by Cronspisen Produktion AB.</td>
<td>The manufacturer’s instructions bearing the reference “January 1992. Serial No: UM 351B”. Firewood that has been split, stacked and air-dried.</td>
</tr>
<tr>
<td>35. CTC Ecoflex 15 and 20 manufactured by Enertech AB, Box 313, S-341 26 Ljungby, Sweden.</td>
<td>Instruction Manual referenced “161 505 27 06/1” and dated 20/02/2007. Wood pellets.</td>
</tr>
<tr>
<td>36. The Defiant Encore manufactured by VCW International Limited.</td>
<td>The manufacturer’s instructions dated November 1991 bearing the reference “200-8632”. Firewood that has been split, stacked and air-dried.</td>
</tr>
<tr>
<td>37. Dimplex SE Selborne 5 manufactured by ESSE Engineering Limited, Ouzledale Foundry, Long Ing, Barnoldswick, Lancashire, BB18 6BN.</td>
<td>Instruction manual reference “SE Selborne 5 Issue 1” dated 08 2009. Wood logs. All appliances must be fitted with a mechanical stop to prevent closure beyond the 50 per cent open position.</td>
</tr>
<tr>
<td>38. Dovre 250 (model number DV-250) manufactured by Dovre NV, Nijverheidsstraat 18, BE-2381 Weelde, Belgium.</td>
<td>Instruction manual reference “PM 250 Issue 1”. Untreated dry wood. A permanent stop must be in place on the secondary air inlet to prevent closure beyond the 75 per cent open position.</td>
</tr>
</tbody>
</table>
| 39. The Dovre woodstove models 500CBW and 700CBW manufactured by Dovre Castings Limited, including those models referred to by their former reference numbers, 500G and 700G respectively. | The manufacturer’s instructions dated October 1995 bearing the following references:—  
(a) for model 500G: “500G”; and  
(b) for model 700G: “700G”. Wood. |
<table>
<thead>
<tr>
<th>Fireplace</th>
<th>Conditions</th>
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</thead>
<tbody>
<tr>
<td>The Dunsley Yorkshire Stove manufactured by Dunsley Heat Limited.</td>
<td>The manufacturer’s instructions dated 5th August 1998, reference A/22160 as amended by those dated 4th December 2004, reference D13.</td>
</tr>
</tbody>
</table>

Untreated dry wood.

Peat or peat briquettes with, in either case, less than 25 per cent moisture.

Union Coal Briquettes, manufactured by Rheinbraun AG of Germany, comprising lignite compressed into briquettes of approximately 15 cm in length with square ends and with a sulphur content not exceeding 1 per cent of the total weight (“UCB”).

CPL Wildfire, manufactured by Coal Products Limited, Immingham, which—

(a) comprise bituminous coal with a volatile content of 32–36 per cent (as to approximately 96 per cent of the total weight) and a cold cure resin binder (as to the remaining weight);

(b) are manufactured from those constituents by a process involving roll-pressing;

(c) have an average weight of either 80–90 grammes or 160–170 grammes; and
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<td><strong>The fireplace must be installed, maintained and operated in accordance with the following specifications</strong></td>
<td>d) have a sulphur content not exceeding 1.8 per cent of the total weight (“CPL”).</td>
<td></td>
</tr>
<tr>
<td>42. The Dunsley Yorkshire Multifuel Stove and Boiler manufactured by Dunsley Heat Limited.</td>
<td>The manufacturer’s instructions dated 4th October 2004, reference GHD/DUN4B/1.</td>
<td>Untreated dry wood. Peat or peat briquettes with, in either case, less than 25 per cent moisture. UCB or CPL.</td>
</tr>
<tr>
<td>45. Earlswood manufactured by ACR Heat Products Limited, Unit One, Weston Works, Weston Lane, Tyseley, Birmingham, B11 3RP.</td>
<td>Instruction manual reference “EMIMF technical manual” dated 02 2009. When the primary out control is in the closed position, it must remain open by 5mm and be prevented from closing fully by a screw.</td>
<td>Wood logs.</td>
</tr>
<tr>
<td>46. Eccostove manufactured by Landy Vent, Foster House, 2 Redditch Road, Studley, Warwickshire, B80 7AX.</td>
<td>Instruction manual reference “02/10” dated 10/02/2010. A system that prevents closure of the secondary air flaps to less than 4mm (3 Turns) open position must be fitted.</td>
<td>Wood logs.</td>
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<tr>
<td><strong>Fireplace</strong></td>
<td><strong>Conditions</strong></td>
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<td>The fireplace must be installed, maintained and operated in accordance with the following specifications</td>
<td>Fuels that must be used (other than authorised fuels)</td>
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</tr>
<tr>
<td>47. The Eclipse Junior, Standard, Senior, Jumbo 30 and Jumbo 50 incinerators manufactured by Northern Incinerators Limited.</td>
<td>The manufacturer’s instructions dated 21st June 1988 and which bear the reference “NORCIN/TECH/88”. Fuel consisting of paper, cardboard cartons, scrap wood, foliage, combustible floor sweepings and other waste from domestic, commercial and industrial activities containing no more than 20 per cent of restaurant and cafeteria waste, and containing less than 5 per cent by weight of coated papers, plastic or rubber waste.</td>
<td></td>
</tr>
<tr>
<td>48. The Extraflame Babyfiamma, Bella and Bella Lux, Clementina, Comfort Maxi, Contessa, Divina, Divina Plus and Divina Steel, Duchessa and Duchessa Steel, Ecologica, Esmeralda and Esmeralda Crystal, Falò 1CP, Falò 2CP and Falò 1XP, Isabella, Karolina, Preziosa, all of which are manufactured by Extraflame S.p.a. in Montecchio Precalcino (Vicenza), Italy.</td>
<td>The manufacturer’s operating instructions dated 5th March 2007, reference 004275101 011. Wood pellets.</td>
<td></td>
</tr>
<tr>
<td>49. The Extraflame Comfort Mini manufactured by Extraflame S.p.a. in Montecchio Precalcino (Vicenza), Italy.</td>
<td>The manufacturer’s operating instructions dated 2nd October 2006, reference 004275115 REV 005. Wood pellets.</td>
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<td><strong>Fireplace</strong></td>
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<td><strong>The fireplace must be installed, maintained and operated in accordance with the following specifications</strong></td>
<td><strong>Fuels that must be used (other than authorised fuels)</strong></td>
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<tr>
<td>50. The Extraflame Idro manufactured by Extraflame S.p.a. in Montecchio Precalcino (Vicenza), Italy.</td>
<td>The manufacturer’s operating instructions dated 28th August 2006, reference 004275128 REV 002. Wood pellets.</td>
<td></td>
</tr>
<tr>
<td>51. The Extraflame Lucrezia Idro and Lucrezia Steel manufactured by Extraflame S.p.a. in Montecchio Precalcino (Vicenza), Italy.</td>
<td>The manufacturer’s operating instructions dated 12th July 2006, reference 004275110 REV 011. Wood pellets.</td>
<td></td>
</tr>
<tr>
<td>52. The Farm 2000 boiler models BB154, BB154A and BB154/2 (when used with the Farm 2000 conversion kit BB154/2Vcx) manufactured by Farm 2000 Limited.</td>
<td>The manufacturer’s instructions which—&lt;br&gt;(a) in the case of the installation instructions are dated May 1994 and bear the reference “BB154/2VC”; and&lt;br&gt;(b) in the case of the maintenance and operation instructions are dated September 1993 and bear the reference “BB154/2V”. Cereal straw.</td>
<td></td>
</tr>
<tr>
<td>53. The Farm 2000 model HT6 (when used with the Farm 2000 conversion kit HT60cx), the HT6Plus and HT600 (when each is used with the Farm 2000 conversion kit HT70cx) and the HT7 and HT8 (when each is used with the Farm 2000 conversion kit HT80cx), manufactured by Farm 2000 Limited.</td>
<td>The manufacturer’s instructions which—&lt;br&gt;(a) in the case of the installation instructions are dated May 1994 and bear the references “HT6780” and “HT6781”; and&lt;br&gt;(b) in the case of the maintenance and operation instructions are dated 1st July 1993 and bear the reference “HT60/70/80”. Cereal straw.</td>
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<td>Fireplace</td>
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<td><strong>Fuels that must be used (other than authorised fuels)</strong></td>
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<tr>
<td><strong>54.</strong> The Farm 2000 boilers HT60, HT70, HT80 and BB154/2V manufactured by Farm 2000 Limited.</td>
<td>The manufacturer’s instructions which, in the case of models HT60, HT70 and HT80, are dated 1st July 1993 and bear the reference “HT60/70/80”, and, in the case of model BB154/2V, are dated 1st September 1993 and bear the reference “9/93”.</td>
<td>Cereal straw.</td>
</tr>
<tr>
<td><strong>55.</strong> Firefox 5CB, Vega 100CB and Sirius 405CB (4.9kW) stoves manufactured by Percy Doughty &amp; Co, Imperial Point, Express Trading Estate, Stonehill Road, Farnworth, Bolton, BL4 9TN.</td>
<td>Instruction manual reference “FFXCB-A” dated January 2010.</td>
<td>Wood logs.</td>
</tr>
<tr>
<td></td>
<td>A system that prevents the closure of the secondary air flaps to less than 8mm open position must be fitted.</td>
<td></td>
</tr>
<tr>
<td><strong>57.</strong> Fireline manufactured by Charlton and Jenrick Limited, Charlton and Jenrick, G1-G2, Halesfield 5, Telford, Shropshire, TF7 4OJ.</td>
<td>Instruction manual reference “Issue 03” dated 03/10.</td>
<td>Wood logs.</td>
</tr>
<tr>
<td></td>
<td>A system that prevents the closure of the secondary air control beyond the 3.5mm open position must be fitted.</td>
<td></td>
</tr>
<tr>
<td><strong>58.</strong> Fireline FP5, Fireline FX5, Fireline FPi 5kW, and Fireline FXi 5kW manufactured by Charlton and Jenrick Limited, Charlton and Jenrick, G1-G2, Halesfield 5, Telford, Shropshire, TF7 4OJ.</td>
<td>Instruction manual reference “Issue 03” dated 03/10.</td>
<td>Wood logs.</td>
</tr>
<tr>
<td></td>
<td>A system that prevents the closure of the secondary air control beyond the 3.5mm open position must be fitted.</td>
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<td><strong>Fuels that must be used (other than authorised fuels)</strong></td>
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<tr>
<td><strong>Chipped wood, wood pellets or planed wood shavings.</strong></td>
<td><strong>Instruction manual reference “05.007 operating instructions – FM (1Ph) 20 35 45 60 v 2.3” dated 08/2009.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Wood pellets conforming to ÖNORM M 7135(a) with a diameter of 6mm or wood chips up to a maximum size of 50mm and maximum water content of 35%.</strong></td>
<td><strong>Wood logs.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>61. Franco Belge Model 134 08 11 Savoy EA 8kW output wood burning stove manufactured by Franco Belge, Staub Fonderie SARL, Rue Orphée Variscotte, 59660, Merville, France.</strong></td>
<td><strong>The Savoy EA Technical Manual, document reference 1290-1, reviewed 9th July 2009.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Instruction manual reference “B0430408_en” dated July 2009.</strong></td>
<td><strong>Wood pellets with a diameter of 6mm.</strong></td>
<td></td>
</tr>
</tbody>
</table>

