RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

AGENDA

21st Meeting, 2010 (Session 3)

Wednesday 6 October 2010

The Committee will meet at 10.00 am in Committee Room 6.

1. **Decision on taking business in private:** The Committee will decide whether to take item 8 in private.

2. **Subordinate legislation:** The Committee will take evidence on the Welfare of Farmed Animals (Scotland) Regulations 2010 (SSI 2010/draft); and the Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2010 (SSI 2010/draft) from—

   Richard Lochhead MSP, Cabinet Secretary for Rural Affairs and the Environment, Ian Strachan, Head of Veterinary and Science Team, Andrew Voas, Veterinary Adviser, Animal Health and Welfare Division, and Kirsten Simonnet-Lefevre, Legal Advisor, Scottish Government.

3. **Subordinate legislation:** Richard Lochhead MSP (Cabinet Secretary for Rural Affairs and the Environment) to move S3M-6988— That the Rural Affairs and Environment Committee recommends that the Welfare of Farmed Animals (Scotland) Regulations 2010 (SSI/2010 draft) be approved.

4. **Subordinate legislation:** Richard Lochhead MSP (Cabinet Secretary for Rural Affairs and the Environment) to move S3M-6989— That the Rural Affairs and Environment Committee recommends that the Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations (SSI/2010 draft) be approved.

5. **Fisheries:** The Committee will take evidence on fishing opportunities for the Scottish fleet in 2011 from—

   Bertie Armstrong, Chief Executive, Scottish Fishermen's Federation;

   Ian Gatt, Chief Executive, Scottish Pelagic Fishermen's Association;
6. **Wildlife and Natural Environment (Scotland) Bill**: The Committee will take evidence on the Bill at Stage 1 from—

   Dr Harold Thompson, British Veterinary Association;

   Professor Colin Reid, Professor of Environmental Law, Dundee University;

   Patrick Stirling-Aird, Scottish Raptor Study Groups.

7. **Wildlife and Natural Environment (Scotland) Bill (in private)**: The Committee will consider the evidence heard earlier in the meeting.

8. **Fisheries (in private)**: The Committee will consider the evidence heard earlier in the meeting.

   Peter McGrath
   Clerk to the Rural Affairs and Environment Committee
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   The Scottish Parliament
   Edinburgh
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The papers for this meeting are as follows—

**Agenda Item 3**

*Welfare of Farmed Animals (Scotland) Regulations 2010 (SSI 2010/draft)*

**Agenda Item 4**

*Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations (SSI 2010/draft)*

**Agenda Item 5**

SPICe briefing on Fisheries

Briefing Paper (Private Paper)

**Agenda Item 6**

Written submissions for 6 October - WANE Bill

Briefing Paper (Private Paper)

**For Information**

Recent Developments

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2010 No.

ANIMALS

The Welfare of Farmed Animals (Scotland) Regulations 2010

Made - - - - 2010

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 26 of the Animal Health and Welfare (Scotland) Act 2006(a) and all other powers enabling them to do so.

In accordance with section 26(5) of that Act, the Scottish Ministers have consulted such persons appearing to them to represent relevant interests and such other persons as they consider appropriate.

In accordance with section 51(3) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Welfare of Farmed Animals (Scotland) Regulations 2010 and come into force on the day after the day on which they are made.

Interpretation

2.-(1) In these Regulations—

“animal welfare code” means a code of practice issued under section 37 of the Animal Health and Welfare (Scotland) Act 2006(b);

“calf” means a bovine animal under 6 months old;

“conventionally reared meat chicken” means an animal of the species Gallus gallus that is kept for meat production, other than one—

(a) that is on a holding—

(i) with fewer than 500 such animals; or

(ii) with only breeding stocks of such animals;

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(a) 2006 asp 11.
(b) This includes Codes of Recommendations issued under section 3 of the Agriculture (Miscellaneous Provisions) Act 1968 (c.34) and saved by article 4(2) of the Animal Health and Welfare (Scotland) Act 2006 (Commencement No. 1, Savings and Transitional Provisions) Order 2006 (S.S.I. 2006/482).
(b) that is on a hatchery;
(c) in relation to which the term “Extensive indoor (barn-reared)”, “Free range”, “Traditional free range” or “Free range – total freedom” can be used within the meaning of point (b), (c), (d) or (e) of Annex V to Commission Regulation (EC) No. 543/2008 laying down detailed rules for the application of Council Regulation (EC) No. 1234/2007 as regards the marketing standards for poultrymeat(a); or
(d) that is organically reared in accordance with Council Regulation (EC) No. 834/2007 on organic production and labelling of organic products and repealing Regulation (EEC) No. 2092/91(b);

“inspector” means a person appointed as an inspector by the Scottish Ministers or a local authority for the purposes of these Regulations;

“laying hen” means an animal of the species Gallus gallus which has reached laying maturity and is kept for production of eggs not intended for hatching;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(c);

“person responsible” means a person responsible for an animal in terms of section 18 of the Animal Health and Welfare (Scotland) Act 2006 and includes a keeper and a food business operator; and

“pig” means an animal of the porcine species of any age, kept for breeding or fattening.

(2) Expressions used in these Regulations which are not defined in these Regulations and are used in the following Directives, have the meaning they bear in those Directives—

(a) in relation to laying hens, Council Directive 1999/74/EC laying down minimum standards for the protection of laying hens(d);
(b) in relation to conventionally reared meat chickens, Council Directive 2007/43/EC laying down minimum rules for the protection of chickens kept for meat production(e);
(c) in relation to calves, Council Directive 2008/119/EC laying down minimum standards for the protection of calves(f); and

Animals to which these Regulations apply

3.—(1) These Regulations apply to farmed animals only.

(2) In these Regulations, a “farmed animal” means an animal bred or kept for the production of food, wool or skin or for other farming purposes, but not including—

(a) a fish, reptile or amphibian;
(b) an animal whilst at, or solely intended for use in, a competition, show or cultural or sporting event or activity;
(c) an experimental or laboratory animal; or
(d) an animal living in the wild.

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(c) 1994 c.39, amended by the Environment Act 1995 (c.25), section 120(1) and Schedule 22, paragraph 232(1).
(g) O.J. No. L 47, 18.2.2009, p.5.
Appointment of competent authority

4. The Scottish Ministers are the competent authority for the purposes of—
   (a) Council Directive 98/58/EC concerning the protection of animals kept for farming purposes;
   (d) Council Directive 2008/119/EC laying down minimum standards for the protection of calves; and

Duties on a person responsible for a farmed animal

5.—(1) A person responsible for a farmed animal must ensure that the conditions under which that animal is bred or kept comply with the requirements set out in Schedule 1.
   (2) In relation to the duty in paragraph (1), a person responsible for a farmed animal must have regard to its—
      (a) species;
      (b) degree of development;
      (c) adaptation and domestication; and
      (d) physiological and ethological needs in accordance with established experience and scientific knowledge.

Additional duties on a person responsible for animals and at slaughterhouses

6.—(1) A person responsible for—
      (a) conventionally reared meat chickens must comply with the requirements set out in Schedule 2;
      (b) laying hens kept on holdings with 350 or more laying hens must comply with the requirements set out in Schedule 3 (as appropriate to the system or systems used on the premises);
      (c) calves confined for rearing and fattening must comply with the requirements set out in Schedule 4;
      (d) cattle must comply with the requirements set out in Schedule 5;
      (e) pigs must comply with the requirements set out in Schedule 6; and
      (f) rabbits must comply with the requirements set out in Schedule 7.
   (2) In relation to monitoring and follow-up at the slaughterhouse, Part 3 of Schedule 2 has effect.

Animal welfare codes

7. A person responsible for a farmed animal—
   (a) must not attend to that animal unless that person is acquainted with any relevant animal welfare code and has access to that code while attending to that animal; and

must take all reasonable steps to ensure that a person employed or engaged by the person responsible does not attend to that animal unless that employed or engaged person—

(i) is acquainted with any relevant animal welfare codes relating to the animal being attended to;
(ii) has access to a copy of those codes while that person is attending to that animal; and
(iii) has received instruction and guidance on those codes.

Powers of an inspector

8.—(1) Where an inspector considers that a farmed animal is being kept in contravention of any provision of these Regulations, the inspector may serve a notice on the person who in the opinion of the inspector is responsible for that animal requiring that person within the period stated in the notice to take any action that the inspector considers to be reasonably necessary to ensure compliance with these Regulations and the inspector shall give reasons for requiring that action to be taken.

(2) An inspector may enter any premises except domestic premises at all reasonable times, on producing, if so required, evidence of that inspector’s authority, for the purpose of ascertaining whether these Regulations are being, or have been, complied with and, in particular, may—

(a) inspect and copy any records (in whatever form they are held) kept under these Regulations or remove such records to enable them to be copied;
(b) inspect and check the operation of any computer and any associated apparatus or material which is, or has been, in use in connection with the records;
(c) for that purpose, require any person having charge of, or otherwise concerned with, the operation of the computer, apparatus or material to afford the inspector such assistance as the inspector may reasonably require (including providing the inspector with any necessary passwords);
(d) where a record is kept by means of a computer, require the record to be produced in a form in which it may be taken away;
(e) examine, or require the examination of, any farmed animal kept on the premises; and
(f) take on to the premises such persons to give the inspector such assistance and such equipment as the inspector considers necessary.

(3) If a Sheriff or Justice of the Peace is satisfied by evidence on oath laid by any inspector that there are reasonable grounds for suspecting that an offence under these Regulations has been or is being committed at any domestic premises, the Sheriff or Justice may issue a warrant authorising any inspector to enter those premises, by reasonable force if need be, and inspect them and any animals or any thing found there.

(4) A warrant issued under paragraph (3) above—

(a) may authorise persons to accompany the person who is executing the warrant; and
(b) shall continue in force for the period of one month commencing with the date of issue.

(5) The power of entry conferred by the warrant may be exercised at all reasonable times and any person entering the premises in exercise of that power shall—

(a) produce the warrant if so required; and
(b) comply with such precautions (if any) as the Sheriff or Justice of the Peace may specify to prevent the spread among animals of infectious or contagious diseases.

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

Obstruction

9. If any person intentionally obstructs an inspector (or a person assisting an inspector in accordance with regulation 8(2)(f)) in the exercise of the powers conferred by regulation 8 that
person is guilty of an offence and will be liable on summary conviction to a fine not exceeding level 4 on the standard scale, or to imprisonment for a term not exceeding 3 months, or both.

Powers of entry: representative of the European Commission

10. An inspector exercising powers of entry under regulation 8 may be accompanied by a representative of the European Commission acting for the purposes of—
   (a) Council Directive 98/58/EC concerning the protection of animals kept for farming purposes(a);
   (b) Council Directive 1999/74/EC laying down minimum standards for the protection of laying hens(b);
   (c) Council Directive 2007/43/EC laying down minimum rules for the protection of chickens kept for meat production(c);
   (d) Council Directive 2008/119/EC laying down minimum standards for the protection of calves(d); or

Offences

11. A person responsible for animals who—
   (a) without lawful authority or reasonable excuse—
      (i) contravenes or fails to comply with any provision of these Regulations;
      (ii) fails to comply with a notice served under regulation 8 within the time specified in the notice;
   (b) makes any entry in a record, or gives any information for the purposes of these Regulations which that person knows to be false in any material particular or, for those purposes, recklessly makes a statement or recklessly gives any information which is false in any material particular; or
   (c) causes or permits any of the above,

is guilty of an offence and will be liable on summary conviction to a fine not exceeding level 4 on the standard scale, or to imprisonment for a term not exceeding 3 months, or both.

Enforcement

12. The Scottish Ministers or the local authority may appoint inspectors for the purposes of enforcing these Regulations.

Revocations

13. The instruments specified in Schedule 8 are revoked.

(c) O.J. No. L 182, 12.7.2007, p.19.
(e) O.J. No. L 47, 18.2.2009, p.5.
Savings

14. The Welfare of Farmed Animals (Scotland) Regulations 2000(a) continue to have effect in relation to any notices served under regulation 11 of those Regulations and any offence under regulation 13 of those Regulations committed prior to the coming into force of these Regulations.

St Andrew’s House,
Edinburgh

A member of the Scottish Executive

2010

SCHEDULE 1

GENERAL CONDITIONS UNDER WHICH FARmed ANIMALS MUST BE BRED OR KEPT

Staffing

1. Animals must be cared for by a sufficient number of staff who possess the appropriate ability, knowledge and professional competence.

Inspection

2.—(1) Animals kept in husbandry systems in which their welfare depends on frequent human attention must be adequately inspected at least once a day to check that they are in a state of well-being.

(2) Animals kept in systems other than husbandry systems in which their welfare depends on frequent human attention must be inspected at intervals sufficient to avoid any suffering.

(3) In the following cases, it is sufficient for the purposes of this paragraph to comply with the following specific provisions:—
   (a) in the case of conventionally reared meat chickens, paragraph 11 of Schedule 2;
   (b) in the case of laying hens kept in any system, paragraph 2 of Schedule 3;
   (c) in the case of calves, paragraph 2 or 3 of Schedule 4; or
   (d) in the case of pigs, paragraph 2 of Schedule 6.

3. Where animals are kept in a building, adequate lighting (whether fixed or portable) must be available to enable them to be adequately inspected at any time.

4. Where any animals (other than laying hens kept in the systems referred to in Parts 3, 4 and 5 of Schedule 3) are kept in a building they must be kept on, or have access at all times to, a lying area which is well maintained with dry bedding or litter or a well-drained area for resting.

5. Any animals which appear to be ill or injured—
   (a) must be cared for appropriately without delay; and
   (b) where they do not respond to such care, veterinary advice must be obtained as soon as reasonably practicable.

6. Where necessary, sick or injured animals must be isolated in suitable accommodation with, where appropriate, dry comfortable bedding.

Record keeping

7. A record must be maintained of—
   (a) any medicinal treatment given to animals; and
   (b) the number of mortalities found on each inspection of animals.

8. The record referred to in paragraph 7 must be retained for a period of at least 3 years from the date on which the medicinal treatment was given, or the date of the inspection, as the case may be, and must be made available to an inspector on request.
Freedom of movement

9. The freedom of movement of animals, having regard to their species and in accordance with established experience and scientific knowledge, must not be restricted in such a way as to cause them unnecessary suffering or injury.

10. Where animals are continuously or regularly tethered or confined, they must be given the space appropriate to their physiological and ethological needs in accordance with established experience and scientific knowledge.

Buildings and accommodation

11. Materials used for the construction of accommodation and, in particular, for the construction of pens, cages, stalls and equipment with which the animals may come into contact, must not be harmful to them and must be capable of being thoroughly cleaned and disinfected.

12. Accommodation and fittings for securing animals shall be constructed and maintained so that there are no sharp edges or protrusions likely to cause injury to them.

13. Air circulation, dust levels, temperature, relative air humidity and gas concentrations must be kept within limits which are not harmful to the animals.

14. Animals kept in buildings must not be kept in permanent darkness.

15. Where the natural light available in a building is insufficient to meet the physiological and ethological needs of any animals being kept in it then appropriate artificial lighting must be provided.

16. Animals kept in buildings must not be kept without an appropriate period of rest from artificial lighting.

Animals not kept in buildings

17. Animals not kept in buildings must, where necessary and possible, be given protection from adverse weather conditions, predators and risks to their health and, at all times, have access to a well-drained lying area.

Automatic or mechanical equipment

18. All automated or mechanical equipment essential for the health and well-being of the animals must be inspected at least once a day to check that there is no defect in it.

19. Where any defect in automated or mechanical equipment of the type specified in paragraph 18 is discovered, it must be rectified immediately, or if that is impossible, appropriate steps must be taken to safeguard the health and well-being of the animals pending the rectification of such defects including the use of alternative methods of feeding and watering and methods of providing and maintaining a satisfactory environment.

20. Where the health and well-being of animals is dependent on an artificial ventilation system—

(a) provision must be made for an appropriate back-up system to guarantee sufficient air renewal to preserve the health and well-being of the animals in the event of failure of the system; and

(b) an alarm system (which will operate even if the principal electricity supply to it has failed) must be provided to give warning of any failure of the system.

21. The back-up system referred to in paragraph 20(a) must be thoroughly inspected, and the alarm system referred to in paragraph 20(b) tested, in each case not less than once every 7 days in order to check that there is no defect in it, and, if any defect is found in such system or alarm
whether or not on it being inspected or tested in accordance with this paragraph), it must be
rectified forthwith.

**Feed, water and other substances**

22. Animals must be fed a wholesome diet which is appropriate to their age and species and
which is fed to them in sufficient quantity to maintain them in good health, to satisfy their
nutritional needs and to promote a positive state of well-being.

23. Animals must not be provided with food or liquid in a manner, nor must such food or liquid
contain any substance, which may cause them unnecessary suffering or injury.

24. All animals must have access to feed at intervals appropriate to their physiological needs
(and, in any case, at least once a day), except where a veterinary surgeon acting in the exercise of
that profession otherwise directs.

25. All animals must either have access to a suitable water supply and be provided with an
adequate supply of fresh drinking water each day or be able to satisfy their fluid intake needs by
other means.