(a) This standard is issued by the Austrian Standards Institute. Copies may be obtained from that Institute at Heinestrasse, 38, 1020 Vienna, Austria, http://www.austrian-standards.at.
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<tr>
<td></td>
<td>Wood pellets or wood chips.</td>
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<td></td>
<td>Wood pellets or wood chips.</td>
</tr>
<tr>
<td>65. The Fulgora Slow Combustion Stove manufactured by Fulgora Stoves Limited.</td>
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<td>Wood waste in clean condition.</td>
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<td>Wood pellets or wood chips.</td>
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<td>Wood pellets or wood chips.</td>
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<tr>
<td><strong>Fireplace Conditions</strong></td>
<td>The fireplace must be installed, maintained and operated in accordance with the following specifications</td>
</tr>
<tr>
<td>68. Gilles HPK USK 360 kW manufactured by GILLES Energie- und Umwelttechnik GmbH, Koaserbauer Str. 16 A-4810 Gmunden, Austria.</td>
<td>Fuels that must be used (other than authorised fuels)</td>
</tr>
<tr>
<td>Operating instructions reference Gilles 360/1 and dated January 2008.</td>
<td>Wood pellets or wood chips.</td>
</tr>
<tr>
<td>69. Gilles UTSK 450 kW and 550 kW boilers manufactured by GILLES Energie- und Umwelttechnik GmbH, Koaserbauer Str. 16 A-4810 Gmunden, Austria.</td>
<td></td>
</tr>
<tr>
<td>Operating instructions reference Gilles/360/1 and dated January 2008.</td>
<td>Wood pellets or wood chips.</td>
</tr>
<tr>
<td>70. Gilles UTSK 700 kW and 900 kW boilers manufactured by GILLES Energie- und Umwelttechnik GmbH, Koaserbauer Str. 16 A-4810 Gmunden, Austria.</td>
<td></td>
</tr>
<tr>
<td>Operating instructions reference Gilles/360/1 and dated January 2008.</td>
<td>Wood pellets or wood chips.</td>
</tr>
<tr>
<td>71. Gilles UTSK 1200 kW and 1600 kW boilers manufactured by GILLES Energie- und Umwelttechnik GmbH, Koaserbauer Str. 16 A-4810 Gmunden, Austria.</td>
<td></td>
</tr>
<tr>
<td>Operating instructions reference Gilles/360/1 and dated January 2008.</td>
<td>Wood pellets or wood chips.</td>
</tr>
<tr>
<td></td>
<td>Wood pellets with a diameter of 6mm and a length of between 10mm and 30mm.</td>
</tr>
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<td>The fireplace must be installed, maintained and operated in accordance with the following specifications</td>
<td>Fuels that must be used (other than authorised fuels)</td>
</tr>
<tr>
<td></td>
<td>Wood pellets with a diameter of 6mm and a length of between 10mm and 30mm.</td>
</tr>
<tr>
<td></td>
<td>Wood pellets with a diameter of 6mm and a length of between 10 and 30mm or wood chip with less than 30 per cent moisture content and meeting ÖNORM M 7133: 1998(size class G30).</td>
</tr>
<tr>
<td></td>
<td>Wood pellets with a diameter of 6mm and a length of between 10 and 30mm or wood chip with less than 30 per cent moisture content and meeting ÖNORM M 7133: 1998 size class G30.</td>
</tr>
<tr>
<td>76. The HSV 50 + WTH 45, 49 or 55 boilers manufactured by Hargassner Gesellschaft mit beschränkter Haftung (GmbH), Gunderding 8, A-4952, Weng, Austria.</td>
<td>The manufacturer’s installation manual version 44 for Wood Chip and Pellet Stoves, Type HSV 30-100 (reference BA HSV30-100 RA/RAP V44 0608).</td>
</tr>
<tr>
<td></td>
<td>Wood chip or wood pellets.</td>
</tr>
</tbody>
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</tr>
<tr>
<td>77. The HSV 80 + WTH 70 or 80 boilers manufactured by Hargassner Gesellschaft mit beschränkter Haftung (GmbH), Gunderding 8, A-4952, Weng, Austria.</td>
<td>The manufacturer’s installation manual version 44 for Wood Chip and Pellet Stoves, Type HSV 30-100 (reference BA HSV30-100 RA/RAP V44 0608).</td>
</tr>
<tr>
<td>78. The HSV 100 + WTH 100 boiler manufactured by Hargassner Gesellschaft mit beschränkter Haftung (GmbH), Gunderding 8, A-4952, Weng, Austria.</td>
<td>The manufacturer’s installation manual version 44 for Wood Chip and Pellet Stoves, Type HSV 30-100 (reference BA HSV30-100 RA/RAP V44 0608).</td>
</tr>
<tr>
<td>79. The Haat LD, MD and HD incinerators manufactured by Haat Incineration Limited.</td>
<td>The manufacturer’s instructions dated March 1988 and which bear the reference “HAAT/I/CAA/3/88”.</td>
</tr>
<tr>
<td>80. The Haat Pioneer ABI Incinerators, models 12, 20, 28 and 36 manufactured by Haat Incineration Limited.</td>
<td>The manufacturer’s instructions bearing the reference “HAAT/2/CAA/10/89”.</td>
</tr>
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</tr>
<tr>
<td>Wood pellets of diameter 6 mm and a maximum length of 30 mm.</td>
<td></td>
</tr>
<tr>
<td>Lighting Instructions BAV SE-EX H30 511942.</td>
<td></td>
</tr>
<tr>
<td>A permanent stop must be in place on the air inlet to prevent closure beyond the minimum air open position.</td>
<td></td>
</tr>
<tr>
<td>Untreated dry wood with less than 20 per cent moisture.</td>
<td></td>
</tr>
<tr>
<td>Lighting Instructions BAV SE-EX 0717-1 511865.</td>
<td></td>
</tr>
<tr>
<td>A permanent stop must be in place on the air inlet to prevent closure beyond the minimum air open position.</td>
<td></td>
</tr>
<tr>
<td>Untreated dry wood with less than 20 per cent moisture.</td>
<td></td>
</tr>
<tr>
<td>Fireplace</td>
<td>Conditions</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>The fireplace must be installed, maintained and operated in accordance</strong></td>
<td><strong>Fuels that must be used (other than authorised fuels)</strong></td>
</tr>
<tr>
<td><strong>with the following specifications</strong></td>
<td></td>
</tr>
<tr>
<td>84. Highlander 5 Clean Burn manufactured by Dunsley Heat Limited, Bridge</td>
<td>Instruction manual reference “Highlander. The Dunsley-Enviroburn-5. Clean Burn Stove Installation and operation instructions. D-12-01-09, D060-01-09, D13-01-09, D-12-12-08”.</td>
</tr>
<tr>
<td>Mills, Huddersfield, Holmfirth, West Yorkshire, HD9 3TW.</td>
<td></td>
</tr>
<tr>
<td>85. The Holden Heat House 29.3kw and 45.4kw underfeed bituminous coal</td>
<td>The manufacturer’s instructions which—</td>
</tr>
<tr>
<td>burning boilers manufactured by Holden Heat plc.</td>
<td>(a) in the case of the installation instructions bear the reference “HH86 1B”, and</td>
</tr>
<tr>
<td></td>
<td>(b) in the case of the user instructions bear the reference “HH86/1”.</td>
</tr>
<tr>
<td>86. The Hounsell Sawdust Burning Stove previously manufactured by John</td>
<td>Wood waste in clean condition.</td>
</tr>
<tr>
<td>Hounsell (Engineers) Limited.</td>
<td></td>
</tr>
<tr>
<td>87. The Housewarmer manufactured formerly by Ideal Standard Limited and</td>
<td>Washed coal singles of nominal size 12.5 mm to 28 mm.</td>
</tr>
<tr>
<td>latterly by Stelrad Group Limited.</td>
<td></td>
</tr>
<tr>
<td>88. The Hoval AgroLyt 20, 25, 35, 45 and 50 manufactured by Hoval AG,</td>
<td>The manufacturer’s—</td>
</tr>
<tr>
<td>Austrasse 70, FL-9490 Vaduz, Liechtenstein.</td>
<td>(a) installation manual reference 4 205/194/00, dated 01/06, and</td>
</tr>
<tr>
<td></td>
<td>(b) Operation manual reference 4 205 193/00 dated 06/06.</td>
</tr>
<tr>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Fireplace</th>
<th>Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>The fireplace must be installed, maintained and operated in accordance with the following specifications</td>
<td>Fuels that must be used (other than authorised fuels)</td>
</tr>
<tr>
<td><strong>89.</strong> The Hoval BioLyt 50 wood pellet fired boiler (49 kW thermal output) manufactured by Hoval AG, Austrasse 70, FL-9490, Vaduz, Liechtenstein.</td>
<td>The manufacturer’s— (a) technical information and installation instructions dated 10/05, reference 4 204 794/00, and (b) operating instructions dated 01/06 reference 4 204 793/01.</td>
</tr>
<tr>
<td></td>
<td>Wood pellets.</td>
</tr>
<tr>
<td><strong>90.</strong> The Hoval BioLyt 50 and 70 models manufactured by Hoval AG, Austrasse 70, FL-9490 Vaduz, Liechtenstein.</td>
<td>Installation and operation manuals reference 4 204 794/01 and 4 204 793/02 dated 06/07.</td>
</tr>
<tr>
<td></td>
<td>6 mm diameter wood pellets.</td>
</tr>
<tr>
<td></td>
<td>Wood pellets or wood chips following CEN/TS 14961:2005(a).</td>
</tr>
<tr>
<td><strong>92.</strong> The Hoval STU 150, 200, 250, 300, 350, 425 and 500 manufactured by Hoval UK Ltd, Northgate, Newark-on-Trent, Nottinghamshire, NG24 1JN.</td>
<td>Installation and operation manual referenced STU/man/01 dated 11/07 or the installation and operation manual referenced STU/man/01/1 dated 06/08.</td>
</tr>
<tr>
<td></td>
<td>6 mm diameter wood pellets.</td>
</tr>
<tr>
<td><strong>93.</strong> The Hoval STU 600, 800 and 1000 manufactured by Hoval UK Ltd, Northgate, Newark-on-Trent, Nottinghamshire, NG24 1JN.</td>
<td>Installation and operation manual referenced STU/man/01/1 dated 06/08.</td>
</tr>
<tr>
<td></td>
<td>6 mm diameter wood pellets.</td>
</tr>
</tbody>
</table>

(a) This standard is issued by the European Committee for Standardisation (CEN). Copies may be obtained from CEN at Avenue Marnix 17, B-1000, Brussels, Belgium, http://www.cenorm.be.
<table>
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<tr>
<th>Fireplace</th>
<th>Conditions</th>
</tr>
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<tr>
<td><strong>The fireplace must be installed, maintained and operated in accordance with the following specifications</strong></td>
<td><strong>Fuels that must be used (other than authorised fuels)</strong></td>
</tr>
</tbody>
</table>

| 94. The Hughes Edwards 45 Coalflow Boiler manufactured by Hughes Edwards Heating Ltd. | The manufacturer’s instructions which—  
(a) in the case of the installation instructions bear the reference II/02D/07-89; and  
(b) in the case of the user instructions bear the reference U1/02D/07-89. | The washed coals recommended in the manufacturer’s instructions bearing the reference II/02D/07-89. |

| 95. The Hughes Edwards model 65 hot water boiler manufactured by Hughes Edwards Heating Limited. | The manufacturer’s instructions bearing the reference “II/02D/11-90 and U1/02D/11-90”. | Bituminous Coalflow pearls. |

| 96. Huntingdon 25 clear door (model number 7057) manufactured by Stovax Limited, Falcon Road, Sowerton Industrial Estate, Exeter, Devon, EX2 7LF. | Instruction manual reference “PM 249 Issue 1”.  
A permanent stop must be in place on the secondary air inlet to prevent closure beyond the 75 per cent open position. | Untreated dry wood. |

| 97. Huntingdon 25 tracery door (model number 7058) manufactured by Stovax Limited, Falcon Road, Sowerton Industrial Estate, Exeter, Devon, EX2 7LF. | Instruction manual reference “PM 249 Issue 1”.  
A permanent stop must be in place on the secondary air inlet to prevent closure beyond the 75 per cent open position. | Untreated dry wood. |
<table>
<thead>
<tr>
<th>Fireplace</th>
<th>Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The fireplace must be installed, maintained and operated in accordance with the following specifications</strong></td>
<td><strong>Fuels that must be used (other than authorised fuels)</strong></td>
</tr>
<tr>
<td>Fireplace</td>
<td>Conditions</td>
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</tr>
<tr>
<td><strong>The fireplace must be installed, maintained and operated in accordance with the following specifications</strong></td>
<td>Fuels that must be used (other than authorised fuels)</td>
</tr>
<tr>
<td>103. The I.D.L., M and H incinerators, manufactured by the Incinerator Doctor.</td>
<td>The manufacturer’s instructions dated February 1999 and bearing the reference “I.D.E.I.”. Paper, cardboard, untreated dry wood, foliage, floor sweepings and other waste containing no more than 20 per cent by weight of restaurant and cafeteria waste and less than 5 per cent by weight of coated paper, plastic or rubber waste.</td>
</tr>
<tr>
<td>Fireplace</td>
<td>Conditions</td>
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</tr>
<tr>
<td><strong>The fireplace must be installed, maintained and operated in accordance with the following specifications</strong></td>
<td><strong>Fuels that must be used (other than authorised fuels)</strong></td>
</tr>
</tbody>
</table>
Wood logs. |
| 105. The Intrepid II woodstove manufactured by Vermont Castings, Inc. | The manufacturer’s instructions bearing the reference “AMENDED No. 20917C U.K. MAY 1990”.  
40 cm firewood that has been split, stacked and air-dried. |
| 106. The Jansen Design stove, using the five channel system, manufactured by Kakkelovenmakeriet as. | The manufacturer’s instructions bearing the reference “CSC-JDS-OI dated 21/10/91”.  
Wood. |
| 107. The Jotul catalyst stove models 8TDIC and 12TDIC manufactured by Jotul Limited. | The manufacturer’s instructions dated November 1995 bearing the following references:—  
(a) model 8TDIC: “JT8/001” and “J/S/001”;  
(b) model 12TDIC: “JT12/001” and “JT/S/001”.  
Wood. |
Wood logs (up to 0.5m) or off cuts of natural timber. |
Wood logs (up to 1.0m) or off cuts of natural timber. |
<table>
<thead>
<tr>
<th>Fireplace</th>
<th>Conditions</th>
</tr>
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<tbody>
<tr>
<td><strong>The fireplace must be installed, maintained and operated in accordance with the following specifications</strong></td>
<td>Fuels that must be used (other than authorised fuels)</td>
</tr>
<tr>
<td>12. KOB Pyromat-DYN (KPM-DYN) 45, 65 and 85 manufactured by Veissman Limited, Hortonwood 30, Telford, Shropshire, TF1 7YP. Instruction manual reference “ID 103689-L English” dated 01.01.2005 and instruction manual reference “ID: 103708-G English”.</td>
<td>Wood logs (up to 0.5m) or off cuts of natural timber, wood chips and pellets.</td>
</tr>
<tr>
<td>Fireplace</td>
<td>Conditions</td>
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<tr>
<td>--------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------</td>
</tr>
<tr>
<td>The fireplace must be installed, maintained and operated in accordance</td>
<td>Fuels that must be used (other than authorised fuels)</td>
</tr>
<tr>
<td>with the following specifications</td>
<td></td>
</tr>
<tr>
<td>Biomasse Gesellschaft mit Beschränkter Haftung (GmbH) of Industriestrasse</td>
<td></td>
</tr>
<tr>
<td>235, A-8321 St. Margarethen an der Raab, Austria.</td>
<td>Wood pellets or wood chips.</td>
</tr>
<tr>
<td>(type LIN-KA 2000) or a multi-cyclone (type LIN-KA 3x2) manufactured by</td>
<td></td>
</tr>
<tr>
<td>LIN-KA Maskinfabrik A/S, Nylandsvej 38 DK-6940 Lem St. Denmark.</td>
<td>Wood pellets of maximum diameter 8mm.</td>
</tr>
<tr>
<td>116. The Little Thurlow wood burning stove manufactured by Town and</td>
<td>The manufacturer’s instructions dated 30th June 2007, issue No 3.</td>
</tr>
<tr>
<td>Country Fires, Pickering, North Yorkshire.</td>
<td></td>
</tr>
<tr>
<td>Seasoned logs of less than 20 per cent moisture and of a maximum length</td>
<td></td>
</tr>
<tr>
<td>350 mm.</td>
<td></td>
</tr>
<tr>
<td>Road, Ketley, Telford, Shropshire, TF1 5AQ.</td>
<td>DP081219.</td>
</tr>
<tr>
<td>Dry and split wood logs of a maximum length of 25 cm and a maximum</td>
<td></td>
</tr>
<tr>
<td>diameter of 10 cm.</td>
<td></td>
</tr>
</tbody>
</table>
### Fireplace Conditions

<table>
<thead>
<tr>
<th>Fireplace</th>
<th>Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The fireplace must be installed, maintained and operated in accordance with the following specifications</strong></td>
<td><strong>Fuels that must be used (other than authorised fuels)</strong></td>
</tr>
<tr>
<td>120. The Løvenholm, Løvenholm Traditional, Løvenholm European and Løvenholm Pedestal Stoves manufactured by Hunter Stoves Limited, Unit 6, Old Mill Industrial Estate, Stoke Canon, Exeter, Devon, EX5 4RJ.</td>
<td>Løvenholm Multifuel stove Installation and Operation manual version 06/09.</td>
</tr>
</tbody>
</table>

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(a) This standard is issued by the Austrian Standards Institute. Copies may be obtained from that Institute at Heinestrasse 38, 1020 Vienna, Austria, http://www.austrian-standards.at.

(b) This standard is issued by the German Institute for Standardisation. Copies may be obtained from that Institute at Burggrafenstrasse, 6, 10787 Berlin, Germany, http://www.din.de.
<table>
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<tr>
<th>Fireplace</th>
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<tbody>
<tr>
<td><strong>Fireplace</strong></td>
<td><strong>Conditions</strong></td>
</tr>
<tr>
<td>The fireplace must be installed, maintained and operated in accordance with the following specifications</td>
<td>Fuels that must be used (other than authorised fuels)</td>
</tr>
<tr>
<td>123. Monfort MK2 Stove manufactured by Franco Belge Staub, Staub Fonderie, Rue Orphee Bariscotte, BP 73, 59660 Merville, France.</td>
<td>Instruction manual reference “1295-3” dated 17th November 2009.  The appliance must be fitted with a mechanical stop to prevent closure of the secondary air control beyond the 25 per cent open position.</td>
</tr>
<tr>
<td>124. Monterrey 6, York Midi and Serrano 5 manufactured by Broseley Fires Limited, Knights Way, Battlefield Enterprise Park, Shrewsbury, Shropshire, SY1 3AB.</td>
<td>Instruction manual reference “09TJD” dated 01 2010.  A system that prevents the closure of the secondary air flaps to less than 8mm open position must be fitted.</td>
</tr>
<tr>
<td>125. The Morsø Owl 3410, 3420 and 3440 for wood burning manufactured by Morsø Jernstøberi A/S, DK-7900 Nykøbing, Mors, Denmark.</td>
<td>The manufacturer’s instructions dated 1st January 2000, reference 72345600.</td>
</tr>
<tr>
<td>Fireplace</td>
<td>Conditions</td>
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<tr>
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</tr>
<tr>
<td><strong>The fireplace must be installed, maintained and operated in accordance with the following specifications</strong></td>
<td><strong>Fuels that must be used (other than authorised fuels)</strong></td>
</tr>
<tr>
<td>128. The Morsø 3100 series consisting of the 3112 and 3142 models manufactured by Morsø Jernstøberi A/S DK-7900 Nykøbing, Mors, Denmark.</td>
<td>Installation and operation manual referenced 72311200 and dated 04.02.2008.</td>
</tr>
<tr>
<td>129. The Morsø 3400 Owl GB Series for wood burning manufactured by Morsø Jernstøberi A/S, Denmark.</td>
<td>The manufacturer’s instructions dated 1st January 2000 and bearing the reference 72345600.</td>
</tr>
<tr>
<td>130. The Morsø 6140 and 6148 models manufactured by Morsø Jernstøberi A/S DK-7900 Nykøbing, Mors, Denmark.</td>
<td>Installation and operation manual referenced 72610400 and dated 04.09.2007.</td>
</tr>
<tr>
<td>Fireplace</td>
<td>Conditions</td>
</tr>
<tr>
<td>-----------</td>
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</tr>
<tr>
<td><strong>133.</strong> The Nestor Martin Multi-Fuel Stove IT 13 (3.5 kW nominal thermal output) manufactured by Nestor Martin, S A Finuick Nv, Voie Axiale 5, B-5660 Couvin, Belgium.</td>
<td><strong>Euroheat Distributors (HBS) Limited’s operational instructions dated April 2007, reference IN1180 Edition C.</strong> Untreated dry wood.</td>
</tr>
<tr>
<td><strong>135.</strong> The Nestor Martin R23 Stove (6 kW nominal thermal output), manufactured by Nestor Martin S A Finuick Nv Voie Axiale 5 B-5660 Couvin, Belgium.</td>
<td><strong>Euroheat Distributors (HBS) Limited’s operational instructions referenced IN1141 Ed B and dated November 2006.</strong> Untreated dry wood.</td>
</tr>
<tr>
<td><strong>136.</strong> The Nestor Martin Stanford Multi-Fuel Stove S13 (3.5 kW nominal thermal output), S33 and SP33 (8 kW nominal thermal output) manufactured by Nestor Martin, S A Finuick Nv, Voie Axiale 5, B-5660 Couvin, Belgium.</td>
<td><strong>Euroheat Distributors (HBS) Limited’s operational instructions dated January 2007, reference IN1116 Edition D.</strong> Untreated dry wood.</td>
</tr>
<tr>
<td>Fireplace</td>
<td>Conditions</td>
</tr>
<tr>
<td>-----------</td>
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</tr>
<tr>
<td><strong>The fireplace must be installed, maintained and operated in accordance with the following specifications</strong></td>
<td><strong>Fuels that must be used (other than authorised fuels)</strong></td>
</tr>
<tr>
<td>139. Ökofen Pellematic PE08, PE12, PE16, PE20, PE25 and PE32 manufactured by Ökofen of Auftragsbearbeitung Gewerbepark 1, 4133 Niederkappel, Austria.</td>
<td>Ökofen operation instructions referenced PE/HB/001.E and with revision date 02/2007. Wood pellets of maximum diameter 6 mm and maximum length of 4 cm.</td>
</tr>
<tr>
<td>140. Ökofen Pellematic PE36, PE48 and PE56 manufactured by Ökofen of Auftragsbearbeitung Gewerbepark 1, 4133 Niederkappel, Austria.</td>
<td>Ökofen operation instructions referenced PBV 2000 CMP 1.4 (V2.31) and with revision date 03/2007. Wood pellets of maximum diameter 6 mm and maximum length of 4 cm.</td>
</tr>
<tr>
<td>141. Ökofen Pellematic PEK12, PEK16, PEK20, PEK25 and PEK32 manufactured by Ökofen of Auftragsbearbeitung Gewerbepark 1, 4133 Niederkappel, Austria.</td>
<td>Ökofen operation instructions referenced PE/HB/001.E and with revision date 02/2007. Wood pellets of maximum diameter 6 mm and maximum length of 4 cm.</td>
</tr>
<tr>
<td>Fireplace</td>
<td>Conditions</td>
</tr>
<tr>
<td>-----------</td>
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</tr>
<tr>
<td><strong>The fireplace must be installed, maintained and operated in accordance with the following specifications</strong></td>
<td>Fuels that must be used (other than authorised fuels)</td>
</tr>
<tr>
<td>142. Ökofen Pellematic PEK36, PEK48 and PEK56 manufactured by Ökofen of Auftragsbearbeitung Gewerbepark 1, 4133 Niederkappel, Austria.</td>
<td>Ökofen operation instructions referenced PBV 2000 CMP 1.4 (V2.31) and with revision date 03/2008.</td>
</tr>
<tr>
<td>143. Ökofen Pellematic PES12, PES16, PES20, PES25 and PES32 manufactured by Ökofen of Auftragsbearbeitung Gewerbepark 1, 4133 Niederkappel, Austria.</td>
<td>Ökofen operation instructions referenced PE/HB/001.E and with revision date 02/2007.</td>
</tr>
<tr>
<td>144. Ökofen Pellematic PES36, PES48 and PES56 manufactured by Ökofen of Auftragsbearbeitung Gewerbepark 1, 4133 Niederkappel, Austria.</td>
<td>Ökofen operation instructions referenced PBV 2000 CMP 1.4 (V2.31) and with revision date 03/2008.</td>
</tr>
<tr>
<td>145. Ökofen Pellematic PESK12, PESK16, PESK20, PESK25 and PESK32 manufactured by Ökofen of Auftragsbearbeitung Gewerbepark 1, 4133 Niederkappel, Austria.</td>
<td>Ökofen operation instructions referenced PE/HB/001.E and with revision date 02/2007.</td>
</tr>
<tr>
<td>146. Ökofen Pellematic PESK36, PESK48 and PESK56 manufactured by Ökofen of Auftragsbearbeitung Gewerbepark 1, 4133 Niederkappel, Austria.</td>
<td>Ökofen operation instructions referenced PBV 2000 CMP 1.4 (V2.31) and with revision date 03/2008.</td>
</tr>
</tbody>
</table>
### Fireplace Conditions

The fireplace must be installed, maintained and operated in accordance with the following specifications.

**Fuels that must be used (other than authorised fuels)**

<table>
<thead>
<tr>
<th>Instruction</th>
<th>Model</th>
</tr>
</thead>
<tbody>
<tr>
<td>OOLinst.1</td>
<td>FVR 80</td>
</tr>
<tr>
<td>OOLinst.2</td>
<td>FVR 100</td>
</tr>
<tr>
<td>OOLinst.3</td>
<td>FVR 110</td>
</tr>
<tr>
<td>OOLinst.4</td>
<td>FVR 120</td>
</tr>
<tr>
<td>OOLinst.5</td>
<td>FVR 110 × 160</td>
</tr>
<tr>
<td>OOLinst.6</td>
<td>TOP 100</td>
</tr>
<tr>
<td>OOLinst.7</td>
<td>TOP 120</td>
</tr>
<tr>
<td>OOLinst.8</td>
<td>GR 100 and OT 100</td>
</tr>
<tr>
<td>OOLinst.9</td>
<td>GR 120 and OT 120</td>
</tr>
<tr>
<td>OOLinst.10</td>
<td>GR 140 and OT 140</td>
</tr>
<tr>
<td>OOLinst.11</td>
<td>GR 120 × 160 and OT 120 × 160</td>
</tr>
<tr>
<td>OOLinst.12</td>
<td>GR 140 × 160 and OT 140 × 160</td>
</tr>
<tr>
<td>OOLinst.13</td>
<td>GR 140 × 180 and OT 140 × 180</td>
</tr>
<tr>
<td>OOLinst.14</td>
<td>GR 180 and OT 180</td>
</tr>
<tr>
<td>OOLinst.15</td>
<td>Valoriani Piccolo.</td>
</tr>
</tbody>
</table>

| The manufacturer’s instructions dated 25th October 2004, references: |

| The Osier wood burning stove, manufactured by Reinhart von Zschock. |

The manufacturer’s instructions dated 30th September 1997 and bearing the reference “CSC/OS/001”.

**Fuels that must be used (other than authorised fuels)**

Untreated dry wood.

| The Parkray-Coalmaster manufactured formerly by Radiation Parkray Limited and now by T. I. Parkray Limited. |

Washed coal singles of nominal size 12.5 mm to 28 mm.
<table>
<thead>
<tr>
<th>Fireplace</th>
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</thead>
<tbody>
<tr>
<td><strong>The fireplace must be installed, maintained and operated in accordance with the following specifications</strong></td>
<td><strong>Fuels that must be used (other than authorised fuels)</strong></td>
</tr>
</tbody>
</table>

150. The Parkray Coalmaster II manufactured, both as an inset model and as a freestanding model, by T.I. Parkray Limited. The manufacturer’s instructions which—

(a) in the case of the installation instructions for the inset model bear the reference “List No. 1048/June 83 8402”;

(b) in the case of the installation instructions for the free standing model bear the date February 1984 and the reference “List No. 1058/February 1984”;

(c) in the case of the user instructions for both models bear the reference “List No. 1049/September 1983”.

Selected washed coal doubles and trebles or UCB (see entry 40).

151. Pelletstar 10, 20, 30, 45 and 60 manufactured by HERZ Armaturen GmbH, Geschäftsbereich HERZ, Feuerungstechnik, A-8272 Sebersdorf 138, Austria. Operating instructions dated November 2007 reference V2.2. Wood pellets corresponding to ÖNORM M 7135(a) of diameter 6 mm.


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(a) This standard is issued by the Austrian Standards Institute. Copies may be obtained from that Institute at Heinestrasse 38, 1020 Vienna, Austria, http://www.austrian-standards.at.
<table>
<thead>
<tr>
<th>Fireplaces</th>
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</tr>
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<tbody>
<tr>
<td>The fireplace must be installed, maintained</td>
<td>Fuels that must be used (other than authorised fuels)</td>
</tr>
<tr>
<td>and operated in accordance with the following</td>
<td></td>
</tr>
<tr>
<td>specifications</td>
<td></td>
</tr>
<tr>
<td>Stoves</td>
<td>(291) 2’</td>
</tr>
<tr>
<td>manufactured by BFM Europe Limited, Trentham</td>
<td></td>
</tr>
<tr>
<td>Lakes, Stoke on Trent, Staffordshire, ST4 4TJ</td>
<td>The appliance must be used with a modification to the secondary air slide</td>
</tr>
<tr>
<td></td>
<td>which prevents closure further than the 20mm from the left position.</td>
</tr>
<tr>
<td>manufactured by BFM Europe Limited, Trentham</td>
<td>(291) 2’.</td>
</tr>
<tr>
<td>Lakes, Stoke on Trent, Staffordshire, ST4 4TJ</td>
<td>A modification of the secondary air control must be implemented such that</td>
</tr>
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<td></td>
<td>the 20mm from left position is maintained during use. In addition the</td>
</tr>
<tr>
<td></td>
<td>primary air control must be modified such that the minimum setting allows</td>
</tr>
<tr>
<td></td>
<td>a bleed of air to pass through.</td>
</tr>
<tr>
<td>Wood Burning Stove manufactured by Hearth &amp;</td>
<td></td>
</tr>
<tr>
<td>Home Technologies 1445 North Highway, Colville,</td>
<td></td>
</tr>
<tr>
<td>WA 99114, USA.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Dry cured untreated wood of maximum size 43.18 cm × 10.16 cm × 10.16 cm.</td>
</tr>
<tr>
<td>156. The Quadra-Fire 2100 Millennium Freestanding</td>
<td>The manufacturer’s instructions dated 9th October 2003, reference 250–6931B.</td>
</tr>
<tr>
<td>Wood Burning Stove manufactured by Hearth &amp;</td>
<td></td>
</tr>
<tr>
<td>Home Technologies 1445 North Highway, Colville,</td>
<td></td>
</tr>
<tr>
<td>WA 99114, USA.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Dry cured untreated wood of maximum size 38.1 cm × 10.16 cm × 5.08 cm.</td>
</tr>
<tr>
<td>Burning Stove manufactured by Hearth &amp; Home</td>
<td></td>
</tr>
<tr>
<td>Technologies 1445 North Highway, Colville,</td>
<td></td>
</tr>
<tr>
<td>WA 99114, USA.</td>
<td></td>
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<tr>
<td></td>
<td>Dry cured untreated wood of maximum size 38.1 cm × 10.16 cm × 5.08 cm.</td>
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<tr>
<td>Fireplace</td>
<td>Conditions</td>
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<tr>
<td><strong>The fireplace must be installed, maintained and operated in accordance with the following specifications</strong></td>
<td><strong>Fuels that must be used (other than authorised fuels)</strong></td>
</tr>
</tbody>
</table>
| **158. The RanHeat appliances models MSU150, MSU300, MSU500, WA150, WA300 and WA500, manufactured by Ranheat Engineering Limited.** | **The manufacturer’s instructions dated July 1994 bearing the following reference:**—

(a) models MSU150, MSU300 and MSU500: “MSU150/5001994”;

(b) models WA150, WA300 and WA500: “WA150/5001994”. |
| Chipboard, fibre board, melamine coated chipboard, wood offcuts, softwood or hardwood shavings or dust. |
| **159. The RanHeat Boiler Type RHA 20 manufactured by RanHeat, Energy A/S.** | **The manufacturer’s instructions dated 30th March 1988 and which bear the reference “RHGBEA 30388”.** |
| Hardwood and softwood shavings. |
| Hardwood and softwood shavings. |
| **161. The Rayburn Coalglo C-30 manufactured, both as an inset model and as a free-standing model, by Glynwed Appliances Limited.** | **The manufacturer’s instructions which—**

(a) in the case of the inset model, bear the date 1st September 1981 and the reference “Code 510”; or