26. Feeding and watering equipment must be designed, constructed, placed and maintained so
that contamination of food and water and the harmful effects of competition between animals are
minimised.

27. No other substance, with the exception of those given for therapeutic or prophylactic
purposes or for the purpose of zootechnical treatment, may be administered to animals unless it
has been demonstrated by scientific studies of animal welfare or established experience that the
effect of that substance is not detrimental to the health or welfare of the animals; and in this
paragraph “zootechnical treatment” has the meaning given by Article 1(2)(c) of Council
Directive 96/22/EC(a) concerning the prohibition on the use in stockfarming of certain substances
having a hormonal or thyrostatic action and of beta-agonists, and repealing Directives
81/602/EEC, 88/146/EEC and 88/299/EEC.

**Breeding procedures**

28. —(1) Natural or artificial breeding or breeding procedures which cause, or are likely to
cause, suffering or injury to any of the animals concerned must not be practised.

(2) Sub-paragraph (1) does not preclude the use of natural or artificial breeding procedures
which are likely to cause minimal or momentary suffering or injury or that might necessitate
interventions which would not cause lasting injury.

29. No person may keep an animal for farming purposes unless it can reasonably be expected,
on the basis of its genotype or phenotype, that it can be kept without detrimental effect on its
health or welfare.

**Electrical immobilisation**

30. No person may apply an electrical current to any animal for the purposes of immobilisation.

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SCHEDULE 2
Regulation 6(1)(a) and (2)

ADDITIONAL CONDITIONS THAT APPLY TO THE KEEPING OF CONVENTIONALLY REARED MEAT CHICKENS

PART 1
Interpretation

Interpretation

1. In this Schedule—
   “chicken” means a conventionally reared meat chicken;
   “cumulative daily mortality rate” means the sum of daily mortality rates;
   “daily mortality rate” means the number of chickens which have died in a house on the same day including those that have been culled either because of disease or because of other reasons, divided by the number of chickens present in the house on that day, multiplied by 100;
   “food business operator” has the same meaning as it has in Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(a);
   “holding” means a production site on which chickens are kept;
   “house” means a building on a holding where a flock of chickens is kept;
   “keeper” means any person responsible for or in charge of chickens in terms of contract or by law whether on a permanent or temporary basis;
   “litter” means any material which is dry and friable on the surface and enables the chickens to satisfy their ethological needs;
   “official veterinarian” has the same meaning as it has in Regulation 854/2004;
   “stocking density” means the total live weight of chickens which are present in a house at the same time per m² of usable area;
   “usable area” means a littered area accessible to the chickens at any time; and
   “working day” means a day other than a Saturday or a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(d).

(d) 1971 c.80.
PART 2
General additional conditions

Training

2.—(1) A keeper must hold—
(a) a certificate recognised by the Scottish Ministers for the purposes of Article 4(3) or (4) of Council Directive 2007/43/EC(a) laying down minimum rules for the protection of chickens kept for meat production (certificates of completion of training courses); or
(b) written confirmation from the Scottish Ministers that the keeper’s experience is deemed to be equivalent to the certificate described in sub-paragraph (1)(a).

(2) The Scottish Ministers must publish from time to time, in such a way as they consider appropriate, a list of certificates recognised by them for the purposes of sub-paragraph (1).

Notification of stocking density

3.—(1) A keeper must ensure that the Scottish Ministers are notified of the intended stocking density of each house where it is intended to keep chickens at a density of greater than 33 kilograms per m² of usable area, and of any subsequent change to that notified density.

(2) Notification must be made in such manner and form as the Scottish Ministers may require.

(3) Notification (including notification of any change) must be given at least 15 working days before stocking at that density or changed density takes place.

Stocking density limits

4.—(1) Unless sub-paragraph (2) applies, the stocking density must not exceed 33 kilograms per m² of usable area.

(2) A stocking density in excess of 33 kilograms and up to 39 kilograms per m² of usable area may be used if the requirements of paragraph 5 are complied with.

Requirements for higher stocking densities

5. The requirements of this paragraph are that the keeper must—
(a) maintain and, on request, make available documentation in the house giving a detailed description of the production systems, including information on technical details of the house and its equipment, including—
(i) a plan of the house including the dimensions of the surfaces occupied by the chickens;
(ii) ventilation and any relevant cooling and heating system (including their location), and a ventilation plan, detailing target air quality parameters (such as airflow, air speed and temperature);
(iii) feeding and watering systems (and their location);
(iv) alarm and backup systems in the event of a failure of any equipment essential for the health and well-being of the chickens;
(v) floor type and type of litter normally used; and
(vi) records of technical inspections of the ventilation and alarm systems;
(b) keep the documentation referred to in sub-paragraph (a) updated;

(a) O.J. No. L 182, 12.7.2007, p.19.
(c) ensure that each house of a holding is equipped with ventilation and, if necessary, heating and cooling systems designed, constructed and operated in such a way that—

(i) the concentration of ammonia does not exceed 20 parts per million and the concentration of carbon dioxide does not exceed 3000 parts per million, when measured at the level of the chickens’ heads;
(ii) when the outside temperature measured in the shade exceeds 30°C, the inside temperature does not exceed the outside temperature by more than 3°C; and
(iii) when the outside temperature is below 10°C, the average relative humidity measured inside the house during a continuous period of 48 hours does not exceed 70%.

Feed and water

6.—(1) Drinkers must be positioned and maintained in such a way that spillage is minimised.

(2) Feed must be either continuously available or meal fed.

(3) Feed must not be withdrawn from the chickens more than 12 hours before the expected slaughter time.

Litter

7. All chickens must have permanent access to litter.

Ventilation and heating

8. Ventilation must be sufficient to avoid overheating and, in combination with heating systems, must be sufficient to remove excessive moisture.

Noise

9. In all houses—

(a) the sound level must be minimised; and

(b) ventilation fans, feeding machinery or other equipment must be constructed, placed, operated and maintained in such a way that they cause the least possible amount of noise.

Light

10.—(1) All houses must have lighting with an intensity of at least 20 lux during the lighting periods, measured at bird eye level and illuminating at least 80% of the usable area.

(2) A temporary reduction from that lighting level is permitted where necessary following veterinary advice.

(3) Within 7 days from the time when the chickens are placed in the house and until 3 days before the expected time of slaughter, the lighting must follow a 24-hour rhythm and include periods of darkness lasting at least 6 hours in total, with at least one uninterrupted period of darkness of at least 4 hours, excluding dimming periods.

Inspection

11.—(1) A keeper must ensure that all chickens kept on the holding are inspected at least twice a day.

(2) Special attention must be paid to signs indicating a reduced level of animal health or welfare.

(3) Chickens that are seriously injured or show evident signs of health disorder (including those having difficulties in walking, severe ascites or severe malformations), and are likely to suffer, must receive appropriate treatment or be culled immediately.
Cleaning and disinfection

12. After the final depopulation of a house and before a new flock is introduced—
   (a) any part of a house, and any equipment or utensil, which has been in contact with
   chickens must be thoroughly cleaned and disinfected; and
   (b) all litter must be removed and clean litter provided.

Record keeping

13.—(1) The keeper must maintain, for each house in which chickens are kept, a record of—
   (a) the number of chickens introduced;
   (b) the usable area;
   (c) the hybrid or breed of the chickens (if known);
   (d) the number of chickens found dead, with an indication of the causes (if known), as well
       as the number of chickens culled with cause, on each inspection; and
   (e) the number of chickens remaining in the flock following the removal of chickens for sale
       or slaughter.
   (2) The record must be retained for at least 3 years.

PART 3

Monitoring and follow-up at the slaughterhouse

Food chain information and chickens dead on arrival

14.—(1) For the purposes of Section III (food chain information) of Annex II to Regulation
     853/2004, the daily mortality rate and cumulative daily mortality rate and the hybrid or breed of
     chickens from a flock with a stocking density in excess of 33 kilograms per m² of usable area is
     treated as relevant food safety information.
     (2) A food business operator operating a slaughterhouse must—
         (a) under the supervision of the official veterinarian, record the number of chickens from
             such a flock that are dead on arrival at the slaughterhouse; and
         (b) provide that information on request to the official veterinarian.

Identification of poor welfare conditions and follow-up

15.—(1) An official veterinarian conducting controls under Regulation 854/2004 in relation to
     chickens must evaluate the results of the post-mortem inspection to identify possible indications
     of poor animal welfare conditions in the holding or house of origin.
     (2) If the mortality rate of the chickens or the results of the post-mortem inspection are
         consistent with poor animal welfare conditions, the official veterinarian must communicate the
         data to the keeper of those chickens and to the Scottish Ministers without delay.
SCHEDULE 3  
Regulation 6(1)(b)  
ADDITIONAL CONDITIONS THAT APPLY TO THE KEEPING OF LAYING HENS

PART 1  
Interpretation

1. In this Schedule—
   “litter” means any friable material enabling the hens to satisfy their ethological needs;  
   “nest” means a separate space for egg laying, the floor components of which do not include wire mesh that can come into contact with the animals, for an individual hen or for a group of hens; and  
   “usable area” means an area, other than a nesting area, used by laying hens at least 30cm wide with a floor slope not exceeding 14% and with headroom of at least 45cm.

PART 2  
General additional conditions

Inspection

2. All hens must be inspected by the person responsible for the hens at least once a day.

Noise

3. In all systems in which laying hens are kept—
   (a) the sound level must be minimised;  
   (b) constant or sudden noise must be avoided; and  
   (c) ventilation fans, feeding machinery or other equipment must be constructed, placed, operated and maintained in such a way that they cause the least possible amount of noise.

Light

4. All buildings must have—
   (a) light levels sufficient to allow all hens to see one another and be seen clearly, to investigate their surroundings visually and to show normal levels of activity and where there is natural light, light apertures must be arranged in such a way that light is distributed evenly within the accommodation; and  
   (b) after the first days of conditioning and to prevent health and behavioural problems a lighting regime that—  
      (i) follows a 24-hour rhythm and includes an adequate uninterrupted period of darkness lasting about one third of the day, so that the hens may rest and to avoid problems such as immunodepression and ocular anomalies; and  
      (ii) provides a period of twilight of sufficient duration when the light is dimmed so that the hens may settle down without disturbance or injury.
Cleaning and disinfection

5. — (1) Those parts of buildings, equipment or utensils which are in contact with the hens must be thoroughly cleaned and disinfected regularly and, in any case, every time depopulation is carried out and before a new batch of hens is brought in.

(2) While the cages are occupied—
   (a) the surfaces and all equipment must be kept satisfactorily clean;
   (b) droppings must be removed as often as necessary to prevent cross-infection and the build-up of disease carrying organisms; and
   (c) dead hens must be removed every day.

Accommodation

6. Cages must be suitably equipped to prevent hens escaping.

7. Accommodation comprising 2 or more tiers of cages must have devices, or appropriate measures must be taken, to allow inspection of all tiers and removal of hens without difficulty.

8. The design and dimensions of the cage door must be such that an adult hen can be removed without undergoing unnecessary suffering or sustaining injury.

PART 3

Additional conditions applicable for keeping laying hens in conventional cages

Accommodation, feed, water and ethological needs

9. All conventional (unenriched) cage systems must comply with the following requirements of this paragraph:—
   (a) at least 550cm² of cage area, measured in a horizontal plane, which may be used without restriction, in particular not including non-waste deflection plates liable to restrict the area available, must be provided for each laying hen;
   (b) a feed trough which may be used without restriction must be provided and its length must be at least 10cm multiplied by the number of hens in the cage;
   (c) unless nipple drinkers or drinking cups are provided, each cage must have a continuous drinking channel of the same length as the feed trough mentioned in sub-paragraph (b) and where drinking points are plumbed in, at least 2 nipple drinkers or 2 drinking cups must be within reach of each cage;
   (d) cages must be at least 40cm high over at least 65% of the cage area and not less than 35cm at any point;
   (e) floors of cages must be constructed so as to support each of the forward-facing claws of each foot and floor slope must not exceed 14% or 8 degrees when made of rectangular wire mesh and 21.3% or 12 degrees for other types of floor; and
   (f) cages must be fitted with suitable claw-shortening devices.

10. On and after 1st January 2012 no person shall keep any laying hen in any conventional (unenriched) cage system.
PART 4

Additional conditions applicable for keeping laying hens in enriched cages

11. All cage systems (other than those referred to in Part 3) must be enriched to comply with the requirements of this Schedule.

Accommodation

12. Laying hens must have—
   (a) at least 750cm² of cage area per hen, 600cm² of which shall be usable area; the height of the cage other than that above the usable area shall be at least 20cm at every point and no cage shall have a total area that is less than 2000cm²;
   (b) a nest;
   (c) litter such that pecking and scratching are possible; and
   (d) appropriate perches allowing at least 15cm per hen.

Feed

13. A feed trough which may be used without restriction must be provided and its length must be at least 12cm multiplied by the number of hens in the cage.

Water

14. Each cage must have a drinking system appropriate to the size of the group and where nipple drinkers are provided, at least 2 nipple drinkers or 2 drinking cups must be within the reach of each hen.

Inspection

15. To facilitate inspection, installation and depopulation of hens there must be a minimum aisle width of 90cm between tiers of cages and a space of at least 35cm must be allowed between the floor of the building and the bottom tier of cages.

Ethological needs

16. Cages must be fitted with suitable claw-shortening devices.

PART 5

Additional conditions applicable for keeping laying hens in non-cage systems

Feed and water

17. All systems must be equipped in such a way that all laying hens have—
   (a) either linear feeders providing at least 10cm per hen or circular feeders providing at least 4cm per hen;
   (b) either continuous drinking troughs providing 2.5cm per hen or circular drinking troughs providing 1cm per hen, and in addition, where nipple drinkers or drinking cups are used, there must be at least one nipple drinker or cup for every 10 hens and where drinking points are plumbed in, at least 2 drinking cups or 2 nipple drinkers must be within reach of each hen;
   (c) at least one nest for every 7 hens and if group nests are used, there must be at least 1m² of nest space for a maximum of 120 hens;
(d) perches, without sharp edges and providing at least 15cm per hen; perches must not be mounted above the litter; the horizontal distance between perches must be at least 30cm and the horizontal distance between the perch and the wall must be at least 20cm; and
(e) at least 250cm² of littered area per hen, the litter occupying at least one third of the ground surface.

Floors

18. The floors of installations must be constructed so as to support each of the forward-facing claws of each foot.

Accommodation

19. In addition to the requirements of paragraphs 17 and 18—
(a) if systems of rearing are used where the laying hens can move freely between different levels—
   (i) there must not be more than 4 levels;
   (ii) the headroom between the levels must be at least 45cm;
   (iii) the drinking and feeding facilities must be distributed in such a way as to provide equal access for all hens; and
   (iv) the levels must be so arranged as to prevent droppings falling on the levels below; and
(b) if laying hens have access to open runs—
   (i) there must be several popholes giving direct access to the outer area, at least 35cm high and 40cm wide and extending along the entire length of the building; in any case, a total opening of 2m must be available per group of 1,000 hens; and
   (ii) such runs must be of an area appropriate to the stocking density and to the nature of the ground, in order to prevent any contamination, and equipped with shelter from inclement weather and predators and, if necessary, appropriate drinking troughs.

20. Subject to paragraph 21, the stocking density must not exceed 9 laying hens per square metre of usable area.

21. Where on 3rd July 2002 the establishment applied a system where the usable area corresponded to the available ground surface a stocking density of 12 hens per square metre is authorised until 31st December 2011.
SCHEDULE 4

ADDITIONAL CONDITIONS THAT APPLY TO THE KEEPING OF CALVES CONFINED FOR REARING AND FATTENING

Accommodation

1.—(1) A calf must not be confined in an individual stall or pen after the age of 8 weeks unless a veterinary surgeon certifies that its health or behaviour requires it to be isolated in order to receive treatment.

(2) The width of any individual stall or pen for a calf must be at least equal to the height of the calf at the withers, measured in the standing position, and the length must be at least equal to the body length of the calf, measured from the tip of the nose to the caudal edge of the *tuber ischii* (pin bone), multiplied by 1.1.

(3) Individual stalls or pens for calves (except for those isolating sick animals) must have perforated walls which allow calves to have direct visual and tactile contact.

(4) For calves kept in groups, the unobstructed space allowance available to each calf must be—
   (a) at least 1.5m² for each calf with a live weight of less than 150 kg;
   (b) at least 2m² for each calf with a live weight of 150 kg or more but less than 200 kg; and
   (c) at least 3m² for each calf with a live weight of 200 kg or more.

(5) Sub-paragraphs (1) to (4) do not apply to—
   (a) holdings with fewer than 6 calves; or
   (b) calves kept with their mothers for suckling.

(6) Each calf must be able to stand up, turn around, lie down, rest and groom itself without hindrance.

(7) Each calf that is kept on a holding on which 2 or more calves are kept must be able to see at least one other calf.

(8) Sub-paragraph (7) does not apply to any calf that is kept in isolation on a holding on veterinary advice.

(9) In calculating the number of calves being kept on a holding for the purposes of sub-paragraph (7), no account is to be taken of any calf that is being kept in isolation on that holding on veterinary advice.