(b) in the case of the free-standing model, bear the date 1st December 1982 and the reference “Code 510F”. |
<p>| Selected washed coal doubles and trebles. |
| <strong>162. The Rayburn CB34 manufactured formerly by Glynwed Foundries Limited and now by Glynwed Appliances Limited.</strong> | <strong>Washed coal singles of nominal size 12.5 mm to 28 mm.</strong> |</p>
<table>
<thead>
<tr>
<th><strong>Fireplace</strong></th>
<th><strong>Conditions</strong></th>
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<tbody>
<tr>
<td>The fireplace must be installed, maintained and operated in accordance with the following specifications</td>
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<tr>
<td>Fuels that must be used (other than authorised fuels)</td>
<td></td>
</tr>
<tr>
<td><strong>163.</strong> The Rayburn Prince 76 manufactured formerly by Glynwed Domestic and Heating Appliances and now by Glynwed Appliances Limited.</td>
<td>Selected washed coal doubles and trebles.</td>
</tr>
<tr>
<td><strong>164.</strong> The Rayburn Prince 101 manufactured formerly by Glynwed Foundries Limited and now by Glynwed Appliances Limited.</td>
<td>Washed coal singles of nominal size 12.5 mm to 28 mm.</td>
</tr>
<tr>
<td><strong>165.</strong> The Rayburn Prince 301 (known formerly as the Rayburn Prince Model H) manufactured formerly by Glynwed Foundries Limited and now by Glynwed Appliances Limited.</td>
<td>Washed coal singles of nominal size 12.5 mm to 28 mm.</td>
</tr>
<tr>
<td><strong>166.</strong> Redfyre Kensal 20 Flat top (product code RF-KEN20M, Redfyre Kensal 33 Flat top (product code RF-KEN33M and RF-KEN33W) manufactured by Redfyre Cookers, Osprey Road, Sowton Industrial Estate, Exeter, Devon, EX2 7JG.</td>
<td>Instruction manual reference “PM 247 Issue 1” dated July 2008 and instruction manual “PM280 Issue 1” dated January 2009. A permanent stop must be in place on the secondary air inlet to prevent closure beyond the 50 per cent open position. Untreated dry wood.</td>
</tr>
<tr>
<td><strong>167.</strong> The Resolute Acclaim woodstove manufactured by Vermont Castings, Inc.</td>
<td>The manufacturer’s instructions bearing the reference “AMENDED No. 200 – 0908 U.K. OCTOBER 1991”. 40 cm firewood that has been split, stacked and air-dried.</td>
</tr>
<tr>
<td>Fireplace</td>
<td>Conditions</td>
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<tr>
<td>The fireplace must be installed, maintained and operated in accordance with the following specifications</td>
<td>Fuels that must be used (other than authorised fuels)</td>
</tr>
<tr>
<td><strong>168</strong> The Riley Nihot Woodchip Fired Air Heater type NMO 11 manufactured formerly by Clarke Chapman Limited International Combustion Division – Riley Unit and now by NEI International Combustion Limited, Riley Equipment</td>
<td>Clean wood waste containing not more than 5 per cent sander dust.</td>
</tr>
<tr>
<td><strong>169</strong> Riva Plus Small (5kW), Midi (6.5kW) and Medium (8kW) stoves manufactured by Stovax Limited, Falcon Road, Sowton Industrial Estate, Exeter, Devon, EX2 7LF.</td>
<td>Instruction manual reference PM231 Issue 3 dated June 2009 and smoke control kit instruction manual reference PM402 Issue 1 dated November 2009. A permanent stop must be positioned to prevent closure of the secondary air control below the 25 per cent open position.</td>
</tr>
<tr>
<td><strong>170.</strong> Riva Studio 1 Cassette (5kW) stove manufactured by Stovax Limited, Falcon Road, Sowton Industrial Estate, Exeter, Devon, EX2 7LF.</td>
<td>Instruction manual reference PM274 Issue 2 dated October 2009 and smoke control kit instruction manual reference PM400 Issue 1 dated November 2009. A permanent stop must be positioned to prevent closure of the secondary air control below the 45 per cent open position and the primary air control fixed to prevent full closure to allow a bleed of air to enter the firebox at the base of the fuel bed.</td>
</tr>
<tr>
<td><strong>171.</strong> Riva Studio 2 Cassette (8kW) stove manufactured by Stovax Limited, Falcon Road, Sowton Industrial</td>
<td>Instruction manual reference PM274 Issue 2 dated October 2009 and smoke control kit instruction manual reference PM400 Issue 1 dated November 2009. Wood logs.</td>
</tr>
</tbody>
</table>

Wood logs.
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<tr>
<th>Fireplace</th>
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<tr>
<td>The fireplace must be installed, maintained and operated in accordance with the following specifications</td>
<td>Fuels that must be used (other than authorised fuels)</td>
</tr>
<tr>
<td>Estate, Exeter, Devon, EX2 7LF.</td>
<td>A permanent stop must be positioned to prevent closure of the secondary air control below the 25 per cent open position and the primary air control fixed to prevent full closure to allow a bleed of air to enter the firebox at the base of the fuel bed.</td>
</tr>
<tr>
<td>172. Riva Vision Small (5kW) and Riva Vision Midi (6.5kW) Multifuel stoves manufactured by Stovax Limited, Falcon Road, Sowton Industrial Estate, Exeter, Devon, EX2 7LF.</td>
<td>Instruction manual reference PM278 Issue 2a dated October 2009 and smoke control kit instruction manual reference PM401 Issue 1 dated January 2010. A permanent stop must be positioned to prevent closure of the secondary air control below the 50 per cent open position.</td>
</tr>
<tr>
<td>174. Riva 40 Cassette 4.9kW stove manufactured by Stovax Limited, Falcon Road, Sowton Industrial Estate, Exeter, Devon, EX2 7LF.</td>
<td>Instruction manual reference PM235 Issue 2 dated August 2009 and smoke control kit instruction manual reference PM375 Issue 2 dated January 2010. A permanent stop must be positioned to prevent closure of the secondary air control below the 50 per cent open position.</td>
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</table>

Wood logs.
<table>
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<tr>
<th>Fireplace</th>
<th>Conditions</th>
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<tbody>
<tr>
<td>The fireplace must be installed, maintained and operated in accordance with the following specifications</td>
<td>Fuels that must be used (other than authorised fuels)</td>
</tr>
<tr>
<td>manufactured by Stovax Limited, Falcon Road, Sowton Industrial Estate, Exeter, Devon, EX2 7LF.</td>
<td>A permanent stop must be positioned to prevent closure of the secondary air control below the 50 per cent open position.</td>
</tr>
<tr>
<td>176. Riva 55 Cassette, Riva 66 Cassette and Riva 66 Avanti Cassette stoves manufactured by Stovax Limited, Falcon Road, Sowton Industrial Estate, Exeter, Devon, EX2 7LF.</td>
<td>Instruction manual reference PM235 Issue 2 dated August 2009 and smoke control kit instruction manual reference PM375 Issue 2 dated January 2010. A permanent stop must be positioned to prevent closure of the secondary air control below the 50 per cent open position and the primary air control fixed to allow a bleed of air to enter the firebox from underneath the grate.</td>
</tr>
<tr>
<td>177. Riva 55 Avanti Midi and Riva 66 Freestanding 8kW stoves manufactured by Stovax Limited, Falcon Road, Sowton Industrial Estate, Exeter, Devon, EX2 7LF.</td>
<td>Instruction manual reference PM226 Issue 2 dated August 2009 and smoke control kit instruction manual reference PM375 Issue 2 dated January 2010. A permanent stop must be positioned to prevent closure of the secondary air control below the 50 per cent open position and the primary air control fixed to allow a bleed of air to enter the firebox from underneath the grate.</td>
</tr>
</tbody>
</table>
| 178. The SE60 Coalburner Stove manufactured by Jetmaster Fires Limited. | The manufacturer’s instructions which—

(a) in the case of the installation instructions bear the reference “SE60/1 8/84”; and

(b) in the case of the user instructions bear the reference “SE60/2 8/84”. |
|                                                                 | UCB. |

Wood logs.
The fireplace must be installed, maintained and operated in accordance with the following specifications.

<table>
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<tr>
<th>Fireplace</th>
<th>Conditions</th>
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<tbody>
<tr>
<td><strong>179.</strong> Scan Andersen 4-5 manufactured by Krog Iversen &amp; Co. A/S DK-5492 Vissenbjerg, Denmark.</td>
<td>Instruction manual with title “Scan Andersen 4-5” and dated “15/11/07” and instructions for installation referenced “Edition 09/05-GB”. A permanent stop must be in place on the secondary air inlet to prevent closure beyond 20 mm. Untreated dry wood.</td>
</tr>
</tbody>
</table>

(a) This standard is issued by the European Committee for Standardisation (CEN). Copies may be obtained from CEN at Avenue Marnix 17, B-1000, Brussels, Belgium, http://www.cenorm.be.
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<tr>
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<tr>
<td>The fireplace must be installed, maintained and operated in accordance with the following specifications</td>
<td>Fuels that must be used (other than authorised fuels)</td>
</tr>
<tr>
<td><strong>185.</strong> The Solid Fuel Ductair Unit manufactured by Radiation Limited.</td>
<td></td>
</tr>
<tr>
<td><strong>186.</strong> The Spacewarmer B200 manufactured by Clearair Limited.</td>
<td>The manufacturer’s instructions bearing the reference “B200/DEC 83”. The fireplace must not be used to burn chipboard or plastic coated chipboard unless an afterburner, supplied by the manufacturer of the fireplace and capable of producing 50 megajoules of heat per hour, has been fitted to the fireplace.</td>
</tr>
<tr>
<td><strong>187.</strong> The Spacewarmer B500 manufactured by Clearair Limited.</td>
<td>The manufacturer’s instructions bearing the reference “B500/DEC 83”.</td>
</tr>
<tr>
<td><strong>188.</strong> The Spänex Wood Fired Air Heater (types UL50, UL75 and UL100 only) manufactured by Spänex Sander GmbH.</td>
<td></td>
</tr>
<tr>
<td><strong>189.</strong> Stockton 5 Canopy (model number 7160) manufactured by Stovax Limited, Falcon Road, Sowton Industrial Estate, Exeter, Devon, EX2 7LF.</td>
<td>Instruction manual reference “PM 176- Issue 4”. A permanent stop must be in place on the secondary air inlet to prevent closure beyond the 50 per cent open position.</td>
</tr>
<tr>
<td><strong>190.</strong> Stockton 5 Flat top (model number 7119) manufactured by Stovax Limited, Falcon Road, Sowton Industrial Estate, Exeter, Devon, EX2 7LF.</td>
<td>Instruction manual reference “PM 176- Issue 4”. A permanent stop must be in place on the secondary air inlet to prevent closure beyond the 50 per cent open position.</td>
</tr>
<tr>
<td>Fireplace</td>
<td>Conditions</td>
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</tr>
<tr>
<td><strong>The fireplace must be installed, maintained and operated in accordance with the following specifications</strong></td>
<td><strong>Fuels that must be used (other than authorised fuels)</strong></td>
</tr>
<tr>
<td><strong>191. Stockton 5 Midline (model number 7133)</strong> manufactured by Stovax Limited, Falcon Road, Sowton Industrial Estate, Exeter, Devon, EX2 7LF.</td>
<td>Instruction manual reference “PM 176- Issue 4”. Untreated dry wood.</td>
</tr>
<tr>
<td></td>
<td>A permanent stop must be in place on the secondary air inlet to prevent closure beyond the 50 per cent open position.</td>
</tr>
<tr>
<td><strong>192. Stockton 3 Flat top (product code 7118), Stockton 4 flat top (product code 7101 and 7102), Stockton 5 Flat top (product code 7127), Stockton 5 midline (product code 7130), Stockton 6 Flat top (product codes 7100 and 7162), Stockton 6 Highline (product code 7117) and Stockton 7 Flat top (product codes 7120 and 7163) manufactured by Stovax Limited, Falcon Road, Sowton Industrial Estate, Exeter, Devon, EX2 7LF.</strong></td>
<td>Instruction manual references “PM227 ENG Issue 2” dated July 2008 and instruction manual “PM271 Issue 2” dated January 2009. Untreated dry wood.</td>
</tr>
<tr>
<td></td>
<td>A permanent stop must be in place on the secondary air inlet to prevent closure beyond the 50 per cent open position.</td>
</tr>
<tr>
<td></td>
<td>A permanent stop must be in place on the secondary air inlet to prevent closure beyond the 50 per cent open position.</td>
</tr>
<tr>
<td><strong>194. The Talbott 500 Hot-air Heater (afterburn model) manufactured by</strong></td>
<td>The manufacturer’s instructions dated January 1st 1983, and bearing the reference A10000. Wood off-cuts, woodwaste, pallets, chipboard, plastic covered chipboard (the plastic content of the covering being</td>
</tr>
<tr>
<td>Fireplace</td>
<td>Conditions</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Talbott’s Heating Limited.</td>
<td>The afterburn cycle must last not less than 25 minutes and must come into operation each time the loading door is opened.</td>
</tr>
<tr>
<td>195. The Talbott combustion unit models C1, C2, C3 and C4 manufactured by Talbott’s Heating Limited.</td>
<td>The manufacturer’s instructions dated August 1995 bearing the reference “Issue C1000/C/Range”.</td>
</tr>
<tr>
<td>196. The Talbott Combustion Units, models CM1, CM2, CM3 and CM4, manufactured by Talbott’s Heating Limited.</td>
<td>The manufacturer’s instructions dated August 1997 and bearing the reference “Issue: CM897”.</td>
</tr>
<tr>
<td>199. The Talbott Heating models T75, T150, T300, D250B, D500B and D700B, manufactured by Talbott’s Heating Limited.</td>
<td>The manufacturer’s instructions dated 1st January 1995 bearing the following references:—</td>
</tr>
<tr>
<td>(a) models T75, T150 and T300: “gen/sttech”;</td>
<td>(a) Models T75, T150 and T300: wood offcuts, woodwaste pallets, chipboard, plastic coated chipboard, cardboard or paper;</td>
</tr>
<tr>
<td>Fireplace</td>
<td>Conditions</td>
</tr>
<tr>
<td>-----------</td>
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</tr>
<tr>
<td>The fireplace must be installed, maintained and operated in accordance with the following specifications</td>
<td>Fuels that must be used (other than authorised fuels)</td>
</tr>
<tr>
<td>(b) models D250B, D500B and D700B: “Gen/Tech”.</td>
<td>(b) models D250B, D500B and D700B: hardwood or softwood offcuts, chipboard, plastic coated chipboard or cardboard.</td>
</tr>
</tbody>
</table>

200. The Talbott Pirojet P150 Heater manufactured by Talbott’s Heating Limited.  

The manufacturer’s instructions dated February 1987 and which bear the reference “No P150-2-87”.

When the fireplace is used to burn chipboard and plastic coated chipboard, an afterburner which is supplied with the fireplace and which must be capable of continuously producing 20 megajoules of heat per hour must be used.

The fireplace must not be used to burn sawdust in bulk.

Hardwood or softwood offcuts, chipboard or plastic coated chipboard.

201. The Talbott Pirojet P300 Heater manufactured by Talbott’s Heating Limited.  

The manufacturer’s instructions dated February 1987 and which bear the reference “No P300-2-87”.

When the fireplace is used to burn chipboard and plastic coated chipboard, an afterburner which is supplied with the fireplace and which must be capable of continuously producing 40 megajoules of heat per hour must be used.

The fireplace must not be used to burn sawdust in bulk.

Hardwood or softwood offcuts, chipboard, sawdust, chipboard or plastic coated chipboard.
<table>
<thead>
<tr>
<th>Fireplace</th>
<th>Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The fireplace must be installed, maintained and operated in accordance with the following specifications</strong></td>
<td><strong>Fuels that must be used (other than authorised fuels)</strong></td>
</tr>
</tbody>
</table>

| 202. The Talbott Pirojet P600 Heater manufactured by Talbott’s Heating Limited. | The manufacturer’s instructions dated December 1986 and which bear the reference “P600-12-86”. When the fireplace is used to burn chipboard and plastic coated chipboard, an afterburner which is supplied with the fireplace and which must be capable of continuously producing 75 megajoules of heat per hour must be used. The fireplace must not be used to burn sawdust in bulk. | Hardwood or softwood offcuts, sawdust, chipboard or plastic coated chipboard. |

| 203. The Talbott T5-1M Automatic Heater manufactured by Talbott’s Heating Ltd. | The manufacturer’s instructions bearing the reference Jan. 89 T5-A-1-89. | Softwood shavings, hardwood shavings or chipboard dust. |

| 204. The Talbott Warm Air Heaters Down Firing range models D250, D500 and D700 manufactured by Talbotts Heating Limited. | The manufacturer’s instructions bearing the reference “MAY 1991 Ref No: D257” | Hardwood or softwood offcuts, chipboard, plastic coated chipboard or cardboard. |


| 206. The Trianco “Coal King” Boiler manufactured by Trianco Redfyre Limited. | The manufacturer’s instructions dated May 1983 and which—

- (a) in the case of the installation instructions, bear the reference ‘47664’; and
- (b) in the case of the user instructions, bear the reference ‘47665’. | Selected washed coal doubles or UCB. |
<table>
<thead>
<tr>
<th>Fireplace</th>
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</thead>
<tbody>
<tr>
<td><strong>The fireplace must be installed, maintained and operated in accordance with the following specifications</strong></td>
<td><strong>Fuels that must be used (other than authorised fuels)</strong></td>
</tr>
</tbody>
</table>
| **207. The Triancomatic 45 boiler manufactured by Trianco Redfyre Limited.** | The manufacturer’s instructions dated September 1989 and which—  
(a) in the case of the installation instructions bear the reference “No. 44359”; and  
(b) in the case of the user instructions bear the reference “No. 44358”. | The washed coals recommended in the manufacturer’s user instructions. |
| **208. The Triancomatic 60 boiler manufactured by Trianco Redfyre Limited.** | The manufacturer’s instructions dated 24th July 1985 and which—  
(a) in the case of the installation instructions bear the reference “No. 45576”; and  
(b) in the case of the user instructions bear the reference “No. 45574”. | The washed coals recommended in the manufacturer’s user instructions: reference “No. 45574”. |
| **209. Triancomatic 90 boiler manufactured by Trianco Redfyre Limited.** | The manufacturer’s instructions dated July 1987 and which—  
(a) in the case of the installation instructions bear the reference “No. 46576”; and  
(b) in the case of the user instructions bear the reference “No. 46574”. | The washed coals recommended in the manufacturer’s user instructions. |
| **210. The Triancomatic 140 boiler manufactured by Trianco Redfyre Limited.** | The manufacturer’s instructions dated November 1986 and which—  
(a) in the case of the installation instructions bear the reference “No. 48375”; and  
(b) in the case of the user instructions bear the reference “No. 48374”. | The washed coals recommended in the manufacturer’s user instructions. |
<table>
<thead>
<tr>
<th>Fireplace</th>
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<tr>
<td><strong>The fireplace must be installed, maintained and operated in accordance with the following specifications</strong></td>
<td><strong>Fuels that must be used (other than authorised fuels)</strong></td>
</tr>
<tr>
<td>211. The Triancomatic T.80 manufactured formerly by Trianco Limited and now by Trianco Redfyre Limited.</td>
<td>Either washed coal pearls of nominal size 6 mm to 16 mm, or washed coal singles of nominal size 12.5 mm to 28 mm.</td>
</tr>
<tr>
<td>212. The Trianco TGB17 manufactured formerly by Trianco Limited and latterly by Trianco Redfyre Limited.</td>
<td>Either washed coal pearls of nominal size 6 mm to 16 mm, or washed coal singles of nominal size 12.5 mm to 28 mm.</td>
</tr>
<tr>
<td>213. The “Turbo” Heat, models 1000 and 1200 manufactured by CBR Engineers Limited.</td>
<td>The manufacturer’s instructions bearing the reference “CBR “TURBO” HEAT 1000 TO 1200 1990”.</td>
</tr>
<tr>
<td>216. Twinheat CS150i manufactured by Twinheat, Nørreevangen 7, DK-9631, Denmark.</td>
<td>Operating instructions dated 17th December 2008 reference Version 6.0.03. Wood pellets of a maximum length of 30 mm and diameter of 6 mm and conforming to CEN/TS 14961:2005(a).</td>
</tr>
</tbody>
</table>

(a) This standard is issued by the European Committee for Standardisation (CEN). Copies may be obtained from CEN, Avenue Marnix 17, B-1000, Brussels, Belgium, http://www.cenorm.be.
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<tbody>
<tr>
<td><strong>218.</strong> The Type USV wood pellet- and wood chipfired boilers, model numbers USV-15, 25, 30, 40, 50, 60, 80 and 100, manufactured by KWB – Kraft und Wärme aus Biomasse Gesellschaft mit beschränkter Haftung (GmbH) of Industriestrasse 235, A-8321 St. Margarethen an der Raab, Austria.</td>
<td>The manufacturer’s instructions dated August 2003, reference BA-USV 0803.</td>
<td>Wood pellets or wood chips.</td>
</tr>
<tr>
<td><strong>219.</strong> The WTH 150 and WTH 200 boilers manufactured by Hargassner Gesellschaft mit beschränkter Haftung (GmbH), Gunderding 8, A04952, Weng, Austria.</td>
<td>The manufacturer’s installation manual version 91 for Large Capacity Boiler WTH 150-200 (reference BA GK V90b 0309).</td>
<td>Wood chip or wood pellets.</td>
</tr>
<tr>
<td>Fireplace</td>
<td>Conditions</td>
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<td><strong>The fireplace must be installed, maintained and operated in accordance with the following specifications</strong></td>
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<tr>
<td>220. Westfire Uniq 15, 16 and 20 (also known as WF UNIQ 15, 16 and 20) manufactured by Westfire Tømrervej 3 DK-6800 Varde Denmark.</td>
<td>Installation and operating instructions referenced: WF15 – WF16 – WF20 dated 2007 along with supplementary instructions reference 01wfuk.2007 and dated 2007. A permanent stop must be in place on the secondary air inlet to prevent closure beyond 50 mm. Untreated dry wood.</td>
<td></td>
</tr>
<tr>
<td>224. The Wood Stone Ovens, models WS-MS-4-W (Mt. Chuckanut), WS-MS-5-W (Mt. Adams), WS-MS-6-W (Mt. Baker) and WS-MS-7-W (Mt. Rainier), manufactured by the Wood Stone Corporation, USA.</td>
<td>Untreated dry wood.</td>
<td></td>
</tr>
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<td><strong>Fireplace</strong></td>
<td><strong>Conditions</strong></td>
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</table>
(a) in the case of installation instructions bear the reference “BC40.1.2. July 1983”; and
(b) in the case of operating and maintenance instructions, bear the reference “BC40.OM2 July 1983”.
 | UCB (see entry 40). |
| 228. The Worcester Coalstream 17.5 kw underfeed stoker manufactured by Worcester Engineering Company Limited. | The manufacturer’s instructions dated 1st August 1985 and which—
(a) in the case of the installation instructions bear the reference “No. ZKLIT 140”; and
(b) in the case of the user instructions bear the reference “No. ZKLIT 139”. | The washed coals recommended in the manufacturer’s user instructions: reference “No. ZKLIT 139”. |
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</thead>
<tbody>
<tr>
<td><strong>The fireplace must be installed, maintained and operated in accordance with the following specifications</strong></td>
<td>Fuels that must be used (other than authorised fuels)</td>
</tr>
<tr>
<td>230. Yeoman Exmoor Multifuel Flat Top and Multifuel Low Canopy (4.9kW) Stoves manufactured by Stovax Limited, Falcon Road, Sowton Industrial Estate, Exeter, Devon, EX2 7LF.</td>
<td>Instruction manual reference PM 184 Issue 3 dated February 2008 and smoke control kit instruction manual reference PM403 Issue 1 dated January 2010. A permanent stop must be positioned to prevent closure of the secondary air control below the 60% open position and a system that prevents full closure of the primary air controls. Wood logs.</td>
</tr>
<tr>
<td>231. Yeoman Exe Multifuel Flat Top 1 Door, Flat Top 2 Door, Low Canopy 1 Door and Low Canopy 2 Door (4.9kW) Stoves manufactured by Stovax Limited, Falcon Road, Sowton Industrial Estate, Exeter, Devon, EX2 7LF.</td>
<td>Instruction manual reference PM 184 Issue 3 dated February 2008 and smoke control kit instruction manual reference PM403 Issue 1 dated January 2010. A permanent stop must be positioned to prevent closure of the secondary air control below the 60% open position and a system that prevents full closure of the primary air controls. Wood logs.</td>
</tr>
</tbody>
</table>

(a) This standard is issued by the German Institute for Standardisation. Copies may be obtained from that Institute at Burggrafenstrasse 6, 10787 Berlin, Germany, http://www.din.de.
<table>
<thead>
<tr>
<th>Fireplace</th>
<th>Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Door, High Canopy 1 Door and High Canopy 2 Door (9kW) Stoves manufactured by Stovax Limited, Falcon Road, Sowton Industrial Estate, Exeter, Devon, EX2 7LF.</td>
<td>The fireplace must be installed, maintained and operated in accordance with the following specifications. Fuels that must be used (other than authorised fuels). A permanent stop must be positioned to prevent closure of the secondary air control below the 50% open position and a system that ensures a gap of 1mm for bleed of primary air when the spin wheels are rotated to their full closed positions.</td>
</tr>
<tr>
<td>233. 6 Series (7Kw) Stoves: Flatford 6, Barrington 6, Petworth 6, Hampstead 6, Alpine 6 (also sold as: Sunbeam 6, Dakota 6, Providence 6) and the Chelsea 6 (also sold as: Wellington 6, Guernsey 6, Belgravia 6) manufactured by Chesneys, 194-200 Battersea Park Road, London, SW1 14ND.</td>
<td>Chesneys 6 series instruction manual reference “CH6K-V4” dated 7th December 2009. Wood logs. The appliance must be fitted with a mechanical stop to prevent closure of the air control beyond the 10mm open position.</td>
</tr>
<tr>
<td>234. 4 Series (4.6kW) Stoves: Flatford 4, Hampstead 4, Alpine 4 (also sold as: Sunbeam 4, Dakota 4, Providence 4), Pacific 4 (also sold as: Milan 4, Murano 4, Apollo 4), Chelsea 4 (also sold as: Wellington 4, Guernsey 4, Belgravia 4), manufactured by Chesneys, 194-200 Battersea Park Road, London, SW1 14ND.</td>
<td>Chesneys 4 series instruction manual reference “CH4K-V4” dated 7th December 2009. Wood logs. The appliance must be fitted with a mechanical stop to prevent closure of the air control beyond the 34mm open position.</td>
</tr>
<tr>
<td>Fireplace</td>
<td>Conditions</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| **235. 100 SE Smoke Exempt Woodburning Stove** manufactured by ESSE Engineering Limited, Ouzledale Foundry, Long Ing, Barnoldswick, Lancashire, BB18 6BN. | Instruction manual referenced “100SE Issue 1” dated “03/09”.  
A permanent stop must be in place on the secondary air inlet to prevent closure beyond the 50 per cent open position. | Untreated dry wood with a maximum moisture content of 20 per cent  
maximum length of 200 mm and maximum width or diameter of 120 mm. |
All appliances must be fitted with a mechanical stop to prevent closure beyond the 50 per cent open position. | Wood logs. |
EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which extends to Scotland only, makes provision for exemption from the prohibition, under section 20 of the Clean Air Act 1993, on the emission of smoke in smoke control areas.

The Order exempts those fireplaces described in the Schedule where they comply with the conditions specified in that Schedule.

The Order revokes and re-enacts the Smoke Control Areas (Exempt Fireplaces) (Scotland) Order 2009 (S.S.I. 2009/214). It also provides for additional fireplaces to be exempt. The additional entries in the Schedule are: 6; 14 to 16; 21; 25 to 27; 30 and 31; 33; 37; 45 and 46; 55 to 58; 60 to 62; 72 to 78; 82 to 84; 91; 104; 108 to 112; 115; 118 to 120 (other than the Lovenholm); 122 to 124; 126; 152 to 154; 169 to 177; 180 to 183; 219; 229 to 234; and 236. Additionally, an amendment has been made to the conditions applying to entry 70.

An exemption from the requirements of section 20 of the Clean Air Act 1993 does not confer exemption under any other statutory regime which may be applicable, and the burning of waste may be subject to other controls such as licensing under the Waste Management Licensing Regulations 1994 (S.I. 1994/1056) or permitting under the Pollution Prevention and Control (Scotland) Regulations (S.S.I. 2000/323).

No Regulatory Impact Assessment has been prepared for this instrument as it has no impact on the costs of business.
2010 No. 273

AGRICULTURE

The Less Favoured Area Support Scheme (Scotland) Regulations 2010

Made - - - - 1st July 2010
Laid before the Scottish Parliament 1st July 2010
Coming into force - - 2nd July 2010

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The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2, to the European Communities Act 1972(a) and all other powers enabling them to do so.  

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for the references to Article 5 and Annex II of Council Regulation (EC) No. 73/2009 to be construed as references to those provisions as amended from time to time.  

(a) (c.68); section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3); the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”), section 27(1); and the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1. Paragraph 1A of Schedule 2 was inserted by the 2006 Act, section 28. The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.
PART I
GENERAL

Citation, commencement, extent and application
1.—(1) These Regulations may be cited as the Less Favoured Area Support Scheme (Scotland) Regulations 2010 and come into force on 2nd July 2010.

(2) These Regulations extend to Scotland only.

(3) These Regulations apply to holdings in respect of which the Scottish Ministers are the competent authority, in accordance with the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2009(a).