(10) Electrical circuits and equipment must be installed so as to avoid electric shocks to calves.

Inspection

2. All housed calves must be inspected by the person responsible for the calves at least twice a day.

3. Calves which are kept outside must be inspected by the person responsible for the calves at least once a day.

Tethering

4.—(1) Calves must not be tethered, with the exception of group-housed calves which may be tethered for a period of not more than one hour when being fed milk or milk substitute.

(2) Only tethers designed not to cause pain or injury to the calves may be used and they must be inspected regularly and adjusted as necessary to ensure a comfortable fit.

(3) Only tethers designed to avoid the risk of strangulation or pain or injury and which allow the calf to stand up, turn around, lie down, rest and groom itself without hindrance may be used.
Artificially lit buildings

5. Where calves are kept in an artificially lit building then, subject to paragraphs 14 and 16 of Schedule 1, artificial lighting must be provided for a period at least equivalent to the period of natural light normally available between 9.00 a.m. and 5.00 p.m..

Cleaning and disinfection

6. — (1) Housing, stalls, pens, equipment and utensils used for calves must be properly cleaned and disinfected to prevent cross-infection and the build-up of disease-carrying organisms.

(2) Faeces, urine and uneaten or spilt food must be removed as often as necessary to minimise smell and to avoid attracting flies or rodents.

Floors

7. Where calves are kept in a building, floors must—

(a) be smooth but not slippery so as to prevent injury to the calves;

(b) be so designed as not to cause injury or suffering to calves standing or lying on them;

(c) be suitable for the size and weight of the calves; and

(d) form a rigid, even and stable surface.

Bedding and lying area

8. — (1) All calves must be provided with appropriate well-maintained bedding.

(2) All calves must be kept on, or at all times have access to, a lying area which is clean, comfortable and does not adversely affect the calves and is well drained.

(3) All housed calves and calves kept in temporary structures must be kept on, or at all times have access to, a lying area which is well-maintained with dry bedding.

Bovine colostrum

9. Each calf must receive bovine colostrum as soon as possible after it is born and in any case within the first 6 hours of life.

Additional dietary requirements

10. — (1) All calves must be provided with food which contains sufficient iron to ensure a blood haemoglobin level of at least 4.5mmol/litre.

(2) A minimum daily ration of fibrous food must be provided for each calf over 2 weeks old, the quantity being raised in line with the growth of the calf from a minimum of 100g at 2 weeks old to a minimum of 250g at 20 weeks old.

Muzzling

11. Calves must not be muzzled.

Feeding

12. — (1) All calves must be fed at least twice a day.

(2) Where calves are housed in a group and do not have continuous access to feed, or are not fed by an automatic feeding system, each calf must have access to food at the same time as the others in the feeding group.
Drinking water

13.—(1) All calves over 2 weeks of age must be provided with a sufficient quantity of fresh drinking water each day or be able to satisfy their fluid intake needs by drinking other liquids.

(2) Calves must be provided with fresh drinking water at all times—

(a) in hot weather conditions; or

(b) when they are ill.
SCHEDULE 5
Regulation 6(1)(d)

ADDITIONAL CONDITIONS THAT APPLY TO THE KEEPING OF CATTLE

Accommodation

Where any cows which are calving are kept in a building, they must be kept—
(a) in a pen or a yard which is of such a size as to permit a person to attend the cows; and
(b) separate from other livestock other than calving cows.
SCHEDULE 6

ADDITIONAL CONDITIONS THAT APPLY TO THE KEEPING OF PIGS

PART 1

Interpretation

1. In this Schedule—
   “boar” means a male pig after puberty, intended for breeding;
   “gilt” means a female pig intended for breeding after puberty and before farrowing;
   “piglet” means a pig from birth to weaning;
   “rearing pig” means a pig from the age of 10 weeks to slaughter or service;
   “sow” means a female pig after the first farrowing; and
   “weaner” means a pig from weaning to the age of 10 weeks.

PART 2

General additional conditions

Inspection

2. All pigs must be inspected by the person responsible for the pigs at least once a day to check that they are in a state of well-being.

Tethering

3. No person may tether or cause to be tethered any pig except while it is undergoing any examination, test, treatment or operation carried out for any veterinary purpose.

4. —(1) Only tethers designed not to cause injury to the pigs may be used and they must be inspected regularly and adjusted as necessary to ensure a comfortable fit.
   (2) Only tethers of sufficient length to allow the pigs to move as stipulated in paragraph 5(2) and designed, to avoid, as far as possible, any risk of strangulation, pain or injury, may be used.

Accommodation

5. —(1) A pig must be free to turn round without difficulty at all times.
   (2) The accommodation used for pigs must be constructed in such a way as to allow each pig to—
      (a) stand up, lie down and rest without difficulty;
      (b) have a clean, comfortable and adequately drained place in which it can rest;
      (c) see other pigs, unless the pig is isolated for veterinary reasons;
      (d) maintain a comfortable temperature; and
      (e) have enough space to allow all the animals to lie down at the same time.

6. —(1) The dimension of any stall or pen used for holding individual pigs in accordance with these Regulations must be such that the internal area is not less than the square of the length of the pig, and no internal side is less than 75% of the length of the pig, the length of the pig in each case
being measured from the tip of its snout to the base of its tail while it is standing with its back straight.

(2) Sub-paragraph (1) does not apply to a female pig for the period between 7 days before the predicted day of its farrowing and the day on which the weaning of its piglets (including any piglets fostered by it) is complete.

(3) Sub-paragraph (1) does not apply to a pig held in a stall or pen—
(a) while it is undergoing any examination, test, treatment or operation carried out for veterinary purposes;
(b) for the purposes of service, artificial insemination or collection of semen;
(c) while it is fed on any particular occasion;
(d) for the purposes of marking, washing or weighing it;
(e) while its accommodation is being cleaned; or
(f) while it is awaiting loading for transportation, provided that the period during which it is so kept is not longer than necessary for that purpose.

(4) Sub-paragraph (1) does not apply to a pig held in a stall or pen which the pig can enter or leave at will, provided that the stall or pen is entered from a stall or pen in which the pig is kept without contravention of that sub-paragraph.

Artificially lit buildings

7. Where pigs are kept in an artificially lit building then lighting with an intensity of at least 40 lux must be provided for a minimum period of 8 hours per day, subject to paragraph 16 of Schedule 1.

Prevention of fighting

8.—(1) If pigs are kept together, measures must be taken to prevent fighting which goes beyond normal behaviour.

(2) Pigs which show persistent aggression towards others or are victims of such aggression must be isolated or kept separate from the group.

Training

9. Any person who employs or engages a person to attend to pigs must ensure that the person attending to those pigs has received instruction and guidance on the relevant provisions of these Regulations.

Cleaning and disinfection

10.—(1) Housing, pens, equipment and utensils used for pigs must be properly cleaned and disinfected as necessary to prevent cross-infection and the build-up of disease-carrying organisms.

(2) Faeces, urine and uneaten or spilt food must be removed as often as necessary to minimise smell and avoid attracting flies or rodents.

Bedding

11. Where bedding is provided, this must be clean, dry and not harmful to the pigs.

Floors

12. Where pigs are kept in a building, floors must—
(a) be smooth but not slippery;
(b) be so designed, constructed and maintained as not to cause injury or suffering to pigs standing or lying on them;
(c) be suitable for the size and weight of the pigs; and
(d) where no litter is provided, form a rigid, even and stable surface.

13. On and after 1st January 2013, when concrete slatted floors are used for pigs kept in groups—
   (a) the maximum width of the openings between the slats must be—
       (i) 11 mm for piglets;
       (ii) 14 mm for weaners;
       (iii) 18 mm for rearing pigs;
       (iv) 20 mm for gilts after service and sows; and
   (b) the minimum width of the slats must be—
       (i) 50 mm for piglets and weaners; and
       (ii) 80 mm for rearing pigs, gilts after service and sows.

Feeding

14. —(1) All pigs must be fed at least once a day.
   (2) Where pigs are housed in a group and do not have continuous access to feed, or are not fed by an automatic feeding system for feeding the animals individually, each pig must have access to the food at the same time as the others in the feeding group.

Drinking water

15. All pigs over 2 weeks of age must have permanent access to a sufficient quantity of fresh drinking water.

Environmental enrichment

16. To enable proper investigation and manipulation activities, all pigs must have permanent access to a sufficient quantity of material such as straw, hay, wood, sawdust, mushroom compost, peat or a mixture of such, which does not adversely affect the health of the animals.

Prohibition on the use of the sweat-box system

17. Pigs must not be kept in an environment which involves maintaining high temperatures and high humidity (known as the “sweat-box system”).

Noise levels

18. —(1) Pigs must not be exposed to constant or sudden noise.
   (2) Noise levels above 85 dBA must be avoided in that part of any building where pigs are kept.

PART 3

Boars

19. Boar pens must be sited and constructed so as to allow the boar to turn round and to hear, see and smell other pigs, and shall contain clean resting areas.

20. The lying area must be dry and comfortable.
21.—(1) The minimum unobstructed floor area for an adult boar must be 6m² save as set out in sub-paragraph (2).

(2) When boar pens are also used for natural service the floor area must be at least 10m² and must be free of any obstacles.

PART 4
Sows and gilts

Prevention of parasites

22. Pregnant gilts and sows must, where necessary, be treated against external and internal parasites.

Farrowing

23. If they are placed in farrowing crates, pregnant sows and gilts must be thoroughly clean.

24. In the week before the expected farrowing time, sows and gilts must be given suitable nesting material in sufficient quantity unless it is not technically feasible for the slurry system used.

25. During farrowing, an unobstructed area behind the sow or gilt must be available for the ease of natural or assisted farrowing.

26. Farrowing pens where sows are kept loose must have some means of protecting the piglets, such as farrowing rails.

27. In the week before the expected farrowing time and during farrowing, sows and gilts may be kept out of sight of other pigs.

Group housing

28. Sows and gilts must be kept in groups except during the period between 7 days before the predicted day of farrowing and the day on which the weaning of piglets (including any piglets fostered) is complete.

29. On and after 1st January 2013, the pen where the group is kept must have sides greater than 2.8m in length, except when there are less than 6 individuals in the group, when the sides of the pen must be no less than 2.4m in length.

30. On and after 1st January 2013—

(a) the total unobstructed floor area available to each gilt after service and to each sow when such gilts or sows are kept in groups must be at least 1.64m² and 2.25m² respectively;

(b) when gilts after service or sows are kept in groups of fewer than 6 individuals the unobstructed floor area must be increased by 10%;

(c) when gilts after service or sows are kept in groups of 40 or more individuals the unobstructed floor area may be decreased by 10%.

31. On or after 1st January 2013, for gilts after service and pregnant sows, a part of the area required under paragraph 29 equal to at least 0.95m² per gilt and at least 1.3m² per sow must be of continuous solid floor of which a maximum of 15% is reserved for drainage openings.

32. Sows and gilts kept on holdings of fewer than 10 sows may be kept individually provided that their accommodation complies with the requirements of paragraphs 5 and 6.
33. In addition to the requirements of paragraph 13, sows and gilts must be fed using a system which ensures that each individual can obtain sufficient food even when competitors for the food are present.

34. All dry pregnant sows and gilts must be given a sufficient quantity of bulky or high fibre food as well as high energy food to satisfy their hunger and need to chew.

PART 5

Piglets

35. If necessary, piglets must be provided with a source of heat and a solid, dry and comfortable lying area away from the sow where all of them can rest at the same time.

36. The part of the total floor where the piglets are kept, and which is large enough to allow the animals to rest together at the same time, must be solid or covered with a mat or be littered with straw or any other suitable material.

37. Where a farrowing crate is used, the piglets must have sufficient space to be able to be suckled without difficulty.

38. Piglets must not be weaned from the sow at an age of less than 28 days unless the welfare or health of the sow or piglets would otherwise be adversely affected.

39. Piglets may be weaned up to 7 days earlier if they are moved into specialised housings which are emptied and thoroughly cleaned and disinfected before the introduction of a new group and which are separate from housing where sows (other than weaners) are kept.

PART 6

Weaners and rearing pigs

40. Weaners and rearing pigs must be—
   (a) placed in groups as soon as possible after weaning; and
   (b) kept in stable groups with as little mixing as possible.

41.—(1) If weaners and rearing pigs unfamiliar with one another have to be mixed, this should be done at as young an age as possible, and, where reasonably practicable, no later than one week after weaning.

   (2) When weaners and rearing pigs are mixed they must be provided with adequate opportunities to escape and hide from other pigs.

42. The use of tranquillising medication in order to facilitate the mixing of weaners and rearing pigs must be limited to exceptional conditions and only after consultation with a veterinary surgeon.

43. When signs of severe fighting appear among weaners and rearing pigs, the causes must be immediately investigated and appropriate measures must be taken.

44. The unobstructed floor area available to each weaner or rearing pig reared in a group must be at least—
   (a) 0.15m² for each animal where the average weight of the animals in the group is 10 kg or less;
   (b) 0.20m² for each animal where the average weight of the animals in the group is more than 10 kg but less than or equal to 20 kg;
   (c) 0.30m² for each animal where the average weight of the animals in the group is more than 20 kg but less than or equal to 30 kg;
(d) 0.40m$^2$ for each animal where the average weight of the animals in the group is more than 30 kg but less than or equal to 50 kg;
(e) 0.55m$^2$ for each animal where the average weight of the animals in the group is more than 50 kg but less than or equal to 85 kg;
(f) 0.65m$^2$ for each animal where the average weight of the animals in the group is more than 85 kg but less than or equal to 110 kg;
(g) 1.00m$^2$ for each animal where the average weight of the animals in the group is more than 110 kg.
SCHEDULE 7

ADDITIONAL CONDITIONS THAT APPLY TO THE KEEPING OF RABBITS

Accommodation

1. Any hutch or cage in which rabbits are kept must be—
   (a) of sufficient size to allow the rabbits to move around and to feed and drink without difficulty and to enable all the rabbits kept in them to lie on their sides at the same time; and
   (b) of sufficient height to allow the rabbits to sit upright on all four feet without having their ears touching the top of the hutch or cage.

2. Where any rabbits are kept in any accommodation which is exposed to the weather, suitable steps must be taken so as to ensure that the rabbits have access to shelter from the action of the weather (including direct sunlight).
### SCHEDULE 8

#### Regulation 13

**REVOCATIONS**

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<td>The Welfare of Farmed Animals (Scotland) Regulations 2000</td>
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These Regulations, which extend to Scotland only, revoke and replace (with amendments):

The Welfare of Farmed Animals (Scotland) Regulations 2000;
The Welfare of Farmed Animals (Scotland) Amendment Regulations 2002; and
The Welfare of Farmed Animals (Scotland) Amendment Regulations 2003.

The Regulations implement the following EU legislation:

Council Directive 98/58/EC concerning the protection of animals kept for farming purposes;
Council Directive 2008/119/EC laying down minimum standards for the protection of calves; and

These Regulations and the EU legislation which they implement reflect the obligations contained in the European Convention for the Protection of Animals kept for Farming Purposes of 10th March 1976 (European Treaty series No. 98), as read with the Protocol of Amendment to the European Convention for the Protection of Animals kept for Farming Purposes of 6th February 1992 (European Treaty series No. 145). Regulation 4 provides that the Scottish Ministers are the competent authority.

The Regulations apply to “farmed animals”, namely to all animals kept for farming purposes, subject to certain limited exceptions set out in regulation 3(2).

A “person responsible” for an animal takes its meaning from section 18 of the Animal Health and Welfare (Scotland) Act 2006, which includes a person responsible for an animal on a permanent or temporary basis, a person who is in charge of an animal, an owner of an animal and a person with actual care and control of a child under the age of 16 years who is responsible for an animal; and includes a keeper of animals.

The Regulations provide for general requirements which apply in the case of farmed animals (regulation 5 and Schedule 1) and for specific additional requirements which apply in the cases of conventionally reared meat chickens (regulation 6(1)(a) and Schedule 2), laying hens in certain circumstances (regulation 6(1)(b) and Schedule 3), calves (regulation 6(1)(c) and Schedule 4), cattle (regulation 6(1)(d) and Schedule 5), pigs (regulation 6(1)(e) and Schedule 6) and rabbits (regulation 6(1)(f) and Schedule 7).

Regulation 7 contains provisions to ensure that those in charge of animals access the animal welfare codes issued under section 37 of the Animal Health and Welfare (Scotland) Act 2006 (which include codes issued under section 3 of the Agriculture (Miscellaneous Provisions) Act 1968) and are acquainted with those codes.

Regulation 8 sets out the powers of an inspector; regulation 9 makes it an offence to obstruct an inspector and regulation 10 provides for an inspector to be accompanied by a representative of the European Commission for the purpose of enforcing EU legislation.

Under regulation 11(1), any contravention of, or failure to comply with, the Regulations is an offence. The maximum penalty for such an offence is 3 months imprisonment and/or a fine at level 4 on the standard scale. Regulation 12 makes provision for enforcement.
Regulation 13 and Schedule 8 revoke the instruments replaced by these Regulations and regulation 14 saves the Welfare of Farmed Animals (Scotland) Regulations 2000 in relation to any notices served and offences committed before the coming into force of these Regulations.