Interpretation
2.—(1) In these Regulations, unless the context otherwise requires—

“actively farm” means to undertake a continuous activity which is, in the opinion of the Scottish Ministers, an agricultural activity and which is undertaken for a period or periods totalling not less than 183 days in the Scheme Year for which payment is to be made and “active farming” shall be construed accordingly;

“alpaca” means any alpaca of any breed which is kept by way of business for the primary purpose of fibre production;

“applicant” means a person who has made an application for less favoured area support;

“area aid application” has the same meaning as in Article 6 of Council Regulation (EEC) 3508/92 establishing an integrated administration and control system for certain Community aid schemes(b);

“authorised person” means a person who is authorised by the Scottish Ministers, either generally or specifically, to act in relation to matters arising under these Regulations;

“beef cow” means a female bovine animal which, in the opinion of the Scottish Ministers, is a breeding cow used primarily to produce calves for the purpose of beef production and aged 20 months or over;

“Council Regulation 1698/2005” means Council Regulation (EC) No. 1698/2005 on support for rural development from the European Agricultural Fund for Rural Development (EAFRD)(c);


“Commission Regulation 1122/2009” means Commission Regulation (EC) No. 1122/2009 laying down detailed rules for the implementation of Council Regulation (EC) No. 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No. 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector(e);

“common grazing” means any right in pasture or grazing land held or to be held by the applicant, whether alone or in common with others;

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(a) S.I. 2009/3263.
“competent authority” has the same meaning as in regulation 3 of the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2009;


cross border holding” means a holding in the United Kingdom which is situated partly in Scotland;

cross compliance” has the same meaning as it has for the purposes of Article 5 and Annex II as amended from time to time and Article 6 and Annex III of Council Regulation 73/2009;

dairy activity” means maintaining a dairy herd;

dairy cow” means a female bovine animal which, in the opinion of the Scottish Ministers, is a breeding cow maintained primarily for the purpose of milk production and aged over 20 months;

dairy ring fence area” has the meaning given in Schedule 1;

designated maps” means the four maps numbered 1 to 4, each such map being marked “Map of less-favoured farming areas in Scotland”, dated 5th May 1991, signed by the Secretary of State for Scotland and deposited at the offices of the Scottish Government Rural Payments and Inspections Directorate, Saughton House, Broomhouse Drive, Edinburgh EH11 3XD;

eligible land” shall be construed in accordance with regulation 5;

farmed deer” means any deer of any species which is kept on eligible land enclosed by a deer proof barrier and kept by way of business for the primary purpose of meat production;

forage area” means the area of the holding available to the applicant throughout the Scheme Year for rearing livestock including areas in shared use and areas subject to mixed cultivation but not including buildings, woods, ponds and paths;

“goat” means any goat (of any breed) which is kept by way of business for the primary purpose of fibre production;

“holding” has the same meaning as it has for the purpose of Article 2(b) of Council Regulation 73/2009;

“key dates” for sheep means 1st January and for other livestock means 1st January and 30th June;

“less favoured area” means the land shown coloured in blue or in pink on the designated maps—

(a) which is situated in an area included in the list of less favoured farming areas adopted by Council Directive 84/169/EEC concerning the Community list of less-favoured farming areas within the meaning of Directive 75/268/EEC (United Kingdom)(b); and

(b) which is, in the opinion of the Scottish Ministers, inherently suitable for extensive livestock production but not for the production of crops in quantity materially greater than that necessary to feed such livestock as are capable of being maintained on such land, and whose agricultural production is, in the opinion of the Scottish Ministers, restricted in its range by, or by any combination of, soil, relief, aspect or climate;

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“livestock” means a beef cow, a dairy cow, a sheep, a goat, a farmed deer, an alpaca or a llama;
“livestock unit” means a unit of measurement of livestock numbers, and each of the following constitute one livestock unit—
(a) one beef cow over 24 months of age;
(b) 1.66 beef cows over 20 months and up to and including 24 months of age;
(c) within the dairy ring fence area, one dairy cow over 24 months of age;
(d) within the dairy ring fence area, 1.66 dairy cows over 20 months and up to and including 24 months of age;
(e) 6.66 breeding ewes or gimmers;
(f) 6.66 breeding female goats kept as part of a regular breeding herd for fibre production;
(g) 3.33 breeding female farmed deer aged 27 months and over;
(h) 5 breeding female farmed deer aged over 6 months but less than 27 months of age;
(i) 3.33 breeding female alpaca kept as part of a regular breeding herd;
(j) 3.33 breeding female llamas kept as part of a regular breeding herd;
“llama” means any llama of any breed which is kept by way of business for the primary purpose of fibre production;
“maximum stocking density” means 1.40 livestock units per hectare;
“minimum stocking density” means 0.12 livestock units per hectare;
“payable area” means the area of land on which less favoured area support is to be paid, calculated in accordance with regulation 8 and, adjusted where appropriate, in accordance with regulation 10;
“Scheme Year” means a calendar year commencing on 1st January;
“Scheme 2005 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2004 to 31st December 2004 under the 2005 Regulations;
“Scheme 2006 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2005 to 31st December 2005 under the 2005 Regulations;
“Scheme 2007 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2007 to 31st December 2007 under the 2007 Regulations;
“Scheme 2008 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2008 to 31st December 2008 under the 2007 Regulations;
“Scheme 2009 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2009 to 31st December 2009 under the 2007 Regulations and “Scheme Year 2009” shall be construed accordingly;
“Scheme 2010 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2010 to 31st December 2010;
“Scheme 2011 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2011 to 31st December 2011;
“Scheme 2012 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2012 to 31st December 2012;
“Scheme 2013 payment” means the sum to which the applicant is entitled in respect of the period from 1st January 2013 to 31st December 2013;
“shared grazing” means land used for grazing within a field used by two or more producers;
“sheep” means breeding ewes or gimmers, kept by way of business for the primary purpose of meat production;
“single application” has the meaning given in Article 2(11) of Commission Regulation 1122/2009(a);
“the 2003 Regulations” means the Less Favoured Area Support Scheme (Scotland) Regulations 2003(b);
“the 2005 Regulations” means the Less Favoured Area Support Scheme (Scotland) Regulations 2005(c); and
“the 2007 Regulations” means the Less Favoured Area Support Scheme (Scotland) Regulations 2007(d).

(2) Any reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in section 15 of the Electronic Communications Act 2000(e) (general interpretation), which has been recorded and is consequently capable of being reproduced.

PART II
ELIGIBILITY

Eligibility for payment of less favoured area support

3.—(1) Payment of less favoured area support may be made to an applicant in respect of a Scheme Year only if—

(a) subject to paragraphs (2) and (3), that applicant has given an undertaking to continue to use eligible land for a period of not less than five years from the first payment made under—

(i) these Regulations;
(ii) the 2007 Regulations; or
(iii) the 2005 Regulations; and

(b) that applicant has, in the opinion of the Scottish Ministers, met the requirements of cross compliance on the applicant’s holding throughout the Scheme Year.

(2) An applicant may be released from the undertaking referred to in paragraph (1)(a)—

(a) if the applicant has, during the period for which the undertaking was given, transferred all or part of the holding to another person and that person agrees to take over the undertaking;

(b) if the applicant has, during the period for which the undertaking was given, transferred all or part of the holding to an organisation, which in the opinion of the Scottish Ministers, has the main objective of nature conservation and where the transfer is for the principle purpose of securing a permanent change of land use into nature conservation with an associated benefit to the environment; or

(c) if, in the opinion of Scottish Ministers, the applicant is prevented from continuing to discharge that undertaking by reason of any material circumstances beyond the control of that person.


(b) S.S.I. 2003/129, revoked by regulation 27 of S.S.I. 2004/70, subject to the savings provision contained in that regulation.


(e) 2000 (c.7); section 15 was amended by the Communications Act 2003 c.21 section 406 and Schedule 17 paragraph 158.
(3) In the event that the applicant has ceased farming and the person to whom all or part of the holding has been transferred does not agree to be bound by the undertaking referred to in paragraph (1)(a), the Scottish Ministers may, if satisfied that the applicant has, at the time of the cessation of farming, honoured a significant proportion of the undertaking, release the applicant from that undertaking.

**Payment of less favoured area support**

4. The Scottish Ministers may, on such occasions as they consider fit, in respect of the Scheme Year in question pay less favoured area support to an applicant who actively farms eligible land which is not less than 3 hectares.

**Eligible land**

5.—(1) Eligible land comprises the number of hectares of forage area in a less favoured area with—

(a) a less favoured area support grazing category attributed to it by the Scottish Ministers prior to 1st January 2007; and

(b) one of the land use codes specified in column 2 of Schedule 2 corresponding to the entry in column 1 of Schedule 2 relating to the use of the land,

as declared by the applicant in a single application in respect of the Scheme Year to which payment relates.

(2) Eligible land includes land in respect of which the applicant has a right of use pursuant to a short term let, seasonal grazing or common grazing or other such arrangement.

(3) If an application for less favoured area support relates to land situated outwith the dairy ring fence area and all or part of that land was used for dairy activity in the Scheme Year 2009 or in the first year of application, where the applicant did not submit a single application or claim less favoured area support in or prior to 2009, the Scottish Ministers shall determine the area of ineligible land attributable to dairy activity.

(4) The ineligible area referred to in paragraph (3) shall be deducted from the eligible area identified in accordance with paragraph (1).

**Transfer of a holding**

6.—(1) A decision by the Scottish Ministers to make a payment under regulation 4 must be in accordance with Article 82 of Commission Regulation 1122/2009.

(2) For the purposes of paragraph 6 of Article 82 of Commission Regulation 1122/2009, the Scottish Ministers must grant less favoured area support to the transferor of a holding if—

(a) the transferor has been in continuous occupation of the holding for a period of not less than 183 calendar days in the Scheme Year concerned; and

(b) the requirements of paragraphs 2 to 5 of Article 82 of Commission Regulation 1122/2009 have, in the opinion of the Scottish Ministers, been fulfilled.
PART III
CALCULATION OF LESS FAVOURED AREA SUPPORT

Amount of less favoured area support

7.—(1) Subject to paragraph (2) and regulation 12, the amount of less favoured area support is calculated in accordance with the following formula:

\[ LFAS = P \times R \]

Where—

- \( LFAS \) is the amount of less favoured area support payable;
- \( P \) is the payable area; and
- \( R \) is the rate of payment determined in accordance with regulation 11.

(2) Where an applicant has eligible land in more than one grazing category (as determined for the purposes of regulation 8) then—

(a) the calculation in paragraph (1) is applied in respect of the total area of eligible land in each grazing category and, for the purposes of each calculation—

(i) \( P \) is the payable area of land in each grazing category; and

(ii) \( R \) is the rate of payment for each type of grazing category determined in accordance with regulation 11; and

(b) the total amount of less favoured area support payable is the sum of the calculations in respect of each grazing category.

Determination of Unadjusted Payable Area

8.—(1) The unadjusted payable area is the total of the areas of eligible land of the applicant in each grazing category, calculated in accordance with the following formula:

\[ P = E \times V \]

Where—

- \( P \) is the unadjusted payable area;
- Subject to regulation 9(2) and (3), \( E \) is the area of eligible land in each field or shared grazing in the Scheme Year for which payment is to be made; and
- \( V \) is the hectare value for each field or shared grazing determined in accordance with paragraph (2).

(2) For the purpose of paragraph (1), the hectare value is the entry in the third column of Schedule 3 corresponding to the grazing category in the second column of that Schedule.

(3) For the purposes of this regulation, the grazing category of each field or shared grazing of the applicant is the entry in the second column of Schedule 3 corresponding to the entry in the first column of that Schedule relating to the base year stocking density of each field or shared grazing.
(4) For the purposes of paragraph (3), the “base year stocking density” for each field or shared grazing is either—

(a) the stocking density that was determined for that field or shared grazing by paragraphs (4) to (12) of regulation 9 of the 2003 Regulations following upon an application for less favoured area support under those Regulations; or

(b) where no stocking density was determined under regulation 9 of the 2003 Regulations for a field or shared grazing, the stocking density figure determined by the Scottish Ministers under regulation 9(5) of the 2005 Regulations for that part of the land of the applicant on or before 31st December 2006.

Stocking density outwith the minimum and maximum stocking density parameters

9.—(1) The provisions of this regulation apply where the stocking density calculated in accordance with paragraph (4) and Parts I and II of Schedule 4 is either less than the minimum stocking density or greater than the maximum stocking density.

(2) Where the stocking density calculated in accordance with paragraph (4) and Parts I and II of Schedule 4 is less than the minimum stocking density, the eligible land for the purposes of the calculation in regulation 8(1) is the number of hectares calculated in accordance with the following formula—

\[ E_1 = \frac{F \times S}{M} \]

Where—

- \( E_1 \) is the area of eligible land adjusted in accordance with this regulation;
- \( F \) is the total area of eligible land of the applicant;
- \( S \) is the stocking density calculated for the applicant in accordance with paragraph (4) and Parts I and II of Schedule 4; and
- \( M \) is the minimum stocking density.

(3) Where the stocking density calculated in accordance with paragraph (4) and Parts I and II of Schedule 4 is greater than the maximum stocking density, the eligible land for the purposes of the calculation in regulation 8(1) is the number of hectares calculated in accordance with the following formula—

\[ E_2 = \frac{F \times M}{S} \]

Where—

- \( E_2 \) is the area of eligible land adjusted in accordance with this regulation;
- \( F \) is the total area of eligible land of the applicant;
- \( M \) is the maximum stocking density; and
- \( S \) is the stocking density calculated for the applicant in accordance with paragraph (4) and Parts I and II of Schedule 4.

(4) For the purpose of paragraphs (1), (2) and (3), the stocking density is to be calculated in accordance with Parts I and II of Schedule 4, using—

(a) livestock units based on the number of livestock which the Scottish Ministers determine were maintained by the applicant—

(i) in 2009, where the applicant maintained livestock on eligible land declared in a single application in 2009; or
(ii) in the first year of application for less favoured area support where the applicant did not submit a single application or claim less favoured area support in or prior to 2009; and

(b) the historic land area.

(5) In determining the number of livestock for the purposes of paragraph (4)(a), the Scottish Ministers must have regard to the livestock numbers declared by the applicant as being maintained by the applicant on eligible land on key dates in 2009 or the first year of application for less favoured area support, where the applicant did not submit a single application or claim less favoured area support in or prior to 2009.

(6) Where—

(a) an applicant has land in more than one grazing category (as determined for the purposes of regulation 8); and

(b) eligible land, for the purpose of the calculation in regulation 8(1), for that applicant has been reduced under paragraph (2) or (3),

the Scottish Ministers must apply that reduction in eligible land proportionately to the total of the eligible land in each grazing category for the purpose of the calculation in regulation 8(1).

(7) Where the stocking density calculated in accordance with paragraph (4) was less than the minimum stocking density due to the culling of the stock on the land in question in the context of the control of an outbreak of an epizootic disease—

(a) during 2009; or

(b) where the applicant did not submit a single application or claim less favoured area support in or prior to 2009, the first year of application,

the applicant may request that the Scottish Ministers determine the stocking density to be used for the purposes of the formula at paragraph (2).

(8) For the purposes of this regulation and Part II of Schedule 4, “historic land area” means the area of eligible land declared by the applicant in a single application in 2009 or in the first year of application where the applicant did not submit a single application or claim less favoured area support in or prior to 2009, prior to deduction of either or both of—

(a) any penalty area calculated in accordance with Commission Regulation 1975/2006; and

(b) any area deducted in accordance with regulation 6(5) of the 2007 Regulations(a).

Enterprise mix

10.—(1) Subject to paragraphs (2) and (3), where at least 10% of the livestock units of the applicant, calculated in accordance with regulation 9(4) and Part I of Schedule 4, are cattle, the unadjusted payable area calculated in accordance with regulation 8 is to be adjusted in accordance with this regulation and the following formula—

\[
P_1 = P_2 \times Z
\]

Where—

\( P_1 \) is the payable area;

\( P_2 \) is the unadjusted payable area calculated in accordance with regulation 8; and

\( Z \) is the hectare multiplier contained in the second column of Schedule 8 corresponding to the proportion of livestock units (calculated in accordance with regulation 9(4) and Part I of Schedule 4) which are cattle contained in the first column of Schedule 8.

(2) Where the number of sheep used to calculate livestock units for the purposes of regulation 9(4) and Part I of Schedule 4 is lower than—

(a) the number of sheep used to calculate livestock units for the purposes of the Scheme 2006 payment; or
(b) where an applicant did not receive a Scheme 2006 payment, the number of sheep used to calculate livestock units for the purposes of the Scheme 2005 payment,

and the hectare multiplier contained in the second column of Schedule 8, corresponding to the proportion of livestock units (calculated in accordance with regulation 9(4) and Part I of Schedule 4) which are cattle contained in the first column of Schedule 8, is higher than the hectare multiplier established for the purposes of the Scheme 2006 payment or, the Scheme 2005 payment as appropriate, then that hectare multiplier can only apply for the purposes of the Scheme 2010 payment, the Scheme 2011 payment, the Scheme 2012 payment or the Scheme 2013 payment if the number of cattle used to calculate livestock units for the purposes of regulation 9(4) and Part I of Schedule 4 is greater than the number of cattle used to calculate livestock units for the purposes of the Scheme 2006 payment or the Scheme 2005 payment as appropriate.