Schedule 1 provides for general conditions under which farmed animals must be kept.

Schedule 2 provides for additional conditions that apply to the keeping of conventionally reared meat chickens.

Schedule 3 provides for additional conditions that apply to the keeping of laying hens.

Schedule 4 provides for additional conditions that apply to the keeping of calves confined for rearing and fattening.

Schedule 5 provides for additional conditions that apply to the keeping of cattle.

Schedule 6 provides for additional conditions that apply to the keeping of pigs.

Schedule 7 provides for additional conditions that apply to the keeping of rabbits.

A Regulatory Impact Assessment in relation to conventionally reared meat chickens has been prepared and placed in the Scottish Parliament Information Centre. A copy of it may be obtained from the Scottish Government Rural and Environment Directorate, Animal Health and Welfare Division, Saughton House, Broomhouse Drive, Edinburgh EH11 3XD.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2010 No.

ANIMALS

The Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2010

Made - - - - 2010

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 20(5)(b) of the Animal Health and Welfare (Scotland) Act 2006(a) and all other powers enabling them to do so.

In accordance with section 20(6) of that Act, they have consulted such persons appearing to them to represent relevant interests and such other persons as they consider appropriate.

In accordance with section 51(3) of that Act, a draft of the Regulations has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2010 and come into force on the day after the day on which they are made.

Interpretation

2. In these Regulations—

“agricultural land” means land used for agriculture (within the meaning of the Agriculture (Scotland) Act 1948(b)) which is so used for the purposes of a trade or business;

“bovine animal” means any animal of genera Bos, Bison or Bubalus;

“de-snooding” means the removal of the part of the male turkey’s wattle arising from the forehead and lying over the upper beak;

“disbudding” means the removal of the horn bud;

“dock” means the amputation of one or more coccygeal vertebrae of the tail of an animal;

“domestic fowl” means a domesticated member of the species Gallus gallus;

(a) 2006 asp 11.
(b) 1948 c.45, section 86(3).
“dubbing” means the removal of all or part of the comb of a bird;
“equine animal” means any animal of the genus *Equus* including hybrids;
“infra-red procedure” means an automated procedure involving exposure of the tip of the beak of a chick to a focused high intensity infra-red beam designed to cause a limited area of tissue damage and subsequent loss of the beak tip;
“laying hen” means a domestic fowl which is kept or to be kept for the production of eggs not intended for hatching;
“meat chicken” means a domestic fowl which is kept or to be kept for the production of meat;
“non-farmed” when applied to an animal means a bovine animal, deer, goat, pig or sheep which is not bred or kept for the production of food, wool or skin or for other farming purposes, and includes—
(a) an animal whilst at, or solely intended for use in, a competition, show or cultural or sporting event or activity;
(b) an experimental or laboratory animal; and
(c) an animal living in the wild;
“pinioning” means the disabling of the wing of a bird by the removal of the metacarpal bone and phalanges of one wing;
“poultry” means any bird reared or kept in captivity for the production of meat or eggs for consumption, or of other products, for restocking supplies of game or for the purpose of any breeding programme for the production of such categories of birds;
“surgical castration” means any method of castration that involves cutting or tearing tissue but not crushing tissue at the neck of the scrotum using a rubber ring or other device; and
“surgical docking” means any method of docking that involves cutting or tearing tissue but not crushing tissue using a rubber ring or other device or using a hot iron.

**Exempted Procedures**

3. The Scottish Ministers hereby specify the procedures described in column 1 of each of Schedules 1 to 12 where the procedure is carried out in relation to the particular type of protected animal(a) described in any of those Schedules and is carried out—
(a) for a purpose which is specified, in relation to any such procedure, in column 2 of the corresponding entry in the relevant Schedule;
(b) in hygienic conditions;
(c) in such a way as to minimise the pain and suffering it causes to the animal;
(d) in accordance with good practice; and
(e) where applicable, in accordance with such conditions as are specified, in relation to any such procedure, in column 1 of the entry in the relevant Schedule,
as procedures in relation to which section 20 (mutilation) of the Animal Health and Welfare (Scotland) Act 2006 does not apply.

**Revocations**

4. The following instruments are revoked:—
(a) the Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2007(b); and

---

(a) The term “protected animal” is defined in section 17 of the Animal Health and Welfare (Scotland) Act 2006.
(b) S.S.I. 2007/256, amended by S.S.I. 2009/47.
(b) the Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Amendment Regulations 2009(a).

St Andrew’s House,
Edinburgh
2010

A member of the Scottish Executive

(a) S.S.I. 2009/47.
## Bovine animals

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Freeze branding</td>
<td>Identification</td>
</tr>
<tr>
<td>Tattooing</td>
<td>Identification</td>
</tr>
<tr>
<td>Ear tagging</td>
<td>Identification</td>
</tr>
<tr>
<td>Micro chipping</td>
<td>Identification</td>
</tr>
<tr>
<td>Vasectomy</td>
<td>Controlling reproduction or general animal management</td>
</tr>
<tr>
<td>Castration</td>
<td>Controlling reproduction or general animal management</td>
</tr>
<tr>
<td>Implantation of a subcutaneous contraceptive into a non-farmed bovine</td>
<td>Controlling reproduction or general animal management, as part of a conservation programme</td>
</tr>
<tr>
<td>Embryo and ovum transfer</td>
<td>Controlling reproduction or general animal management</td>
</tr>
<tr>
<td>Nose ringing</td>
<td>Handler safety or herd welfare</td>
</tr>
<tr>
<td>Dehorning</td>
<td>Handler safety or herd welfare</td>
</tr>
<tr>
<td>Disbudding</td>
<td>Handler safety or herd welfare</td>
</tr>
<tr>
<td>Supernumerary teat removal</td>
<td>Animal health</td>
</tr>
</tbody>
</table>
## SCHEDULE 2

**Regulation 3**

### Pigs

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tattooing</td>
<td>Identification</td>
</tr>
<tr>
<td>Ear tagging</td>
<td>Identification</td>
</tr>
<tr>
<td>Ear notching</td>
<td>Identification</td>
</tr>
<tr>
<td>Micro chipping</td>
<td>Identification</td>
</tr>
<tr>
<td>Vasectomy</td>
<td>Controlling reproduction or general animal management</td>
</tr>
<tr>
<td>Implantation of a subcutaneous contraceptive into a non-farmed pig</td>
<td>Controlling reproduction or general animal management, as part of a conservation programme</td>
</tr>
<tr>
<td>Embryo and ovum transfer</td>
<td>Controlling reproduction or general animal management</td>
</tr>
<tr>
<td>Tusk trimming</td>
<td>Handler safety or herd welfare</td>
</tr>
<tr>
<td>Docking of farmed pigs kept on agricultural land</td>
<td>Handler safety or herd welfare</td>
</tr>
</tbody>
</table>

### Conditions

1) The procedure may only be performed—
   
   (a) where there is evidence that injuries to the tails of other pigs have occurred and where other measures to improve environmental conditions or management systems have been taken in order to prevent tail-biting; and
   
   (b) by the quick and complete severance of the part of the tail to be removed.

2) Where pigs are older than 7 days of age the procedure must be performed under anaesthetic and additional prolonged analgesia and only by a veterinary surgeon.

<p>| Uniform reduction of the corner teeth of farmed piglets kept on agricultural land aged 7 days or less by grinding or clipping to leave an intact smooth surface | Herd welfare |</p>
<table>
<thead>
<tr>
<th>Condition—</th>
<th>General animal management</th>
</tr>
</thead>
<tbody>
<tr>
<td>The procedure may only be performed where there is evidence of injuries to sows’ teats or to other pigs’ ears or tails and when other measures have been taken to prevent tail-biting and other vices have been exhausted.</td>
<td>Nose ringing</td>
</tr>
<tr>
<td>Nose rings must not be put in animals kept continuously in indoor husbandry systems.</td>
<td>Castration</td>
</tr>
<tr>
<td>Controlling reproduction or general animal management.</td>
<td>Conditions—</td>
</tr>
<tr>
<td>1) Castration may only be performed by means other than the tearing of tissues.</td>
<td>2) Where pigs are older than 7 days of age the procedure must be performed under anaesthetic and additional prolonged analgesia and only by a veterinary surgeon.</td>
</tr>
</tbody>
</table>
SCHEDULE 3

Birds

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Micro chipping</td>
<td>Identification</td>
</tr>
<tr>
<td>Beak trimming of poultry</td>
<td>Flock welfare</td>
</tr>
</tbody>
</table>

**Conditions—**

1) Beak trimming of poultry may only be performed to prevent feather pecking and cannibalism and, in relation to laying hens kept on holdings of 350 or more and meat chickens kept on holdings of 500 or more, when the animals are less than 10 days old.

2) Beak trimming of laying hens kept on holdings of 350 or more may only be performed using the infra-red procedure.

3) In an emergency, to control an outbreak of feather pecking or cannibalism in laying hens, conditions 1 and 2 do not apply.

4) Beak trimming of meat chickens may only be carried out, after consultation with and on the advice of a veterinary surgeon, by qualified staff, and where other measures to prevent feather pecking and cannibalism are exhausted.

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<thead>
<tr>
<th>Procedure</th>
<th>Purpose</th>
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</thead>
<tbody>
<tr>
<td>De-snooding</td>
<td>General animal management</td>
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<tr>
<td>Cutting of the toes of poultry other than laying hens and meat chickens</td>
<td>General animal management</td>
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<tr>
<td>Dubbing of domestic fowl other than laying hens and meat chickens</td>
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<td>Pinioning of birds other than poultry</td>
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<tr>
<td>Laparoscopy</td>
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<tr>
<td>Castration, ovidectomy and vasectomy of a bird other than poultry</td>
<td>Controlling reproduction or general animal management, as part of a conservation programme</td>
</tr>
<tr>
<td>Implantation of a subcutaneous contraceptive into a bird other than poultry</td>
<td>Controlling reproduction or general animal management, as part of a conservation programme</td>
</tr>
<tr>
<td>Wing tagging</td>
<td>Identification of—</td>
</tr>
<tr>
<td></td>
<td>1) poultry in connection with breeding or testing for the presence of disease; or</td>
</tr>
<tr>
<td>Procedure</td>
<td>Purpose</td>
</tr>
<tr>
<td>-----------------</td>
<td>-------------------------------------------------------------------------</td>
</tr>
<tr>
<td>2) a bird other than poultry in connection with conservation or research</td>
<td></td>
</tr>
<tr>
<td>Web tagging</td>
<td>Identification of—</td>
</tr>
<tr>
<td></td>
<td>1) poultry in connection with breeding or testing for the presence of disease; or</td>
</tr>
<tr>
<td></td>
<td>2) a bird other than poultry in connection with conservation or research</td>
</tr>
</tbody>
</table>
## SCHEDULE 4

### Sheep

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<tr>
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<th>Purpose</th>
</tr>
</thead>
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<td>Tattooing</td>
<td>Identification</td>
</tr>
<tr>
<td>Ear tagging</td>
<td>Identification</td>
</tr>
<tr>
<td>Ear notching</td>
<td>Identification</td>
</tr>
<tr>
<td>Micro chipping</td>
<td>Identification</td>
</tr>
<tr>
<td>Vasectomy</td>
<td>Controlling reproduction or general animal management</td>
</tr>
<tr>
<td>Castration</td>
<td></td>
</tr>
<tr>
<td><strong>Condition</strong>—</td>
<td></td>
</tr>
<tr>
<td>Surgical castration may only be carried out by a veterinary surgeon.</td>
<td>Controlling reproduction or general animal management</td>
</tr>
<tr>
<td>Laparoscopic insemination</td>
<td>Controlling reproduction or general animal management</td>
</tr>
<tr>
<td>Embryo and ovum transfer</td>
<td>Controlling reproduction or general animal management</td>
</tr>
<tr>
<td>Implantation of a subcutaneous contraceptive into a non-farmed sheep</td>
<td>Controlling reproduction or general animal management, as part of a conservation programme</td>
</tr>
<tr>
<td>Dehorning</td>
<td>Handler safety or flock welfare</td>
</tr>
<tr>
<td>Disbudding</td>
<td>Handler safety or flock welfare</td>
</tr>
<tr>
<td>Docking of a farmed sheep kept on agricultural land</td>
<td>Animal health</td>
</tr>
<tr>
<td><strong>Conditions</strong>—</td>
<td></td>
</tr>
<tr>
<td>1) Docking of sheep over 3 months of age may only be carried out by a veterinary surgeon.</td>
<td></td>
</tr>
<tr>
<td>2) Surgical docking may only be carried out by a veterinary surgeon.</td>
<td></td>
</tr>
</tbody>
</table>
## SCHEDULE 5

### Goats

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tattooing</td>
<td>Identification</td>
</tr>
<tr>
<td>Ear tagging</td>
<td>Identification</td>
</tr>
<tr>
<td>Ear notching</td>
<td>Identification</td>
</tr>
<tr>
<td>Micro chipping</td>
<td>Identification</td>
</tr>
<tr>
<td>Vasectomy</td>
<td>Controlling reproduction or general animal management</td>
</tr>
<tr>
<td>Castration</td>
<td>Controlling reproduction or general animal management</td>
</tr>
<tr>
<td>Laparoscopic insemination</td>
<td>Controlling reproduction or general animal management</td>
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<tr>
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<td>Controlling reproduction or general animal management, as part of a conservation programme</td>
</tr>
<tr>
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<tr>
<td>Dehorning</td>
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<td>Disbudding</td>
<td>Handler safety or herd welfare</td>
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<th>Procedure</th>
<th>Purpose</th>
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</thead>
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<td>Identification</td>
</tr>
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<td>Identification</td>
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<td>Micro chipping</td>
<td>Identification</td>
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<tr>
<td>Vasectomy</td>
<td>Controlling reproduction or general animal management</td>
</tr>
<tr>
<td>Castration</td>
<td>Controlling reproduction or general animal management</td>
</tr>
<tr>
<td>Implantation of a subcutaneous contraceptive</td>
<td>Controlling reproduction or general animal management</td>
</tr>
<tr>
<td>Embryo and ovum transfer</td>
<td>Controlling reproduction or general animal management</td>
</tr>
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</table>
## SCHEDULE 7

**Regulation 3**

### Deer

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<thead>
<tr>
<th><strong>Procedure</strong></th>
<th><strong>Purpose</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Tattooing</td>
<td>Identification</td>
</tr>
<tr>
<td>Ear tagging</td>
<td>Identification</td>
</tr>
<tr>
<td>Ear notching</td>
<td>Identification</td>
</tr>
<tr>
<td>Micro chipping</td>
<td>Identification</td>
</tr>
<tr>
<td>Vasectomy</td>
<td>Controlling reproduction or general animal management</td>
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<tr>
<td>Castration</td>
<td>Controlling reproduction or general animal management</td>
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<tr>
<td>Implantation of a subcutaneous contraceptive into a non-farmed deer</td>
<td>Controlling reproduction or general animal management, as part of a conservation programme</td>
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<td>Removal of antlers</td>
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#### Regulation 3

**Cats**

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<td>Ear tipping of feral cats</td>
<td>Identification</td>
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<td>Micro chipping</td>
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<td>Tattooing</td>
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<tr>
<td>Vasectomy</td>
<td>Controlling reproduction or general animal management</td>
</tr>
<tr>
<td>Castration</td>
<td>Controlling reproduction or general animal management</td>
</tr>
<tr>
<td>Spaying</td>
<td>Controlling reproduction or general animal management</td>
</tr>
<tr>
<td>Implantation of a subcutaneous contraceptive</td>
<td>Controlling reproduction or general animal management</td>
</tr>
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### SCHEDULE 9

#### Dogs

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<th>Procedure</th>
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</thead>
<tbody>
<tr>
<td>Micro chipping</td>
<td>Identification</td>
</tr>
<tr>
<td>Tattooing</td>
<td>Identification</td>
</tr>
<tr>
<td>Vasectomy</td>
<td>Controlling reproduction or general animal management</td>
</tr>
<tr>
<td>Castration</td>
<td>Controlling reproduction or general animal management</td>
</tr>
<tr>
<td>Spaying</td>
<td>Controlling reproduction or general animal management</td>
</tr>
<tr>
<td>Embryo and ovum transfer</td>
<td>Controlling reproduction or general animal management</td>
</tr>
<tr>
<td>Implantation of a subcutaneous contraceptive</td>
<td>Controlling reproduction or general animal management</td>
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<tr>
<td>Amputation of dew claws</td>
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**Fish**  

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<tr>
<td>Chemical branding</td>
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<td>Freeze branding</td>
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<tr>
<td>Passive integrated transponder tagging/microchipping</td>
<td>Identification</td>
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<tr>
<td>Removal or perforation of parts of the fins, adipose fins or fin rays</td>
<td>Identification</td>
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<tr>
<td>Removal of fish scales</td>
<td>Age determination or stock management</td>
</tr>
<tr>
<td>Implantation of a subcutaneous contraceptive</td>
<td>Controlling reproduction or general animal management</td>
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**Regulation 3**

## Reptiles

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</tr>
<tr>
<td>Laparoscopy</td>
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<tr>
<td>Implantation of a subcutaneous contraceptive</td>
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Any other kind of animal

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<tr>
<td>Micro chipping</td>
<td>Identification</td>
</tr>
<tr>
<td>Tattooing</td>
<td>Identification</td>
</tr>
<tr>
<td>Vasectomy</td>
<td>Controlling reproduction</td>
</tr>
<tr>
<td>Castration</td>
<td>Controlling reproduction</td>
</tr>
<tr>
<td>Spaying</td>
<td>Controlling reproduction</td>
</tr>
<tr>
<td>Embryo and ovum transfer</td>
<td>Controlling reproduction</td>
</tr>
<tr>
<td>Implantation of a subcutaneous contraceptive</td>
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</tr>
</tbody>
</table>
EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 20(5)(b) of the Animal Health and Welfare (Scotland) Act 2006 (“the Act”), which enable the Scottish Ministers to specify procedures to which section 20 of the Act does not apply.

These Regulations revoke and replace (with amendments) the Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2007 and the Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Amendment Regulations 2009. The provisions in the revoked Regulations relating to the authorisation of hot branding of equine animals have not been re-enacted and no savings have been made as no authorisations exist at the date of making these Regulations.

The Regulations also implement provisions in the following EU legislation:—
   Council Directive 2007/43/EC laying down minimum rules for the protection of chickens kept for meat production; and

Section 20(1) of the Act makes it an offence to carry out, or cause to be carried out, a prohibited procedure on a protected animal. Section 20(2) makes it an offence for a person responsible for an animal to permit or fail to take reasonable steps to prevent a prohibited procedure being carried out on a protected animal. Section 20(3) makes it an offence to take an animal, or cause an animal to be taken, from a place in Scotland for the purpose of having a prohibited procedure carried out on that animal at a place outwith Scotland.

“Protected animal” is defined in section 17 of the Act as an animal which is of a kind commonly domesticated in the British Islands, under the control of man on a permanent or temporary basis, or not living in a wild state. In terms of section 20(4) of the Act a reference to the carrying out of a prohibited procedure on an animal is to the carrying out of a procedure which involves interference with the sensitive tissues or bone structure of the animal.

Regulation 3 and Schedules 1 to 12 exempt certain procedures from the application of section 20 of the Act where they are carried out for specified purposes and in accordance with any specified condition and with good practice. Guidance on good practice is found in the animal welfare codes which may be viewed on the Scottish Government website at www.scotland.gov.uk.

Notwithstanding that these Regulations exempt certain procedures from the statutory prohibitions in section 20, those procedures remain subject to requirements imposed by other legislation and, in particular, these Regulations do not permit procedures to be carried out by anyone except in accordance with the Veterinary Surgeons Act 1966. Information on several of those requirements, and the related legislation, can be found in the animal welfare codes.

A Regulatory Impact Assessment has not been produced for this instrument as it has no impact on the costs of business.
This briefing has been prepared for members of the Rural Affairs and Environment Committee. It highlights some of the important issues in the autumn 2010 fisheries negotiations at which decisions on fishing quotas and limits on fishing time will be made for 2011.
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EXECUTIVE SUMMARY

Since 1983, the main instrument of the Common Fisheries Policy has been to set Total Allowable Catches (TAC), for certain species in specific sea areas, which fix the total amount of fish that can be landed by the fleets of the EU’s Member States each year. This policy has not proven a successful means of managing mixed fisheries, and has contributed to the problem of discarding. Discards are fish that are caught but thrown back into the sea; in most cases the fish are thrown back dead or do not survive. Fish are discarded e.g. because they are too small, are not of marketable species, or because fishermen do not have quota for that species.

Since 2003 recovery plans have been implemented for some of the EU’s most threatened fish stocks. Some of these plans have included measures to limit fishing time – fishing effort. From a Scottish perspective, the most important of these plans has been that concerning cod.

TACs are set in an annual cycle culminating in the December Fisheries Council. The publication of scientific advice by ICES in June is the starting point for a series of autumn negotiations at which TACs, quotas, and fishing effort limits are set for the following year. Table 1 on page 8 has details of the important dates in the 2010 negotiations.

The main points from the ICES advice are:

- Cuts are advised for the main quota species of interest to the Scottish fleet, with the exception of West of Scotland monkfish, mackerel and North Sea herring
- A substantial decrease in the TAC for North Sea cod is advised, and a modest decrease for North Sea haddock; these fish are the mainstays of the East coast whitefish fleet.
- A modest cut for North Sea Nephrops and a more substantial cut for West of Scotland Nephrops as the scientific advice seeks to reduce harvest rates in line with a Maximum Sustainable Yield approach. Due to market difficulties, the uptake of quota has been low in 2010. However, reductions in fishing opportunity would be significant should the market recover.
- West of Scotland cod, haddock and whiting stocks are at low levels and show no sign of recovering. Further cuts in the already low quotas for these species seem likely
- The potential to increase the mackerel TAC is likely to be more than offset by the current problem with this stock, described below

Further details of the implications of the ICES advice and the European Commission’s proposals for UK quotas are included in table 3 on page 10 of the briefing.

Mackerel is a widely distributed, migratory pelagic species, and is the most valuable species to the Scottish fleet. For the last ten years catches have been managed under a coastal states agreement between the EU, Norway and the Faeroes. While the stock is in good shape, its migration has shifted, and it can now be caught in numbers in Icelandic waters. Iceland has declared a unilateral quota of 130,000 tonnes in 2009 and 2010. The Faeroes have followed suit and unilaterally increased their 2010 quota to 85,000 tonnes, three times their normal share. ICES’ estimate of mackerel catches for 2010 is 60% higher than the upper bound of what it had advised would be sustainable. If such additional removals were to continue the sustainability of
the stock would be threatened. The actions of Iceland and the Faeroes have been condemned by the Scottish Government and the European Commission. Iceland is now being included in the coastal states negotiations and the next round of talks take place in London from 12-14 October to try to achieve a deal.

Scientists have advised that stocks of cod, haddock and whiting to the West of Scotland are at very low levels. During the autumn 2008 fisheries negotiations, the European Commission’s initial proposals for the West of Scotland were described by the Scottish Fishermen’s Federation as amounting to an almost complete shut down of fishing in the area. The outcome from the negotiations for 2009 was a reduction in quotas for these species and the adoption of emergency measures designed to allow fishermen to harvest other stocks while lessening impact on cod, haddock and whiting. In the 2009 negotiations these measures were extended for 18 months to mid 2011. The Scottish Government established a task force to oversee the implementation of these measures. It has worked with the task force during 2009 to develop alternative proposals which it has submitted to the European Commission.

Under a plan to recover cod stocks, limits on fishing days at sea were introduced in 2003 for Scottish fishing boats which carry fishing gears that can catch cod. These limits were initially set monthly, and then annually, and a complicated series of derogations were introduced e.g. to increase the number of fishing days for boats that could prove they had not made significant catches of cod. In 2008, the UK piloted the option of managing fishing effort in terms of a Member State ‘kilowatt day’ ceiling. The advantage is greater flexibility in allocating fishing effort. Kilowatt days are calculated by multiplying the number of days fished by the sum of the engine power in kilowatts of the vessels.

In 2009, the system of kilowatt days was applied to fleets of all Member States likely to catch cod. The long term cod plan agreed by Member States explicitly links the setting of kilowatt days to the scientific advice on the state of cod stocks covered by the plan. This resulted in a 25% reduction in kilowatt days for 2009, compared to baselines established using data provided by the Member States. For the UK the reference period was average annual effort over the period 2004-2006. In 2010, kilowatt days for whitefish boats were cut further, by 10 percentage points in the North Sea and 25% in the West of Scotland. For 2011, as required by the plan, an additional cut in kilowatt days of 10 percentage points in the North Sea and 25% in the West of Scotland is expected.

The Scottish Government sought to mitigate the impact of kilowatt days cuts through the conservation credits scheme, which seeks to deliver the required reductions in mortality on cod without cutting fishing time. Fishermen are given additional days if they avoid fishing in closed areas (both permanent and temporary closures are used) and if they adopt additional technical measures.

There is agreement that discarding is a waste of resources, and that it should be reduced. The European Commission proposed a discards action plan in 2007. The Commission has said it proposes to tackle the problem of discards in stages, focussing initially on the discarding of the major commercial species. A ban has been imposed on discarding marketable fish (high-grading) in the North Sea since 2009. The Scottish Government has stated that tackling the problem of discards cannot wait until reform of the CFP in 2012. A trial involving the monitoring of discards using CCTV has been initiated.

For some species the scientific advice already includes an assessment of the amount of fish that will be discarded. The Scottish Government has argued that it is possible to “catch less and land more” by allowing fishermen to land the fish they would have otherwise discarded by moving to a system of catch quotas. Fishermen who have agreed to take part in trials of this
approach receive additional quota if they carry CCTV in the fish room of their vessel which allows monitoring to ensure fish are not discarded. These trials have continued in 2010.
LIMITING CATCHES UNDER THE COMMON FISHERIES POLICY

Conservation policy is the most important pillar of the Common Fisheries Policy (CFP) (European Commission a). Since 1983, the main instrument of the conservation policy has been to set annual Total Allowable Catches (TACs) which fix the total amount of fish that can be landed by the fleets of the EU’s Member States each year. TACs are set for certain areas of sea, called ICES areas, which are identified with roman numerals. The most important areas for the Scottish fleet are ICES area IV, the North Sea, and ICES area VIa, the West of Scotland. The TAC for each stock is shared out in quotas which limit the amount of fish that can be landed by Member States. Quotas are shared out according to the principle of ‘relative stability’. This principle guarantees Member States a fixed percentage of a quota in a certain area from one year to the next which is based on historic fishing activity. Member States which have not fished in areas historically do not receive quotas for those areas. The process for setting TACs is outlined in the next section.

Quotas work relatively well when fishermen can catch one species at a time – herring or mackerel are examples of fisheries like this. Quotas have proved a less successful means of managing mixed fisheries when fish of several different species are caught in the same fishery. A good example of this is provided by the demersal fishery of the North Sea where each haul will bring up a mixed bag of different species. The main commercial species in the fishery: cod; haddock; whiting; Nephrops; monkfish; saithe; plaice; and sole are caught in different proportions on different fishing grounds at different times of year. If a fisherman’s quota for one species is used up, they are allowed to carry on fishing for other species, but any fish they catch for which they do not have quota must be dumped over the side, and very few discarded fish survive. This can mean more fish are caught than the population can sustain and if this happens repeatedly then the population of that species can decline. Fishermen also discard fish for other reasons, e.g. they may discard small fish if they catch larger fish on subsequent hauls (high-grading). Some information on discards is available to scientists, e.g. from sampling on-board fishing vessels, and these data are now increasingly used in assessments, so that quotas take account of total removals from a stock, instead of just the quantities landed.

These problems have led scientists to advocate for many years that quotas should either be accompanied by or replaced with controls on fishing effort, for example limiting the number of days that fishermen are allowed to be at sea. Controls on fishing effort were introduced following reforms of the CFP in 2002. Since the reform of the CFP in 2002, the EU has begun to take a longer-term approach to fisheries management by managing fisheries under long term plans. Two types of plans are being implemented based on the state of the stocks in question. Recovery plans are designed to help rebuild threatened stocks while management plans aim to maintain stocks at safe biological levels. The plans contain a formula for calculating TACs on the basis of scientific advice on the state of the stock. EU law requires that recovery plans must also include limits on fishing effort.

From a Scottish perspective, the most important of these has been the plan to recover cod stocks, which has now been replaced with a long-term management plan. In 2003, limits on the

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1 ICES areas can be further subdivided, so for example, area IVa is the North North Sea. The Scottish fleet also fishes in ICES area VIb Rockall
2 When quotas were first introduced a reference period from 1973-78 was used to establish Member States shares in quotas
3 demersal species live close to the sea bottom, e.g. cod, haddock, whiting. Pelagic species live in the mid water e.g. herring, mackerel. Benthic species live on the bottom e.g. flatfish, Nephrops.
4 The full scientific name for this species is *Nephrops norvegicus*, common name: Norway lobsters or langoustines
5 Scientists from Marine Scotland monitor discards on sampling trips onboard Scottish fishing vessels. ICES has complained about the fact that some countries refuse to provide it with data on discards.
6 Unless it can be shown that effort restrictions are not needed for stock recovery.
number of days at sea which could be spent fishing for vessels over 10 metres in length that were using fishing gear likely to catch cod were introduced. The long-term management plan also limits fishing effort. The Scottish Government has developed a scheme called “Conservation Credits” which implements the cod recovery plan in Scottish waters and which intends to reward Scottish fishermen with additional effort or days-at-sea where they can demonstrate that they are fishing in a manner which is likely to have a less severe impact on cod.

The Common Fisheries Policy is being reviewed and substantial changes are expected to come into effect at the end of 2012. The European Commission (2009) published a Green Paper on the reform of the policy in April 2009. The Green Paper asked broad questions about the future of the CFP. On TACs it asks whether these should be made more freely tradeable, or whether instead of regulating the quantities landed, the policy should regulate fishing effort instead. The consultation ran until the end of 2009. The Scottish Government (2009) responded to the consultation. The European Commission (2010a) intends to make further proposals for CFP reform by summer 2011.

**PROCESS FOR SETTING QUOTAS**

TACs are set on an annual cycle, culminating in the December Fisheries Council in Brussels. This annual cycle is shown in the diagram below.

![Annual TAC Setting Cycle](source)

**EUROPEAN PARLIAMENT’S ROLE**

The entry into force of the Lisbon Treaty in December 2009 has changed the content of the autumn fisheries negotiations. The Treaty gives the European Parliament co-decision powers over EU fisheries law. The only exception to the co-decision power are decisions on the fixing and allocation of fishing opportunities, which the Council will continue to decide upon alone, on the basis of a Commission proposal. This is taken to mean TACs, quotas, and any associated effort limits.

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7 Links to all public responses are available from the European Commission’s website: [http://ec.europa.eu/fisheries/reform/consultation/received/index_en.htm](http://ec.europa.eu/fisheries/reform/consultation/received/index_en.htm)
In the past, the annual TAC regulations have in practice dealt with much more than the fixing and allocation of fishing opportunities – they have included a great deal of so called ‘associated measures’ - detailed technical measures such as area closures and gear regulation. The ratification of the Lisbon Treaty means the European Parliament has a role in deciding on such measures. The European Commission accounted for this in 2009 when drawing up proposals for TACs and quotas by removing all measures not strictly related to the establishment of fishing opportunities from its proposal for TACs and quotas, and the Commission’s proposal for quotas for 2011 will be similarly limited in its subject matter. The technical measures which apply in the West of Scotland were due to expire at the end of 2009. The Council alone could not have agreed to new measures after the entry into force of the Lisbon Treaty, and it would not have been possible to agree measures between the Council and Parliament quickly. The November 2009 Fisheries Council agreed an extension of the existing measures for 18 months by qualified majority (the UK voted against), and they apply until mid 2011.

KEY DATES IN THE 2010 NEGOTIATIONS

Fishing quotas for the Scottish fleet are set during several weeks of negotiations. These include external negotiations about fish stocks which are shared with non-EU Member States including Norway, Iceland and the Faeroes, as well as negotiations between EU Member States which culminate in the December Fisheries Council. Following the 2002 CFP reforms, Regional Advisory Councils were established to advise the European Commission on fisheries management. RACs are composed of representatives of the fishing industry, and other groups with an interest in the CFP, such as environmental NGOs. The following table shows some of the key dates in the autumn fisheries negotiations in 2010.

Table 1 – important dates in fishing negotiations during 2010

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>17 May</td>
<td>The European Commission (2010b) published its annual policy statement</td>
</tr>
<tr>
<td></td>
<td>outlining the general approach to setting fish quotas for 2011</td>
</tr>
<tr>
<td>29 June</td>
<td>ICES (2010) issued its scientific advice for most North Sea and West</td>
</tr>
<tr>
<td></td>
<td>of Scotland fish stocks of interest to the Scottish fleet</td>
</tr>
<tr>
<td>1 October</td>
<td>ICES advice on pelagic stocks, including mackerel</td>
</tr>
<tr>
<td>12-14 October</td>
<td>Coastal States negotiations on mackerel, London (EU, Norway, Faeroes)</td>
</tr>
<tr>
<td>25-26 October</td>
<td>Fisheries Council meeting in Luxembourg</td>
</tr>
<tr>
<td>29 October</td>
<td>European Commission proposal on fishing opportunities for 2011.</td>
</tr>
<tr>
<td>8-12 November</td>
<td>STECF plenary meeting</td>
</tr>
<tr>
<td>8-12 November</td>
<td>North East Atlantic Fisheries Convention (NEAFC) negotiations on</td>
</tr>
<tr>
<td></td>
<td>fisheries in NE Atlantic in international waters beyond the 200 mile</td>
</tr>
<tr>
<td></td>
<td>limit.</td>
</tr>
<tr>
<td>15-19 November</td>
<td>1st round of EU/Norway negotiations on North Sea shared stocks,</td>
</tr>
<tr>
<td></td>
<td>including most whitefish stocks, such as cod, haddock &amp; whiting,</td>
</tr>
<tr>
<td></td>
<td>Brussels.</td>
</tr>
<tr>
<td>29-30 November</td>
<td>EU Fisheries Council meeting in Brussels to decide quotas for deep sea</td>
</tr>
<tr>
<td></td>
<td>species for 2011 and 2012</td>
</tr>
<tr>
<td>29 November – 3 December</td>
<td>2nd round of EU/Norway negotiations, Bergen</td>
</tr>
<tr>
<td>8-10 December</td>
<td>EU-Faroes negotiations, Faeroes</td>
</tr>
<tr>
<td>13-14 December</td>
<td>EU Fisheries Council meeting to decide on fishing opportunities for 2011.</td>
</tr>
</tbody>
</table>

UK QUOTAS IN RECENT YEARS

Fishing quotas are allocated to Member States and it is up to Member States how they allocate quotas to their fishing fleets. In the UK quotas are allocated to producer organisations. Quotas for boats under 10m and for boats which are not members of producer organisations are
managed by fisheries departments. There are not Scottish quotas as such, although there are producer organisations which are exclusively, or mainly, made up of fishing boats registered at Scottish ports. To illustrate how quotas have changed, the table below shows the UK quotas for the seven most important quota species for the Scottish fleet in the waters of most importance to it over the last ten years.