(3) Where the hectare multiplier contained in the second column of Schedule 8 to be used for the purposes of the formula in paragraph (1) is unrepresentative of the usual enterprise mix of the applicant, due to the culling of stock on the land in question in the context of the control of an outbreak of an epizootic disease—
(a) during 2009; or
(b) where the applicant did not submit a single application or claim less favoured area support in or prior to 2009, the first year of application,
the applicant may request that the Scottish Ministers determine the hectare multiplier contained in the second column of Schedule 8 to be used for the purposes of the formula in paragraph (1).

Rate of payment of less favoured area support

11.—(1) Where for the purposes of regulation 8, the grazing category of land, as specified in Schedule 3, is A or B, the rate of payment of less favoured area support for the purposes of regulation 7 is the rate per hectare of the unadjusted payable area set out in the entry in the second column in Part I (More Disadvantaged Land) of Schedule 5 corresponding to the fragility category in the first column of that Part of that Schedule applicable to the applicant in terms of paragraph (3).

(2) Where, for the purposes of regulation 8, the grazing category of land, as specified in Schedule 3, is C or D, the rate of payment of less favoured area support for the purposes of regulation 7 is the rate per hectare of the unadjusted payable area set out in the entry in the second column in Part II (Less Disadvantaged Land) of Schedule 5 corresponding to the fragility category in the first column of that Part of that Schedule applicable to the applicant in terms of paragraph (3).

(3) For the purposes of paragraphs (1) and (2), the fragility category applicable to the applicant is determined by the code of the parish in which the main farm of the applicant is situated as set out in Schedule 6.

(4) For the purpose of paragraph (3), the code of the parish in which the main farm is situated is the first digit or the first two or three digits as appropriate of the applicant’s main farm code.

(5) For the purposes of this regulation, “main farm code” means the code attributed by the Scottish Ministers to the farm which the applicant considers is the applicant’s main farm for the purposes of the applicant’s single application.

Minimum payment

12. The minimum amount of less favoured area support payable by the Scottish Ministers under these Regulations (prior to the deduction of any penalty under Commission Regulation 1975/2006) is £385 in respect of—
(a) a Scheme 2010 payment;
(b) a Scheme 2011 payment;
(c) a Scheme 2012 payment; or
(d) a Scheme 2013 payment.

PART IV
ENFORCEMENT

Powers of authorised persons

13.—(1) An authorised person may, at all reasonable hours and on producing if so required a duly authenticated document showing the authority of that person, exercise the powers specified in this regulation for the purposes of—

(a) verification of the accuracy of an application by carrying out administrative and periodic checks which a Member State is required to carry out under Articles 11, 12 and 20 of Commission Regulation 1975/2006; or

(b) ascertaining whether an offence under these Regulations has been or is being committed, and in doing so may be accompanied by a person assigned to assist the authorised person for those purposes.

(2) An authorised person may enter any land or premises (other than dwellinghouses not being used for a purpose relevant to these Regulations).

(3) An authorised person who has entered any land or premises by virtue of this regulation may—

(a) inspect and verify the total area of such land;

(b) inspect and count livestock on such land and require the applicant to arrange for the collection of animals, penning and securing;

(c) require production of and examine any records in whatever form, and take copies of those records;

(d) remove and retain any document or other record referred to in sub-paragraph (c) which may be required for use as evidence in proceedings under these Regulations; and

(e) inspect and verify that the applicant has complied with the requirements of cross compliance.

(4) An authorised person may require any records mentioned in paragraph (3)(c) which are kept by means of a computer or any associated apparatus or material to be produced in a visible and legible form in which they may be taken away.

Assistance to authorised persons

14. An applicant, employee or agent of an applicant or any person having, or appearing to have, charge of animals on the land must give to an authorised person such assistance as the authorised person may reasonably request so as to enable that person to exercise any power conferred by regulation 13.

Withholding or recovery of less favoured area support

15. The Scottish Ministers may withhold or recover the whole or any part of any payment of less favoured area support payable or paid to an applicant in any of the following circumstances—

(a) where the applicant fails to comply with the terms of an undertaking given by that applicant pursuant to regulation 3(1)(a) from which the applicant has not been released under regulation 3(2) or (3);

(b) where the applicant, or an employee or agent of the applicant intentionally obstructs an authorised person in exercise of the powers under regulation 13, or fails without
reasonable excuse to comply with a requirement or request made by an authorised person under regulation 13 or 14;
(c) where, in the opinion of the Scottish Ministers, the applicant has failed to act in accordance with cross compliance on or in relation to the holding; or
(d) where, in the opinion of the Scottish Ministers, the applicant has failed to comply with the requirement in regulation 4 to actively farm eligible land.

Guidance

16.—(1) The Scottish Ministers may publish guidance from time to time on—
(a) the circumstances in which they will normally withhold or recover any sums under regulation 15, and the amount which any sums withheld will normally be; and
(b) generally, how they intend to perform their functions under these Regulations.

(2) The Scottish Ministers must have regard to any guidance published under paragraph (1) when performing their functions under these Regulations.

Rate of interest

17. For the purpose of Article 80 of Commission Regulation 1122/2009, interest shall be charged at the rate of one percentage point above the sterling three month London Interbank Offered Rate on a day-to-day basis for the period specified in that Article.

Cross border holdings

18. Schedule 7 applies to agency arrangements and to cross border holdings.

Offences

19.—(1) Any person who, for the purposes of obtaining for the benefit of that or any other person part of, or the whole of, a payment of less favoured area support under these Regulations, knowingly or recklessly makes a statement which is false in any material particular, is guilty of an offence.

(2) Any person who intentionally obstructs an authorised person (or a person assisting that authorised person in accordance with regulation 14) in the exercise of the powers conferred by regulation 13 is guilty of an offence.

(3) Any person who without reasonable excuse fails to comply with a requirement made under regulation 13 or request under regulation 14 is guilty of an offence.

Penalties

20.—(1) A person guilty of an offence under regulation 19(1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A person guilty of an offence under regulation 19(3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Time limit for prosecutions

21.—(1) Summary proceedings for an offence under regulation 19 may be commenced within the period of 12 months from the date on which the offence was committed.
(2) Subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995 (date of commencement of proceedings) applies for the purposes of this regulation as it applies for the purposes of that section.

Offences by bodies corporate

22.—(1) Where—
   (a) an offence under these Regulations has been committed by a body corporate or a Scottish partnership or other unincorporated association;
   (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
      (i) a relevant individual; or
      (ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the offender is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1), “relevant individual” means—
   (a) in relation to a body corporate—
      (i) a director, manager, secretary or other similar officer of the body;
      (ii) where the affairs of the body are managed by its members, the members;
   (b) in relation to a Scottish partnership, a partner;
   (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

PART V
MISCELLANEOUS

Appeal against decision as to eligibility of holding

23.—(1) An applicant may, no later than 60 days following the date of intimation of the Scottish Ministers’ decision as to the eligibility of the holding under regulation 5, make an application in writing to the Scottish Ministers to have that decision reviewed by persons appointed by the Scottish Ministers for that purpose.

(2) An application under this regulation is to be treated as made if it is received by the Scottish Ministers.

(3) The application must be accompanied by such information as the persons appointed consider necessary.

(4) Such persons appointed under paragraph (1) must review the decision and notify their determination to the Scottish Ministers, and by recorded delivery mail to the applicant, within 10 days of reaching that determination.

(5) Subject to regulation 24, the determination of such persons appointed is binding on the Scottish Ministers.

(6) The Scottish Ministers may make such payment, by way of fee or reimbursement of expenses, to any such persons appointed under paragraph (1), as appears to them to be appropriate.

(a) 1995 (c.46).
Review

24.—(1) An applicant may apply to the Scottish Ministers in writing for review of the determination referred to in regulation 23(4).

(2) The applicant must apply to the Scottish Ministers for review within 60 days of the notification of the determination to the applicant in accordance with regulation 23(4).

(3) On an application for a review under this regulation, the Scottish Ministers must refer the matter to a person appointed by the Chair of the Scottish Branch of the Royal Institution of Chartered Surveyors to carry out the functions in paragraph (4).

(4) The person appointed under paragraph (3) must review the determination referred to in regulation 23(4) and may—

(a) consider any document or other evidence produced by the applicant or the Scottish Ministers (whether or not that document or other evidence was available at the time of the determination);

(b) invite the applicant and the Scottish Ministers to provide such further information relevant to the review as the person appointed considers appropriate; and

(c) give the applicant and the Scottish Ministers an opportunity to give evidence or to make representations in person or through a representative.

(5) The person appointed to review the determination must make a decision confirming or revoking that determination, and notify that decision to the Scottish Ministers and to the applicant in writing.

(6) The person appointed is entitled to require the reasonable costs of the review to be paid by such party as that person may direct, and the person appointed must determine the amount of such costs.

Amendment of the Rural Payments (Appeals) (Scotland) Regulations 2009

25.—(1) The Rural Payments (Appeals) (Scotland) Regulations 2009(a) are amended in accordance with this regulation.

(2) In the Schedule (relevant decisions)—

(a) for paragraph 13 substitute—

“13. A decision of the Scottish Ministers under regulation 4(1)(b), 5, 7(1), 9(4)(b), 10(7), 11(4) or 16 of the Less Favoured Area Support Scheme (Scotland) Regulations 2007(b),”; and

(b) after paragraph 13 insert—

“13A. A decision by the Scottish Ministers under regulation 3(1)(b), 3(2), 3(3), 4, 5(3), 9(4)(a), 9(7), 10(3) or 15 of the Less Favoured Area Support Scheme (Scotland) Regulations 2010.”.

Revocation and savings provisions

26.—(1) Subject to the savings referred to in paragraph (2), the 2007 Regulations (except regulation 26(2)), the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2008(c) and the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2009(d) are revoked.

(a) S.S.I. 2009/376.
(c) S.S.I. 2008/294.
(d) S.S.I. 2009/412.
(2) In respect of a Scheme 2007 payment, a Scheme 2008 payment or a Scheme 2009 payment within the meaning of the 2007 Regulations, the 2007 Regulations, the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2008 and the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2009 shall continue to have effect as if those Regulations had not been revoked.

RICHARD LOCHHEAD
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
1st July 2010
SCHEDULE 1

MEANING OF DAIRY RING FENCE AREA

“Dairy ring fence area” means—

(a) the islands of Shetland;
(b) the islands of Orkney;
(c) the islands of Islay, Jura, Arran, Bute, Great Cumbrae, Little Cumbrae and the Kintryre Peninsula south of Tarbert;
(d) the islands of the Outer Hebrides and the Inner Hebrides; and
(e) the areas of land within Argyll and Bute Council comprising those parts of the parishes of Dunoon and Kilmum and Inverchaolain bounded as follows—

Starting in the North on the shore of Loch Striven at point national grid reference NS/095708; then in an easterly direction along the Ministry of Defence boundary to point national grid reference NS/098708; then in a northerly direction along the Ministry of Defence boundary to point national grid reference NS/097711; then in a north-easterly direction along the Ministry of Defence boundary to point national grid reference NS/098711; then in a northerly direction along the Ministry of Defence boundary to point national grid reference NS/098712; then in a north north-easterly direction along the Ministry of Defence boundary to point national grid reference NS/099712; then in a north-easterly direction to point national grid reference NS/103714; then in a south-easterly direction to point national grid reference NS/107712; then in an easterly direction along the forestry fence to point national grid reference NS/101712; then in a southerly direction along the forestry fence to point national grid reference NS/105711; then in a south-southerly direction along the forestry fence to point national grid reference NS/106711; then in a southerly direction along the forestry fence to point national grid reference NS/107712; then in a south-west direction along the forestry fence to point national grid reference NS/109712; then in a south south-west direction along the forestry fence to point national grid reference NS/111712; then in a southerly direction along the forestry fence to point national grid reference NS/112713; then in a north-east direction along the Ministry of Defence boundary to point national grid reference NS/114704; then in a southerly direction along the forestry fence to point national grid reference NS/114699; then in a south-westerly direction along the forestry fence to point national grid reference NS/112699; then in a south-south-westerly direction along the forestry fence to point national grid reference NS/11163 where the forestry fence meets the A815; then in a southerly direction along the A815 to point national grid reference NS/112689; then in a north-easterly direction along the forestry fence to point national grid reference NS/114690; then in a west north-easterly direction along the forestry fence to point national grid reference NS/117688; then in a southerly direction along the forestry fence to point national grid reference NS/116685; then in a westerly direction to point national grid reference NS/114685 where the forestry fence meets a track; then in a southerly direction down the track to point national grid reference NS/114683; then in a westerly direction down a burn to point national grid reference NS/112682 where the burn meets the A815; then in a southerly direction down the A815 to point national grid reference NS/111679; then in a westerly direction to point national grid reference NS/110679 at the high water mark; then in a westerly direction for approximately 1200 metres which then turns in a northerly direction all along the shore back to the starting point of national grid reference NS/095708.
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<thead>
<tr>
<th>LAND USE</th>
<th>LAND USE CODE</th>
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<tr>
<td>Other crops for stock feed (excluding kale, cabbages and fodder beet)</td>
<td>OCS</td>
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<tr>
<td>Fodder beet</td>
<td>OCS-B</td>
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<tr>
<td>Kale and cabbage for stock feed</td>
<td>OCS-K</td>
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<tr>
<td>Grass over 5 years</td>
<td>PGRS</td>
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<tr>
<td>Rape for stock feed</td>
<td>RAST</td>
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<tr>
<td>Rough Grazing</td>
<td>RGR</td>
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<tr>
<td>Grass under 5 years</td>
<td>TGRS</td>
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<tr>
<td>Turnips, swedes for stock feed</td>
<td>TSWS</td>
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<td>Open woodland (grazed)</td>
<td>WDG</td>
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<td>Agri-environment areas</td>
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SCHEDULE 3
Regulations 8(2), 8(3), 11(2) and 11(3)

GRAZING CATEGORY: HECTARE VALUES

<table>
<thead>
<tr>
<th>BASE YEAR STOCKING DENSITY (Livestock units (“LU”)/hectare)</th>
<th>GRAZING CATEGORY</th>
<th>HECTARE VALUE</th>
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<tbody>
<tr>
<td>Up to and including 0.19 LU/ha</td>
<td>A</td>
<td>0.167</td>
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<tr>
<td>0.2 to 0.39 LU/ha</td>
<td>B</td>
<td>0.333</td>
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<tr>
<td>0.4 to 0.59 LU/ha</td>
<td>C</td>
<td>0.667</td>
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<tr>
<td>0.6 or more LU/ha</td>
<td>D</td>
<td>0.8</td>
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SCHEDULE 4

LIVESTOCK UNITS AND STOCKING DENSITY

PART I
CALCULATION OF LIVESTOCK UNITS

For the purposes of part II of this Schedule, the total LFASS Livestock Units is calculated in accordance with the formula—

\[ K = A + B + C + D + E + F + G + H + I + J \]

Where—

- **K** is the total LFASS Livestock Units;
- **A** is the number of beef cows over 24 months of age multiplied by a factor of 1.0;
- **B** is the number of beef cows over 20 months up to and including 24 months of age multiplied by a factor of 0.6;
- **C** is the number of breeding ewes and gimmers multiplied by a factor of 0.15;
- **D** is the number of breeding female goats multiplied by a factor of 0.15;
- **E** is the number of breeding female alpaca multiplied by a factor of 0.3;
- **F** is the number of breeding female farmed deer (hinds aged 27 months and over) multiplied by a factor of 0.3;
- **G** is the number of breeding female farmed deer (over 6 months but less than 27 months of age) multiplied by a factor of 0.2;
- **H** is the number of breeding female llamas multiplied by a factor of 0.3;
- **I** is, in the case of an applicant who maintains a dairy herd in the dairy ring fence area, the number of dairy cows over 24 months of age multiplied by a factor of 1.0;
- **J** is, in the case of an applicant who maintains a dairy herd in the dairy ring fence area, the number of dairy cows over 20 months and up to and including 24 months of age multiplied by a factor of 0.6.

PART II
CALCULATION OF STOCKING DENSITY

The stocking density is calculated in accordance with the formula—

\[ S = \frac{K}{L} \]
Where—

S is the stocking density (to two decimal places);

K is the total LFASS Livestock Units calculated in accordance with part I of this Schedule;

L is the total number of hectares comprising the historic land area.
SCHEDULE 5  
Regulations 11(2) and 11(3)

RATES OF PAYMENT FOR LESS FAVOURED AREA SUPPORT

PART I
MORE DISADVANTAGED LAND

<table>
<thead>
<tr>
<th>FRAGILITY CATEGORY</th>
<th>RATE</th>
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<tbody>
<tr>
<td></td>
<td>*Scheme 2010 payment, Scheme 2011 payment,</td>
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<td><em>Scheme 2012 payment, Scheme 2013 payment</em></td>
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<tr>
<td>Very Fragile (Islands)</td>
<td>£71.35</td>
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<tr>
<td>Fragile (Mainland)</td>
<td>£62.10</td>
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<tr>
<td>Standard</td>
<td>£37.80</td>
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PART II
LESS DISADVANTAGED LAND

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<tr>
<th>FRAGILITY CATEGORY</th>
<th>RATE</th>
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<tr>
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<td>*Scheme 2010 payment, Scheme 2011 payment,</td>
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<td><em>Scheme 2012 payment, Scheme 2013 payment</em></td>
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<tr>
<td>Very Fragile (Islands)</td>
<td>£63.00</td>
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<tr>
<td>Fragile (Mainland)</td>
<td>£54.51</td>
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<tr>
<td>Standard</td>
<td>£32.50</td>
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## SCHEDULE 6

### FRAGILITY CATEGORIES

**PARISH CODE NUMBERS**

**Fragility category - Standard**

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**Regulation 11(3)**
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<th>Fragility category - Very Fragile</th>
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<td>874</td>
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Fragility category - Very Fragile
SCHEDULE 7

AGENCY ARRANGEMENTS AND CROSS BORDER HOLDINGS

Agency arrangements

1. The Scottish Ministers may, with the agreement of any competent authority, arrange for any of their functions under these Regulations in relation to any claim to be exercised on their behalf by that competent authority.

2. The Scottish Ministers may also agree to exercise functions on behalf of another competent authority corresponding to those which are exercisable by the Scottish Ministers under these Regulations.

3. Any such arrangement shall be in writing and be signed by or on behalf of the Scottish Ministers and the competent authority and any such arrangement may be subject to such conditions (including conditions as to the costs and charge for costs) as may be agreed from time to time.

Set off

4. Without prejudice to the amount of any sum payable by the Scottish Ministers to any other competent authority, the amount of any sum payable by the Scottish Ministers, whether as principal or agent, by way of a specified payment may be set off against the amount of any sum recoverable by the Scottish Ministers, whether as principal or agent.

Calculation of payments in respect of cross border holdings

5. Where any holding in respect of which a claim has been made is a cross border holding, the Scottish Ministers may, on such occasions as they consider fit, in respect of the Scheme Year in question to an applicant less favoured area support for actively farming eligible land, providing the applicant has declared the eligible land in a single application which has been treated as a valid application by the competent authority concerned.

6. Whether the active farming undertaken on the eligible land is an integral part of the management of the whole holding or independently managed, the Scottish Ministers will only pay less favoured area support in respect of the active farming actually undertaken on eligible land defined as a less favoured area for the purposes of these Regulations.

7. For cross border holdings where the applicant has submitted a declaration of eligible land to another competent authority, the Scottish Ministers will apply the standard rate of payment.

8. Applicants in respect of cross border holdings are required to supply such information as authorised persons may reasonably require to assess the active farming actually undertaken on eligible land defined as a less favoured area for the purposes of these Regulations.

9. All conditions applying to applicants in respect of holdings lying wholly within the less favoured areas apply equally to applicants in respect of cross border holdings.
**SCHEDULE 8  Regulations 10(1), 10(2) and 10(3)**

**ENTERPRISE MIX**

<table>
<thead>
<tr>
<th>Enterprise mix</th>
<th>Hectare multiplier</th>
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</thead>
<tbody>
<tr>
<td>If 50% or more of livestock units are cattle</td>
<td>1.70</td>
</tr>
<tr>
<td>If 10% or more, but less than 50% of livestock units are made of cattle</td>
<td>1.35</td>
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EXPLANATORY NOTE
(This note is not part of the Regulations)


These Regulations apply to holdings in respect of which the Scottish Ministers are the competent authority under the Common Agricultural Policy Single Payment and Support Schemes (Integrated Administration and Control System) Regulations 2009 (S.I. 2009/3263) (regulation 1(3)).

Eligibility for payment of LFAS is dependent upon the applicant giving an undertaking and meeting the criteria set out in regulation 3(1). It can only be paid to an applicant who actively farms eligible land (“actively farms” is defined in regulation 2(1) and “eligible land” is defined in regulation 5). No payment will be made where the amount of land is less than 3 hectares (regulation 4). There is provision at regulation 6 to determine to whom payment should be made where a holding is transferred during a Scheme Year.

LFAS is paid for eligible hectares on farms in Scottish less favoured areas at specified rates (regulations 7 and 11). The rate is fixed according to the grazing category (regulation 8 and Schedule 3) and the fragility category of the parish in which the main farm of the applicant lies (regulation 11(3) and Schedule 6).

The area of land on which LFAS is paid is normally the area of eligible land calculated in accordance with the formula set out in regulation 8(1) (the “unadjusted payable area”). The manner in which the area of unadjusted payable area is calculated will depend on the grazing category of that land (regulation 8(2)). The grazing category is allocated according to the historical stocking density of the applicant’s land known as the “base year stocking density” (regulation 8(3) and (4)).

Where the applicant has a stocking density which is above the maximum stocking density or below the minimum stocking density, the area of eligible land used to calculate the “unadjusted payable area” in regulation 8(1) is modified in accordance with regulation 9(2) and (3). The maximum and minimum stocking densities are defined in regulation 2(1). Stocking density for the purposes of regulation 9 will be based on the applicant’s 2009 livestock figures (regulation 9(4) and (5)). Regulation 9(7) makes provision to allow the Scottish Ministers to determine the stocking density where an applicant has not been able to achieve the minimum stocking because of slaughter in consequence of an epizootic disease.

Where more than 10% of the livestock maintained by the applicant (based on 2009 figures) was made up of cattle, the area of land on which LFAS will be paid will be increased in accordance with the adjustment set out in regulation 10 and Schedule 8.

Regulation 12 fixes a minimum payment of £385 for Scheme 2010-2013 payments (prior to the deduction of any penalties under Commission Regulation 1975/2006). Regulation 13 contains powers of enforcement. Regulation 15 provides for withholding or recovery of LFAS where there is a breach of the rules of the LFAS Scheme. Regulation 16 makes provision as to the publication of guidance. Regulations 19 to 22 deal with offences and penalties.

Regulations 23 and 24 deal with an applicant’s right of appeal against decisions taken by the Scottish Ministers as regards eligibility of the holding.

Regulation 25 amends the Rural Payments (Appeals) (Scotland) Regulations 2009 to make a correction to paragraph 13 of the Schedule to those Regulations and inserts a new paragraph 13A.
to provide for an applicant’s right of appeal against decisions taken by the Scottish Ministers under these Regulations.

Regulation 26(1) revokes the 2007 Regulations and amending instruments with the exception of regulation 26(2) of the 2007 Regulations. Regulation 26(2) of these Regulations makes a savings provision to ensure that Scheme 2007, Scheme 2008 and Scheme 2009 payments within the meaning of the 2007 Regulations as amended continue to have effect as if those Regulations had not been revoked.
The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the European Fisheries Fund (Grants) (Scotland) Amendment Regulations 2010 and shall come into force on 2nd October 2010.

Amendment of the European Fisheries Fund (Grants) (Scotland) Regulations 2007

2.—(1) The European Fisheries Fund (Grants) (Scotland) Regulations 2007(b) are amended in accordance with this regulation.

(2) In regulation 1 (citation, commencement and extent), for paragraph (2) there is substituted—

“(2) Subject to regulation 13 these Regulations extend to Scotland only. Insofar as they extend beyond Scotland, they do so only as a matter of Scots law.”.

(3) In regulation 2 (interpretation) in paragraph (1)—

(a) the words “unless the context otherwise requires” are omitted;

(b) for the definition of “the Commission” substitute—

““the Commission” means the European Commission;”;

(c) for the definition of “Community aid” substitute—

““EU aid” means aid towards eligible expenditure available from the European Fisheries Fund and payable in accordance with Council Regulation 1198/2006 and Commission Regulation 498/2007;”;

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3) which was amended by the Legislative and Regulatory Reform Act 2006 (c. 51) (“the 2006 Act”), section 27(4). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1. The function conferred upon a Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(b) S.S.I. 2007/307.
(d) for the definition of “Community fishing vessel” substitute—

““EU fishing vessel” means a fishing boat flying the flag of and registered in a Member State of the European Union;’’;

(e) for the definition of “financial assistance” substitute—

“financial assistance” means any amount by way of grant or EU aid;’’;

(f) for the definition of “grant” substitute—

“grant” means a payment made under these Regulations in addition to any EU aid and includes a payment towards eligible expenditure;’’ and

(g) for the definition of “relevant operation” substitute—

““relevant operation” means an investment, project or action which is eligible for EU aid; and’’.

(4) In regulation 3 (financial assistance)—

(a) in paragraphs (1) and (2)(a) for “Community aid” substitute “EU aid”; and

(b) in paragraph (1)(a)(ii), before “expenditure incurred” insert “in the case of an application for financial assistance which comprises eligible expenditure,”.

(5) In regulation 6 (eligibility and claims for payment of financial assistance)—

(a) in paragraph (1), for “15” substitute “14”;

(b) in paragraph (2)(a), before “satisfactory evidence” insert “in the case of an application for financial assistance which comprises eligible expenditure,”; and

(c) in paragraph (2)(b), before “satisfactory evidence” insert “in the case of all applications for financial assistance,”.

(6) In regulation 13 (powers of authorised officers)—

(a) in paragraph (1), after “for those purposes” insert “in relation to any Scottish fishing boat, wherever it may be, and’’;

(b) in paragraph (1)(f), for “Community aid” substitute “EU aid”; and

(c) in paragraph (8), before the definition of “premises”, insert—

““Scottish fishing boat” means a fishing vessel which is registered in the register maintained under section 8 of the Merchant Shipping Act 1995(a) and whose entry in the register specifies a port in Scotland as the port to which the vessel is to be treated as belonging;’’.

(7) In regulation 14 (reduction, withholding and recovery of financial assistance)—

(a) in paragraph (1)(h), for “Community aid” substitute “EU aid”; and

(b) in paragraph (2)(f), for “Community fishing vessel” substitute “EU fishing vessel”.

RICHARD LOCHHEAD
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
8th September 2010

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(a) 1995 c.21.
EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations amend the European Fisheries Fund (Grants) (Scotland) Regulations 2007 (“the principal Regulations”). They make amendments designed to ensure that Scottish Ministers may pay public aid as part of the national contribution required when assistance from the European Fisheries Fund is granted, whether or not the amount of such aid is calculated by reference to eligible expenditure incurred by the beneficiary.

The regulations replace references to “Community aid”, “Community fishing vessel” and “European Community” with references to “EU aid”, “EU fishing vessel” and “European Union” and the definition of “the Commission” to reflect changes in terminology following the coming into force of the Lisbon Treaty on 1st December 2009 (regulations 2(3), (b), (c), (d), (e), (f) and (g), and 2(6)(b)). Regulation 2(3)(a) and 2(5)(a) make minor clarifying amendments to the principal Regulations.

They substitute a new definition of “grant” in the principal Regulations to provide that a grant is a payment made under these Regulations and includes a payment towards eligible expenditure (regulation 2(3)(f)).

They amend the principal Regulations to provide that the circumstances in which financial assistance may be paid includes applications made under regulation 5, which comprise an application for eligible expenditure (regulation 2(4)(b)).

They introduce amendments which will provide that financial assistance may be paid to an applicant who provides evidence of expenditure incurred, (where a payment towards eligible expenditure is sought), and (in the case of all applications made for financial assistance) evidence that the approved operation has been executed (regulation 2(5)).

They also amend the powers available to authorised officers to enforce the principal Regulations, to provide that such powers are exercisable by an authorised officer in relation to Scottish fishing boats wherever they may be (regulation 2(6)(a) and (c)) and an amendment is also made to the extent provisions of the principal Regulations to reflect these changes (regulation 2(2)).

No Regulatory Impact Assessment has been prepared in respect of these Regulations.
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.

Anders Wall Award

Subject - Anders Wall Award is a prize granted to individuals who have made a special contribution to the rural environment within the European Union.
Eligibility criteria - Importance at local, national and European level is expected, use of quality instruments and management practices which contribute to the improvement of the quality of the environment.
Selection criteria - Their achievements should preferably include the following elements: preserving and enhancing the landscape; providing biodiversity; preserving the countryside’s cultural heritage; and contributing to sustainable economic local development.
Prize description - The landowner of the selected project is receiving a prize of €10,000.
Deadline for Entries - 31 December 2010

You can find the application form and further details on our website: http://www.elo.org ABOUT ELO >>> AWARDS >>> ANDERS WALL

Increase in the EU support for the beekeeping sector

The European Commission this week approved the national programmes of the 27 Member States to improve the production and marketing of apiculture products for the period 2011-2013. The EU contribution to the financing of the programmes has increased by almost 25% compared to the previous period (2008-2010), from € 26 million to € 32 million per year.

Marine Knowledge 2020

European Maritime Affairs and Fisheries Commissioner Maria Damanaki has this week unveiled the Commission's Marine Knowledge 2020 proposal to unlock the potential of Europe's marine knowledge. The proposal can be found by using the following link:
http://ec.europa.eu/maritimeaffairs/

Westminster News

This week The Environment, Food and Rural Affairs Committee announced that they will hold this oral evidence session in relation to the Future Floods and Water Management Legislation inquiry on 16 October. A link to the inquiry can be found here:
Environment, Food and Rural Affairs Committee Announcement Farming in the Uplands – The Commission for Rural Communities (CRC) published its comprehensive report on the future of England's upland communities—"High ground, high potential"—earlier this year. The Environment, Food and Rural Affairs Committee will undertake a short inquiry into this report, before the abolition of the CRC, focusing on the issues facing farmers in the uplands and their views on the CRC’s recommendations. Please see below for a link to the report:
http://ruralcommunities.gov.uk/2010/07/02/upland-fullreport/