**Table 2 – UK quotas for selected species, 2001-10 (tonnes)**

<table>
<thead>
<tr>
<th>Species</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>North Sea</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>cod</td>
<td>20,555</td>
<td>20,377</td>
<td>10,696</td>
<td>9,507</td>
<td>8,674</td>
<td>9,037</td>
<td>7,773</td>
<td>8,628</td>
<td>11,216</td>
<td>13,067</td>
</tr>
<tr>
<td>haddock</td>
<td>41,184</td>
<td>59,805</td>
<td>33,257</td>
<td>49,537</td>
<td>44,123</td>
<td>34,574</td>
<td>36,466</td>
<td>31,672</td>
<td>27,507</td>
<td>22,698</td>
</tr>
<tr>
<td>whiting</td>
<td>14,363</td>
<td>19,608</td>
<td>7,257</td>
<td>6,784</td>
<td>10,544</td>
<td>9,162</td>
<td>11,297</td>
<td>9,336</td>
<td>8,426</td>
<td>7,391</td>
</tr>
<tr>
<td>monkfish</td>
<td>11,495</td>
<td>9,205</td>
<td>6,245</td>
<td>6,157</td>
<td>8,950</td>
<td>8,392</td>
<td>9,233</td>
<td>9,233</td>
<td>9,233</td>
<td>9,233</td>
</tr>
<tr>
<td>Nephrops</td>
<td>12,961</td>
<td>13,885</td>
<td>14,005</td>
<td>16,047</td>
<td>18,101</td>
<td>24,380</td>
<td>22,644</td>
<td>22,644</td>
<td>21,513</td>
<td>21,384</td>
</tr>
<tr>
<td>herring</td>
<td>40,570</td>
<td>38,101</td>
<td>56,818</td>
<td>65,220</td>
<td>94,941</td>
<td>63,333</td>
<td>50,279</td>
<td>30,025</td>
<td>27,185</td>
<td>24,223</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Species</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>West of Scotland</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>cod</td>
<td>2,322</td>
<td>2,974</td>
<td>1,084</td>
<td>508</td>
<td>485</td>
<td>368</td>
<td>294</td>
<td>241</td>
<td>182</td>
<td>145</td>
</tr>
<tr>
<td>haddock</td>
<td>10,720</td>
<td>10,996</td>
<td>6,455</td>
<td>5,304</td>
<td>7,081</td>
<td>6,294</td>
<td>5,932</td>
<td>4,743</td>
<td>2,747</td>
<td>2,053</td>
</tr>
<tr>
<td>whiting</td>
<td>2,580</td>
<td>2,157</td>
<td>1,285</td>
<td>1,032</td>
<td>917</td>
<td>780</td>
<td>585</td>
<td>438</td>
<td>329</td>
<td>246</td>
</tr>
<tr>
<td>monkfish</td>
<td>2,033</td>
<td>1,572</td>
<td>1,086</td>
<td>1,220</td>
<td>1,865</td>
<td>1,442</td>
<td>1,586</td>
<td>1,713</td>
<td>1,713</td>
<td></td>
</tr>
<tr>
<td>Nephrops</td>
<td>11,070</td>
<td>11,102</td>
<td>11,065</td>
<td>11,043</td>
<td>12,399</td>
<td>17,257</td>
<td>19,415</td>
<td>19,415</td>
<td>18,445</td>
<td>15,677</td>
</tr>
<tr>
<td>herring</td>
<td>21,570</td>
<td>21,571</td>
<td>17,728</td>
<td>17,776</td>
<td>17,788</td>
<td>20,145</td>
<td>20,145</td>
<td>16,036</td>
<td>13,549</td>
<td>14,356</td>
</tr>
<tr>
<td>mackerel</td>
<td>197,099</td>
<td>202,139</td>
<td>187,596</td>
<td>175,164</td>
<td>128,690</td>
<td>131,713</td>
<td>149,519</td>
<td>136,522</td>
<td>181,694</td>
<td>173,663</td>
</tr>
</tbody>
</table>


Notes: 1. West of Scotland Haddock quota does not include Rockall Haddock - in 2010 UK quota for Rockall Haddock was 4,029 tonnes.
2. Mackerel is UK quota for whole of North East Atlantic stock

The Scottish fishing fleet also has an interest in stocks of plaice, sole, saithe, megrim, and ling among the demersal species (i.e. bottom dwellers) and blue whiting among the pelagic species (i.e. fish that live mid-water between the bottom of the sea and the surface). Lobsters, crabs and scallops which are particularly important for inshore shellfish fisheries, are not regulated by quotas. The Scottish fleet has only very small quotas for industrial species (i.e. fish that are used to make animal food, mainly fishmeal) such as sandeel, Norway pout and sprat.

### SCIENTIFIC ADVICE ON STOCKS AND QUOTAS FOR 2011

#### ICES APPROACH TO SCIENTIFIC ADVICE

ICES advice is informed by three approaches to fisheries management:

- **The ecosystem approach**, which seeks to take into account the impact of fisheries on the marine ecosystem, and interactions between fish stocks and the marine ecosystem

- **The precautionary approach**, which seeks to manage the uncertainty of scientific assessment of fish stocks to avoid the risk that they will collapse i.e. decline to a commercially unexploitable level

- **The maximum sustainable yield (MSY) approach**. Maximum sustainable yield is a broad conceptual objective aimed at achieving the highest yield possible over the long term (an infinitely long period of time). It is non-specific with respect to: (a) the biological unit to which it is applied; (b) the models used to provide scientific advice; and (c) the
management methods used to achieve MSY. The MSY concept can be applied to an entire ecosystem, an entire fish community, or a single fish stock.

One of the commitments of the World Summit on Sustainable Development which the EU Member States signed up to was to: “Maintain or restore stocks to levels that can produce the maximum sustainable yield with the aim of achieving these goals for depleted stocks on an urgent basis and where possible not later than 2015.” The MSY approach is becoming increasingly incorporated into ICES advice, as fisheries managers, ICES’ clients, seek to meet this commitment.

ICES (2010) has set out in more detail in an introductory section to its June 2010 advice how these three approaches are incorporated into its advice.

**ICES ADVICE ON QUOTAS FOR 2011**

The table below shows implications of the ICES advice for the quota for the main stocks of interest to the Scottish fleet for 2011. It also indicates the relative value of these stocks by showing the value of landings by Scottish boats in 2009, the most recent year for which data are available, and shows the UK’s quota for 2010. Further details of the scientific advice are provided in the Annex.

**Table 3 – ICES advice for 2011 and comparisons with 2010 (figures in tonnes)**

<table>
<thead>
<tr>
<th>Stock</th>
<th>Where decided</th>
<th>Landings by Scottish boats 2009 (£m)</th>
<th>UK quota for 2010</th>
<th>UK quota implied by ICES and/or long term management plan for 2011</th>
<th>Expected Commission Proposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>NS cod</td>
<td>EU Norway</td>
<td>16.3</td>
<td>13,067</td>
<td>-20</td>
<td>-20</td>
</tr>
<tr>
<td>NS haddock</td>
<td>EU Norway</td>
<td>24.9</td>
<td>22,698</td>
<td>-5</td>
<td>-5</td>
</tr>
<tr>
<td>NS whiting</td>
<td>EU Norway</td>
<td>7.4</td>
<td>7,391</td>
<td>no specific advice</td>
<td>-15</td>
</tr>
<tr>
<td>NS Nephrops</td>
<td>Dec Council</td>
<td>38.9</td>
<td>21,384</td>
<td>-8</td>
<td>-8</td>
</tr>
<tr>
<td>NS Herring</td>
<td>EU Norway</td>
<td>4.7</td>
<td>24,223</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>Monkfish (NS &amp; WoS)</td>
<td>Dec Council</td>
<td>30.7</td>
<td>10,946</td>
<td>no specific advice</td>
<td>-15 for North Sea, rollover West of Scotland</td>
</tr>
<tr>
<td>WoS Nephrops</td>
<td>Dec Council</td>
<td>37</td>
<td>15,677</td>
<td>-25</td>
<td>-15</td>
</tr>
<tr>
<td>WoS cod</td>
<td>Dec Council</td>
<td>0.2</td>
<td>145</td>
<td>No fishing</td>
<td>-25</td>
</tr>
<tr>
<td>WoS haddock</td>
<td>Dec Council</td>
<td>2.7</td>
<td>2,053</td>
<td>No fishing</td>
<td>-25</td>
</tr>
<tr>
<td>WoS whiting</td>
<td>Dec Council</td>
<td>0.4</td>
<td>246</td>
<td>As low as possible</td>
<td>-25</td>
</tr>
<tr>
<td>Rockall haddock</td>
<td>Dec Council</td>
<td>3.6</td>
<td>4,029</td>
<td>-46</td>
<td>-25</td>
</tr>
<tr>
<td>WoS herring</td>
<td>Dec Council</td>
<td>2.2</td>
<td>14,356</td>
<td>-8</td>
<td>-8</td>
</tr>
<tr>
<td>mackerel</td>
<td>Coastal States</td>
<td>135</td>
<td>173,663</td>
<td>+ 4 to + 13</td>
<td>+ 13</td>
</tr>
</tbody>
</table>
Notes: NS = North Sea; WoS = West of Scotland; Expected Cion Prop = expected European Commission proposal for TACs and Quotas for 2011. Further details of the ICES advice are in the table in the annex
Sources: ICES (2010); European Commission (2010b); Scottish Government (2010).

The main points from the ICES advice are:

- Cuts are advised for all the species shown in the table, with the exception of West of Scotland monkfish, mackerel and North Sea herring
- A substantial decrease in the TAC for North Sea cod is advised, and a modest decrease for North Sea haddock; these fish are the mainstays of the East coast whitefish fleet.
- A modest cut for North Sea Nephrops and a more substantial cut for West of Scotland Nephrops as the scientific advice seeks to reduce harvest rates in line with a MSY approach. Due to market difficulties the uptake of quota has been low in 2010. However, reductions in fishing opportunity would be significant should the market recover.
- West of Scotland cod, haddock and whiting stocks are at low levels and show no sign of recovering. Further cuts in the already low quotas for these species seem likely
- The potential to increase the mackerel TAC is likely to be more than offset by the current problem with this stock, described below

MACKEREL

Mackerel are a migratory widely dispersed, migratory pelagic species. The populations of the NE Atlantic are dispersed from the coastal waters of Morocco, around the coasts of Spain, Portugal, France, Ireland, Britain, the Faeroes and Norway and into the Barents sea. The stock is seen as having three spawning components: the southern component spawns in Spanish and Portuguese waters, the western component spawns in the Bay of Biscay and around Ireland, and the third component, which has become depleted, spawns in the North Sea.

For the last ten years catches of mackerel have been agreed through coastal state negotiations between three parties: the EU; Norway; and the Faeroes. The stock has been successfully managed through these agreements, and is currently at a sustainable level.

Historically Iceland has fished a small amount of mackerel, around 2,000 tonnes a year on average. In recent years, Iceland has reported increased mackerel migrating into its waters, perhaps linked to ocean warming. Iceland has substantially increased its catch of mackerel, to 116,000 tonnes in 2009 and 130,000 tonnes in 2010.

The Faeroes has historically taken a small share of the mackerel quota set by the three coastal states, around 4%. In 2010, following the actions of Iceland, it has increased its quota to 85,000 tonnes, which is 15% of the total catch.

The UK has the largest share of the mackerel quota of the EU Member States, at 173,000 tonnes, mainly fished by Scottish boats, and it is the most valuable species to the Scottish fishing industry, with landings by Scottish boats in 2009 worth £135m. The Scottish mackerel fishery has received Marine Stewardship Council certification.

The actions of Iceland and the Faeroes have been greeted with dismay by Scottish mackerel fishermen, as increasing catches of mackerel without a scientific basis for doing so places the future sustainability of the stock at risk.

The Scottish Government (2010b) has been vocal in criticizing the actions of Iceland and the Faeroes, and in pressing for the EU to take action to resolve the situation. The Cabinet Secretary for Rural Affairs and the Environment, Richard Lochhead MSP, spoke on behalf of the
UK delegation on the issue at the Agriculture/Fisheries Council of the 27 September 2010, the first time a Scottish Minister has spoken on behalf of the UK on fisheries (Scottish Government 2010c). Following the Council, the EU Fisheries Commissioner, Maria Damanaki said:

“The actions by Iceland and the Faroe Islands in setting unilateral quotas for themselves is nothing short of unacceptable. The EU and Norway have built up the stock in the North East Atlantic to a good and sustainable level. The amount of mackerel which Icelandic and Faroese vessels have taken out of the sea this year goes way beyond what they have ever fished before. These actions also defy all the hard efforts of our own industry in trying to protect this stock.

We concluded today that we want to resolve this untenable situation, to avoid that our fishermen would be even worse off in the future.

The Commission has ensured the continuation of the dialogue with the Faroe Islands and Iceland over recent weeks and this process will continue while we are discussing the way ahead with Norway.

We must get the best for our fishing industry while preserving sustainable fish stocks. The Commission considers that we should seek a balanced and fair result for all parties concerned in the form of a long term sharing agreement on mackerel between all Coastal States. In such a long term sharing agreement we should take the migration of mackerel into more northern waters into account. Such an arrangement would have the advantage of delivering stability and certainty on future fishing possibilities for the Union's mackerel industry, because without an agreement we don't know what be situation may be next year.

But we will not seek an agreement at any cost. If we are met with continuing exaggerated quota expectations from either Faroe Islands or Iceland, then the EU will to be ready to act, in particular, in relation to our annual fisheries arrangements with those countries. Now we have to focus on results, on finding a long term agreement on quota shares between the Coastal States that can deliver a good and sustainable outcome.”

(European Commission 2010c)

The ICES advice includes a table with an estimate of 2010 catches:

Table 4 – ICES estimates of mackerel catches

<table>
<thead>
<tr>
<th></th>
<th>Tonnes</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU quota, including Southern and Swedish quota</td>
<td>367,014</td>
</tr>
<tr>
<td>Inter-annual quota transfer from 2009 (EU)</td>
<td>7,352</td>
</tr>
<tr>
<td>UK-Ireland payback</td>
<td>-18,222</td>
</tr>
<tr>
<td>Norwegian quota including Northern quota 1)</td>
<td>181,000</td>
</tr>
<tr>
<td>Inter-annual quota transfer from 2009 (Norway)</td>
<td>69,000</td>
</tr>
<tr>
<td>Russian quota</td>
<td>45,321</td>
</tr>
<tr>
<td>Discards (Previous years estimate)</td>
<td>12,854</td>
</tr>
<tr>
<td>ICES estimate of EU, Norway , and Russia (including discards)</td>
<td>664,319</td>
</tr>
<tr>
<td>Expected overcatch in 2010 based on 2009 overcatch (7.6%)</td>
<td>50,683</td>
</tr>
<tr>
<td>Icelandic quota</td>
<td>130,000</td>
</tr>
<tr>
<td>Faroese quota</td>
<td>85,000</td>
</tr>
</tbody>
</table>
In 2009 ICES advice on mackerel was that:

“The precautionary management plan for Northeast Atlantic mackerel implies catches between 527 000 t and 572 000 t in 2010. The SSB is expected to remain stable in 2011 for a catch in this range.”

So ICES’ estimate of mackerel catches for 2010 is 60% higher than the upper bound of what it had advised would be sustainable.

With a view to negotiating a settlement, in 2010 Iceland has now been included for the first time as a party to the coastal state negotiations. The next round of negotiations on mackerel take place in London from 12-14 October.

WEST OF SCOTLAND STOCKS

During the negotiations of autumn 2008, the European Commission’s initial proposals for the West of Scotland were described by the Scottish Fishermen’s Federation (2008) as amounting to an almost complete shut down of fishing in the area. The Cabinet Secretary explained to the Rural Affairs and Environment Committee on the 5 November 2008 that he hoped that the proposal was a negotiating tactic on the part of the Commission, rather than a proposal the Commission seriously expected would be implemented (Scottish Parliament Rural Affairs and Environment Committee 2008). The Scottish Government opposed the proposal and put forward alternative proposals which would allow the other important stocks of Nephrops, monkfish and megrims on the West Coast of Scotland to be harvested. The measures that are in place are described on the Scottish Government’s (a) website:

“1. Gear requirements:
   • The minimum mesh size in the cod-end or extension piece has increased from 70mm to 80mm.
   • Vessels targeting whitefish that are 15m or below must use at least 110mm gear, whilst those that are above 15m must use at least 120mm gear.
   • Vessels targeting whitefish must also have a 3m long Square Mesh Panel (SMP) fitted 12-15m from the codline. The mesh 110mm or 120mm dependant on whether the vessel is below or above 15m respectively.

2. Catch-composition requirements:
   • For vessels targeting Nephrops (also known as Norway lobster, langoustine and prawns), the catch must contain at least 30% Nephrops and no more than 10% combined of cod, haddock and whiting.
   • For vessels targeting whitefish, the catch must contain no more than 30% combined cod, haddock and whiting.”

These measures will remain in place until at least the middle of 2011. Recognising the difficulties that these measures pose to the fleet, the Scottish Government has worked with the industry to develop alternative measures, and proposals were submitted to the European Commission in May 2010:

• A haddock quota uptake rule, to increase flexibility to whitefish fishermen and to reduce haddock discards;
• The transposition of the North Sea 110mm net into the West of Scotland, to improve the quality and value of the megrim fishery;
• A revision of the coordinates of the 'French Line' within which the measures apply;
- The removal of a prohibition on tangle nets to support a seasonal inshore crawfish fishery; and
- A derogation to allow low powered vessels to operate with a 2m Square Mesh Panel when inside the French Line.

The European Commission has asked STECF to evaluate these proposals (Scottish Government 2010a).

**KILOWATT DAYS AND THE COD RECOVERY PLAN**

Fishing effort for vessels fishing with gear likely to catch cod has been limited in the North Sea and the West of Scotland since 2003. From 2003 to 2007 effort was limited by calendar days.

Limits on fishing by individual vessels by calendar days have now been replaced by limits on kilowatt days – kilowatt days = engine power (KW) x calendar days. A vessel’s engine power affects e.g. the size of net that a vessel can tow and haul, and hence its catching capacity.

The regulation on days at sea for 2008 allowed Member States to choose to manage days at sea by a system of kilowatt days, rather than calendar days, for a particular type of fishing gear, or for a particular geographical area. The advantage is greater flexibility in allocating fishing effort. Kilowatt days are calculated by multiplying the number of days fished by the sum of the engine power in kilowatts of the vessels. The UK chose to manage fishing effort by trawlers in the North Sea and to the West of Scotland by kilowatt days in 2008. The reference period for determining the UK’s kilowatt days is the average annual kilowatt days fished from 2004 to 2006.

During 2008, a long-term management plan was agreed for cod stocks, replacing the recovery plan which had been in place since 2004 (Council Regulation (EC) No. 1342/2008). The plan requires fishing mortality on cod to be reduced in stages until it is at or below a target level. It contains rules for setting cod TACs to reduce them to a level corresponding to this target fishing mortality. It also requires fishing using specific fishing gears in specific areas, including the North Sea and West of Scotland, to be managed by kilowatt days. It requires reductions in kilowatt days corresponding to the reduction in TACs. The fleet is divided into gear categories according to the type of net they use and the species they target. Effort reductions apply to gear categories according to the proportion of the total cod catch that they are responsible for. The plan requires the Council to take an annual decision on these kilowatt day limits, which are included in the TAC and quota regulation, decided at the December Fisheries Council.

For the West of Scotland, the plan required that kilowatt days be reduced by 25% per year whilst the stock size is below a biomass limit value. For the North Sea, the plan required a 25% reduction in kilowatt days in 2009, and a 10% point reduction in 2010, and a reduction of 10% points per year thereafter until a target lower fishing mortality and stock biomass are reached. Neither the West of Scotland stock nor the North Sea stock have met the targets in the plan, and so further reductions in kilowatt days are expected to be proposed by the European Commission for 2011.

The table below shows the kilowatt days allocated to the UK in 2009 and 2010. It also shows the kilowatt day allocations that would have been made in 2008, to illustrate the effect of the 25% cut applied in 2009. Proposals for 2011 will be made in the European Commission’s proposal which is expected to be published on the 26 October 2010. For 2011 there will be a further cut of 10 percentage points to the kilowatt days available to North Sea whitefish fleets, reducing the minimum pot to 55% of the 2004-06 average annual effort, and a 25% reduction on the 2010 kilowatt days ceiling for West of Scotland whitefish boats. Whether there will be a
reduction for Nephrops trawlers is not yet known and will depend on the proportion of total cod catch they are estimated to have been responsible for.

Table 5 - Kilowatt days for UK vessels 2008, 2009, and 2010

<table>
<thead>
<tr>
<th></th>
<th>Whitefish trawlers</th>
<th>Nephrops trawlers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>North Sea</td>
<td>West of Scotland</td>
</tr>
<tr>
<td>2008</td>
<td>13,726,845</td>
<td>3,197,975</td>
</tr>
<tr>
<td>2009</td>
<td>10,295,134</td>
<td>2,398,481</td>
</tr>
<tr>
<td>2010</td>
<td>8,938,164</td>
<td>1,836,929</td>
</tr>
<tr>
<td>2011</td>
<td>7,549,765</td>
<td>1,377,696</td>
</tr>
</tbody>
</table>

Source: derived from Appendix II to Annex IIa of Council Regulation 43/2009 and Appendix I to Annex IIa of Council Regulation 23/2010. Notes – the figures for kilowatt days in the regulation for 2009 have been multiplied by 1/0.75 to derive a baseline for 2008. Figures for whitefish trawlers for 2011 – North Sea figure is 55% of 2008 figure, West of Scotland figure is 75% of 2010 figure. Whitefish trawlers are gear category TR1 defined as trawlers using mesh >=100mm; nephrops trawlers are gear category TR2 defined as trawlers using mesh >=70mm - <100mm

CONSERVATION CREDITS

The Scottish Government has sought to mitigate the impact of the reductions in fishing time required by the long-term cod management plan by introducing ‘Conservation Credits’. A number of measures have been introduced which are intended to reduce cod catches. Fishermen who adopt these measures receive additional fishing time. This scheme is facilitated by Article 13 of the regulation on the long term cod plan (Council Regulation 1342/2008), which allows Member States to allocate fishing effort above the minimum set out, where vessels participate in additional cod avoidance activities.

Conservation Credits were introduced by the Scottish Government, following an agreement in the autumn 2007 fisheries negotiations. The Scottish Government agreed with the European Commission that it would institute a system of real time closures in 2008 to reduce catches of juvenile cod. Fishermen who complied with the area closures received additional days at sea.

The Conservation Credits scheme was continued in 2009 and 2010 and the measures under the scheme have been extended. The scheme provides alternatives to the reduction in kilowatt days, whilst still reducing cod mortality by the level required by the cod recovery plan. It is intended to give the majority of Scottish whitefish and Nephrops trawlers the opportunity to fish at a level close to their normal practices. Fishermen can receive additional days at sea by adopting conservation measures such as nets that allow cod to escape, and avoiding fishing in areas with high concentrations of cod. The more conservation methods used, the more days at sea can be topped up.

DISCARDS

Discards are fish that are caught and thrown back into the sea; in most cases the fish are thrown back dead or do not survive. According to a report by the Food and Agriculture Organisation of the United Nations (2005), which was based on data from 1992 to 2001, total annual discards in the North Sea were between 500,000 and 880,000 tonnes. Landings of fish species over this period were around 2 million tonnes per year (ICES 2005 table 1.2.2.2)

The European Commission has identified several reasons why discarding occurs:
• The system of quotas obliges fishermen to discard fish for which they have no quota. Relative stability and the mismatch between quotas and catches results in discards

• Minimum landing sizes require the discarding of undersized fish

• National implementation of fish quotas can contribute to the problem where it does not allocate quotas according to the catches of fleets

• Fish are discarded for economic reasons. Many species have low or no-commercial value. Fishermen also discard landable fish to save space on board for bigger higher value fish of the same species, so-called 'highgrading'.

There is general agreement that discarding is a waste of resources, and that it should be reduced. The European Commission (2007) produced a consultation paper in 2007 on reducing by-catches and discards. In April 2008 the Commission produced a consultation on how discards could be reduced in two fisheries – Nephrops fisheries in ICES Area VII (the Irish Sea, Channel and seas to the West of Ireland), and the beam trawl fishery for plaice/sole in the North Sea (neither fishery is of importance to the Scottish fleet) (European Commission 2008). It proposes a Maximum Acceptable By-catch Limit (MABL) after five to six years, with intermediate targets in the preceding years. Vessels would not be allowed to discard by-catches in excess of the MABL. The Commission stated that “this approach will be gradually extended to all other European fisheries.” The Commission has also stated its intention to reduce discarding through measures adopted as part of the reform of the CFP.

The Scottish Government’s website has some information on the measures that are being implemented by the Scottish fleet to reduce discards:

“The Scottish Government takes the issue of discard reduction very seriously and has supported EU-led initiatives to promote discard reduction as well as implementing its own measures. Scotland actively promotes a fisheries management system which allows vessels to "catch less, land more". We are keen to ensure that our precious natural resources are managed sustainably and protected for future generations.

Some of the measures currently underway to reducing discarding across the Scottish fleet are detailed below.

• Using more selective fishing nets and other gear to avoid catching the unwanted fish in the first place. Trials for further selective gear types are underway;
• Observing real-time temporary closures, or seasonal closures, of rich fishing grounds during critical times;
• CCTV scheme and observer programme to deter discarding;
• High grading (the discarding of fish which can be landed legally) is banned in the North sea and pelagic fisheries;
• Slipping (releasing the fish before the net is fully taken on board) is also banned in pelagic fisheries;
• Jigging machines in the pelagic fisheries sample the catch prior to nets being lowered so that skippers can avoid catching unwanted fish.”

For some species the scientific advice already includes an assessment of the amount of fish that will be discarded. The Scottish Government has argued that it is possible to “catch less and land more” by allowing fishermen to land the fish they would have otherwise discarded by moving to a system of catch quotas. Fishermen who have agreed to take part in trials of this approach receive additional quota if they carry CCTV in the fish room of their vessel which allows monitoring to ensure no fish are discarded. These trials have continued in 2010.
Fishing News of 24 September 2010 reported on a meeting in Peterhead concerning catch quotas:

‘Backing for catch quotas is an economic imperative under the current circumstances, where skippers are running out of quota with only two-thirds of the year gone and the prospect of even more cuts next year,’ said Mike Park, executive chairman of the Scottish White Fish Producers Association (SWFPA). (…)

A pilot project involving only cod catches has been underway on both sides of the border this year and an interim report on the results of the Scottish trials with 19 boats was circulated at the meeting. Boats taking part in the scheme were able to gain extra cod quota from an additional 5% awarded at last December’s Fisheries Council and extra days at sea, but have to observe strict rules. Now the plan is to extend the scheme to other species.

Fisheries Ministers and officials support the scheme, and a DEFRA official at the recent NFFO AGM said catch quotas would be a “live issue” in the autumn negotiations and in the longer term.

Mike Park said (…) ‘It’s time now to break out from the trials stage and to experiment more fully with the concept of catch quotas, apply it to other species and move into a fully fledged system in 2011’. 

GLOSSARY

Blim – biomass limit value, below which the stock is thought to be at risk of collapse
Bpa – biomass precautionary value, above which the stock is thought to be safe from collapse
Flim – fishing mortality limit value
Fpa – fishing mortality precautionary value
ICES – International Council for the Exploration of the Sea
LTMP – Long Term Management Plan
MSY – Maximum Sustainable Yield
STECF – Scientific, Technical and Economic Committee on Fisheries, a committee of experts from EU Member States which advises the European Commission
TAC – Total Allowable Catch, the total amount of fish which can be removed from a stock in a year. Due to the problem of discarding, the TAC is effectively a Total Allowable Landing.
UWTV – Under water TV, a survey technique used to estimate the size of Nephrops stocks
## ANNEX 1 - SUMMARY OF SCIENTIFIC ADVICE FOR STOCKS OF INTEREST TO SCOTTISH FLEET

<table>
<thead>
<tr>
<th>Stock</th>
<th>ICES assessment of state of stock</th>
<th>ICES advice for 2011</th>
<th>TAC 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>North Sea Cod</td>
<td>SSB has increased since its historical low in 2006, but remains below Blim. Fishing mortality declined after 2000, and although its most recent trajectory is considered uncertain, it is estimated to be well above the long-term objectives of maximum yield, and likely above Fpa. Recruitment since 2000 is poor. The assessment this year is considered more uncertain than the assessment conducted last year.</td>
<td>MSY approach – landings of 5,700t in 2011. Staged transition to MSY approach – landings of 18,100t in 2011. Precautionary approach – even with zero catch the SSB is not expected to reach Bpa in 2012. Based on the management plan and the EU cod recovery plan, and the limit of TAC variation of 20% p.a. implies landings of 32,240 tonnes for 2011, which taking account of unallocated removals implies a reduction in the TAC of 20%. However ICES points out that: “In spite of uncertainty in the assessment, all models and scenarios suggest that the management objectives in terms of reduction of fishing mortality specified in the LTMP cannot be achieved in 2011 unless catches are reduced beyond the 20% limit on inter-annual variability.”</td>
<td>33,600t</td>
</tr>
<tr>
<td>North Sea Haddock</td>
<td>Fishing mortality has been below Fpa and SSB is above MSY Btrigger since 2001. Recruitment is characterized by occasional large year-classes, the last of which was the strong 1999 year class. Apart from the 2005 and 2009 year classes which are about average, recent recruitment has been poor.</td>
<td>MSY approach – landings &lt;36,000t in 2011. Precautionary approach – landings &lt;74,000t in 2011. Management plan – 36,152t in 2011, which implies a TAC reduction of 5% and an effort increase of 29%.</td>
<td>36,000t</td>
</tr>
<tr>
<td>North Sea</td>
<td>The state of the stock is uncertain, and</td>
<td>No reference points are available to</td>
<td>12,900t</td>
</tr>
<tr>
<td>Stock</td>
<td>ICES assessment of state of stock</td>
<td>ICES advice for 2011</td>
<td>TAC 2010</td>
</tr>
<tr>
<td>------------------------</td>
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</tr>
<tr>
<td><strong>Whiting</strong></td>
<td>reference points for the stock are not defined. The assessment shows fishing mortality has fallen since 2000, and SSB has increased from a low in 2007.</td>
<td>enable MSY or precautionary advice.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The advice suggests that under the current rules used by the European Commission to categorise stocks, the TAC would change by a maximum of 15%. The European Commission has asked ICES to evaluate its proposals for alternative rules. Under this proposal the TAC for North Sea whiting for 2011 would not change.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>North Sea Nephrops</strong></td>
<td>ICES identify eight separate stocks within the North Sea. Three stocks are of most importance to the Scottish fleet. Fladen, Firth of Forth and Moray Firth.</td>
<td>ICES recommend the eight stocks should be managed individually, or there is a risk stocks can be overexploited.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Fladen: The perception of the state of the stock has not changed substantially since the assessment in 2009. The UWTV abundance is still at a high level relative to the historical time series although there has been a 25% reduction in 2009 from the 2008 value. The stable mean sizes in the length compositions of catches (of individuals &gt;35 mm CL) and recent estimated harvest ratios (removals/TV abundance) relative to per-recruit reference points suggest that the stock is being exploited sustainably.</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Firth of Forth: The perception of the state of the stock has not changed substantially since the assessment in 2009. The UWTV abundance has been at a relatively high level since 2003 and the 15% reduction observed in 2009 is within the</td>
<td>Firth of Forth: The harvest ratio in 2010 is 23.3%, which if maintained would result in landings of 2,200t. For MSY this should be reduced to 15%, corresponding to landings of 1,400t. Following ICES transition scheme for moving to MSY, the harvest rate should be reduced to 21.7% in 2011, corresponding to landings of 2,000t.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Moray Firth: The harvest ratio in 2010 is 14% (which would correspond to landings of 1,300t in 2011). For MSY this should be reduced to 12.7%, corresponding to 2,4888t for the North Sea as a whole.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stock</td>
<td>ICES assessment of state of stock</td>
<td>ICES advice for 2011</td>
<td>TAC 2010</td>
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<tr>
<td></td>
<td>confidence bounds of the 2008 value. The TV survey information, taken together with information showing stable mean sizes, suggest that the stock does not show signs of overexploitation.</td>
<td>landings of 1,200 tonnes. Following the ICES transition scheme for moving to MSY the harvest ratio for 2011 should be 13.7%, which also corresponds to landings of 1300t.</td>
<td></td>
</tr>
<tr>
<td>Moray Firth: The perception of the state of the stock has not changed substantially since the assessment in 2009. The TV survey suggests that the population is stable, but at a lower level than that evident from 2003–2005. There is no evidence from the mean size information to suggest overexploitation of the FU although the current low discard rate suggests that recruitment may be lower than it has been previously. There has also been an apparent increase in female catchability which when observed in other FUs has been associated with the stock having been overexploited.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Sea Herring</td>
<td>Spawning stock biomass is increasing and is close to Bpa. Fishing mortality has declined and is below the target set by the management plan. The main concern with this stock is recruitment - the year classes since 2002 are estimated to be among the weakest since the late 1970s. ICES notes that &quot;North Sea herring has recently produced eight poor year classes in a row, which has never been observed when SSB was above 800,000 t&quot;, and there is a suggestion that rising sea temperatures may be a cause.</td>
<td>MSY approach – fishing mortality could be raised, resulting in a catch of &lt;370,000 tonnes.</td>
<td>164,000t</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Precautionary approach – catches of &lt;370,000 tonnes in 2011.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Management plan – the +/-15% change in TAC year to year would result in a TAC of 188,900t in 2011.</td>
<td></td>
</tr>
<tr>
<td>Monkfish in North sea and West of Scotland</td>
<td>There is no accepted analytical assessment for this stock. However, recent dedicated anglerfish surveys in the North Sea and West of Scotland indicate a decline in abundance</td>
<td>MSY approach: Due to a decrease in survey estimates of stock abundance and biomass and unknown exploitation pattern catches should</td>
<td>11,345t</td>
</tr>
<tr>
<td>Stock</td>
<td>ICES assessment of state of stock</td>
<td>ICES advice for 2011</td>
<td>TAC 2010</td>
</tr>
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</tr>
<tr>
<td><strong>Scotland</strong></td>
<td>since 2007; and a decline in biomass in 2009 in all areas surveyed with the exception of Division VIb (Rockall)</td>
<td>be reduced at rate greater than the rate of stock decrease. Because the catch levels are not known (only landings) this cannot be quantified. Therefore, effort in fisheries that catch anglerfish should be reduced. Precautionary approach: The catch should be reduced and effort in fisheries that catch anglerfish should decrease. Under the EU policy paper the stock is in Category 7, which means the TAC should be reduced by up to 15% based on the advice of STECF.</td>
<td></td>
</tr>
<tr>
<td><strong>West of Scotland Nephrops</strong></td>
<td>ICES identify three separate stocks. North Minch: The evidence from the TV survey suggests that the population is stable over the last 3 years, but at a lower level than that evident from 2003 2006. The calculated harvest ratio in 2009 (dead removals/UWTV abundance) is above the values associated with high long term yield and low risk depletion. South Minch: The stable mean sizes in the length compositions of catches and recent fall in estimated harvest ratios to the equivalent of the FMSY proxy suggests that the stock is now being exploited sustainably. Clyde: Harvest rates for <em>Nephrops</em> in the Firth of Clyde have been at or above the proposed FMSY proxy in recent years. UWTV abundance remains well above the preliminary Btrigger.</td>
<td>North Minch: The harvest ratio in 2010 is 22%, which would equate to landings of 3,400t in 2011. The harvest rate should be reduced to 12.5% under an MSY approach, corresponding to landings of 1,900t. Following the ICES transition scheme for moving to MSY the harvest ratio for 2011 should be 20.1%, which corresponds to landings of 3,100t. South Minch: the current harvest rate of 13% would result in landings from the stock of 4,000t in 2011. The MSY approach would result in a slight reduction in harvest rate and landings to 12.3% and 3,800t respectively. Clyde: Fishing at the current harvest rate of 26% would imply landings of 4,500t in 2011. The MSY approach would require the harvest rate to be reduced to 16.4 %, resulting in landings of 2800 t in 2011. Following the transition scheme towards</td>
<td>16,057t</td>
</tr>
<tr>
<td>Stock</td>
<td>ICES assessment of state of stock</td>
<td>ICES advice for 2011</td>
<td>TAC 2010</td>
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<tr>
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</tr>
<tr>
<td>Stock</td>
<td></td>
<td><strong>MSY</strong> implies the harvest ratio for the Firth of Clyde should be reduced to 24.1%, resulting in landings of 4100 t in 2011.</td>
<td></td>
</tr>
<tr>
<td>West of Scotland Cod</td>
<td>Total mortality is high, but cannot be accurately partitioned into fishing mortality and natural mortality. The spawningstock biomass has increased from an all time low in 2006, but remains well below Blim. Recruitment has been estimated to be low over the last decade. The 2005 and 2008 year classes are estimated to be the largest since 1997 and comparable with the long term geometric mean.</td>
<td><strong>MSY</strong> Approach: Catches (mainly discards) should be reduced to the lowest possible level. <strong>Precautionary approach:</strong> No targeted fishing should take place on cod in Division VIa. Bycatches including discards of cod should be reduced to the lowest possible level. Management plan: implies 25% reduction in effort and in TAC which equates to landings of &lt;180t in 2011.</td>
<td></td>
</tr>
<tr>
<td>West of Scotland Haddock</td>
<td>The very strong 1999 year class caused SSB to increase from a level near the historic low in 2000 to a peak in 2003, although SSB has declined since that time. F has been above Fpa in most years since 1987 and has been below Fpa since 2007. The 2006 to 2009 year classes are estimated to be below the long term average.</td>
<td>A management plan is under development. This plan results in a TAC of 940 t in 2011. ICES considers this to be in accordance with the precautionary approach.</td>
<td></td>
</tr>
<tr>
<td>Rockall Haddock</td>
<td>Spawning biomass has increased in recent years as a result of the 2001 and 2005 year classes. SSB has been above Bpa since 2003. Fishing mortality has declined over time and is now close to FMSY. Recruitments since 2007 are estimated to be extremely weak.</td>
<td>Under the EU policy paper the stock is in Category 1, and ICES advises a TAC of 2,700t for 2011.</td>
<td></td>
</tr>
<tr>
<td>West of Scotland Haddock</td>
<td>The state of the stock is unknown, but long-term information on the historical yield and MSY / Precautionary approach: catches (half of which are discarded) should be</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stock</td>
<td>ICES assessment of state of stock</td>
<td>ICES advice for 2011</td>
<td>TAC 2010</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------</td>
<td>----------</td>
</tr>
<tr>
<td>Whiting</td>
<td>Catch composition and the survey-based assessment covering the more recent period all indicate that the present stock size is at a historical low.</td>
<td>Reduced to the lowest possible level in 2011. ICES also comments that “There are strong indications that TAC management control is not effective in limiting the catch.” Under the EU policy paper the stock is in Category 10 (catches should be reduced to the lowest level). This implies a reduction of 25% and a TAC for 2011 of 323t.</td>
<td></td>
</tr>
<tr>
<td>West of Scotland Herring</td>
<td>ICES considers that the stock over recent years has been fluctuating at a low level and is being exploited below FMSY.</td>
<td>Following the agreed management plan implies a TAC of 22,481 t in 2011 which is expected to lead to a TAC reduction of 13%.</td>
<td></td>
</tr>
<tr>
<td>North East Atlantic Mackerel</td>
<td>Published 1 October</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Sources: [ICES (2010)](https://www.ices.dk)
SOURCES


Council Regulation 23/2010 of 14 January 2010 fixing for 2010 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in EU waters and, for EU vessels, in waters where catch limitations are required. [Online]. Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010R0053:EN:NOT


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RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

WILDLIFE AND NATURAL ENVIRONMENT (SCOTLAND) BILL

SUBMISSIONS PACK

The following evidence has been received by those giving evidence to the Committee at its meeting on 6 October:

WRITTEN SUBMISSION FROM BRITISH VETERINARY ASSOCIATION

I am writing to clarify the position of the British Veterinary Association (BVA) on the use of snares following a written submission to the Committee by the Scottish Rural Property and Business Association (SRPBA), which unfortunately misrepresents the BVA's position.

SRPBA states “That is why snaring is necessary as a tool because in many cases it will be the most humane method of control, as professional opinion from the British Veterinary Association has previously confirmed.”

This is not the professional opinion of the BVA. The BVA Ethics and Welfare Group considered the use of snares and the call by Advocates for Animals for a total ban at its meeting in November 2007. The Group concluded that there is currently a dearth of scientific data on the issue and that it was therefore not possible to have an informed debate at that time.

Some members of the Ethics and Welfare Group felt that in some circumstances snaring is the least inhumane method but concern was raised regarding the high percentage of non-target species caught in snares.

The BVA is aware that Defra is currently undertaking a project looking at the use and humaneness of snares in England and Wales and is awaiting the results of this study before producing a formal BVA policy.

Until these results are available the BVA remains supportive of the findings of the report of the Independent Working Group on Snares.

I hope the Committee will take this position into account when assessing the written submissions of evidence on the issue of snaring and I am happy for this letter to be published alongside the written submissions. Once the BVA’s Ethics and Welfare Group has had the opportunity to consider the results of the Defra study I would appreciate the opportunity to share this position with you.
WRITTEN SUBMISSION FROM PROFESSOR COLIN T REID

General
The Bill is welcomed for its efforts to consolidate and simplify the law, but there are three general observations to be made:

a) Despite the improvements made here, the law will remain complex and fragmented. In particular the laws on species protected under EU law and under domestic law remain in separate places and the changes here only exacerbate the appalling state of the Wildlife and Countryside Act 1981, the key provisions of which have been subject to piecemeal, “cut-and-paste” amendments for years, with the same sections existing in two substantially different forms for Scotland and for the rest of Great Britain. As just one example, the simple fact that s.14 of the Bill proposes inserting a s.14ZC into the 1981 Act sends a clear signal of the need to consolidate the 1981 Act. After this Bill, too much of the law will remain difficult to piece together and to understand, and therefore hard to explain, to follow and to enforce. This Bill should be the start, not the finish, of a tidying up process.

b) The impact of the Bill depends heavily on the detail of further measures not set out within it, both regulations and Codes of Practice. There is therefore a great onus placed on those responsible for these further measures to ensure that they are made and scrutinised in a way that ensures their acceptance and that take account of the practicalities facing those living in and trying to make a living from the countryside.

c) At present, and more so after this Bill, the details of wildlife law will depend on regulations, orders, codes, directions and general licences. Given the dynamic nature of the environment, the flexibility these offer may be desirable in contrast to the comparatively fixed terms of a statute. Nevertheless, this makes it difficult for those who have to comply with or enforce the law be certain of where the boundary lies between lawful and unlawful behaviour. Especially since criminal liability is at stake, effort must be made to ensure clear, consistent and simple public access to all the material necessary to appreciate the legal position.

My overall impression of the Bill is given in the attached extract from a draft article that I have written on it that will shortly be submitted to the Environmental Law Review.

Part 2: Wildlife
The abolition of separate rules for game and of game licences, the simplification of the law by applying the rules that apply to other birds, the removal of landowners’ special powers of enforcement, the abolition of Areas of Special Protection and the clarification of the rules on snares are all welcome.

Section 6-11: A not wholly serious comment is that an unusual but technically elegant drafting approach in relation to these provisions of the Bill would be to deem hares and rabbits to be birds for the purposes of the Act and apply the existing law accordingly.
**Section 12:** Throughout the 1981 Act and related legislation, and again here, it is not clear on what basis certain offences are chosen as ones where single witness evidence suffices whereas for others the standard rules of corroboration apply. This is an area where there is scope for further review and harmonisation of the law.

**Sections 14-17:** The introduction of a clear, precautionary approach to the release of non-native species is welcomed. However, given the breadth of the strict liability offence and the limited defences which focus on avoiding the acts concerned, rather than on uncertainty over the status of the species or locations involved, there is a heavy onus on the ministerial orders and Code of Practice to clarify the position in many situations. There will be formidable difficulties in practice in resolving such issues as whether a species is “native”, what is its “native range” and what amounts to causing a plant to grow “in the wild”. The first two are matters of scientific dispute and the latter impossible to define without either over- or under-inclusion in terms of the mischief to be avoided. What is the status of species that had disappeared from Scotland but have returned, naturally (osprey) or through reintroduction many decades ago (capercaillie) or recently (red kite, beaver)? What about new species spreading naturally in response to climate change? Presumably for plants, fields are not “in the wild”, but what about forestry plantations, country parks, avenues of trees along drives or the planting undertaken by roads authorities on roundabouts and verges? Unless the orders and Code do a very good, thorough and clear job, there is scope for a lot of argument and uncertainty, presenting difficulties for any enforcement officer wishing to intervene on-the-spot and creating the risk of a criminal conviction for someone who thought that they were acting properly.

Given that the proposed s.14B of the 1981 Act (s.14(5) of the Bill) is imposing a positive duty on people, an express requirement on the Ministers to take steps to draw this requirement to the attention of those affected might increase the effectiveness of the measure, reducing the extent of unwitting non-compliance.

Although the current proposal (s.15) is not inconsistent with the Code’s status as not being formal law, given the important role of the Code there is a case for subjecting at least the first version of the Code to a formal scrutiny procedure in Parliament, beyond mere laying.

The spread of responsibility for invasive non-native species (s.16 of the Bill) makes sense given the range of circumstances involved, but the absence of a clear lead authority creates a risk of uncertainty or inaction as authorities are unsure who should act.

**Section 18:** The introduction of a wider ground for licensing to achieve significant social, economic or environmental benefits is acceptable and by creating a means to obtain permission for action thought necessary is likely to encourage compliance with the law.
The unification of licensing powers in the hands of the Ministers initially simplifies the law, but this is then undone by the wide powers to delegate which raise two problems. The first is that it is unclear whether it is intended that the delegation should be absolute or include a reserve power for the Ministers to “call in” requests for licences in delegated areas. The second is the absence of provision for publicity for delegations made to SNH by direction. Such directions should at least be laid before Parliament and be subject to appropriate publicity. The same points apply in relation to section 27(7) dealing with licences for badgers.

More generally, the proposals here do not address what I regard as a significant weakness in the present law. This is that although action against many species of bird is prohibited under the Wildlife and Countryside Act 1981, in practice wide authority to do acts that are normally unlawful is granted under the general licences issued under that Act. The limits of criminal liability are thus being set not by the Act, not by legislation, but by licences of general application which are subject to no formal process for scrutiny or publication (although now in practice available on the Internet). There are arguments of efficiency for the present system, but given the significance of the licences in determining criminal liability, obligations in relation to publication and some scrutiny (perhaps an annual report) seem desirable.

Part 3: Deer
Section 24(3): In passing I note that the Explanatory Note (para.125) makes no mention of a potentially significant change in the law, namely the removal of the limitation on the powers under control schemes that has prevented the imposition of an obligation to fence any land.

Section 26: Given the significance of the change in the law if a register of competent persons is introduced, and the range of important matters to be regulated, the introduction of such a register should require greater parliamentary scrutiny than passage through the negative resolution procedure. That procedure may be appropriate for adjustments once the system is operation, but the initial decision to activate this mechanisms should be subject to express approval.

Part 5: SSSIs
Section 30: De-notification of an SSSI is a significant legal step and should remain subject to the standard process for public participation.

Section 31: The open-ended power of the Ministers to exempt any type of operation from the requirement to obtain SNH’s consent is very broad and should be qualified in some way to ensure that exemptions are available only where there conservation interests have been adequately considered in the process leading up to the operation taking place.

Extract from draft article by Prof. C.T. Reid to be submitted to *Environmental Law Review*
In announcing the Bill, Roseanna Cunningham, MSP, Minister for Environment said that it had three themes - balance, modernising and the welfare of wild animals - but it is difficult to see any unifying vision behind the Bill. Essentially it is a series of measures tidying up what law already says, rather than the reflection of a thorough review of our relationship with nature, and major issues of policy, such as the register of competence to shoot deer, remain open.

Looking at the stated themes, whether the Bill brings an appropriate balance to the law probably depends on one’s point of view. There is no consensus across society of balance between various interests in the countryside, a fact amply illustrated by the fact that the debates on changes to snaring that started before the 2004 Act was passed are only now reaching a legislative conclusion, and one that will fail to satisfy at least some of the participants on both animal welfare and land management sides. In terms of overall balance, the Bill imposes more obligations and restrictions on the owners and occupiers of land for the benefit of biodiversity and views will differ on whether these are these proportionate and efficient and how consistent they are with attitudes to landownership and land management reflected in other areas of policy.

In terms of modernising, there are some very significant gains, especially in relation to the game laws. Regardless of their content, there was a clear need to end the fragmentation of the law and few would disagree that, whatever their operation and effect today, elements of the game laws were founded on an anachronistic respect for the privilege of “the land-owning classes”. Concern for the welfare of animals is clearest in the snaring provisions, although many animal welfare groups would argue that only an outright ban on snaring would be acceptable in welfare terms. On other issues the welfare arguments become more complex when one starts to consider the controls on deer and non-native species, which place the focus on concern for biodiversity and protecting native ecosystems rather than on the individual creatures that might be culled for that purpose.1

The disappointment is in what the Bill does not do rather than what it does. There is some very welcome tidying up of the law, especially in relation to game, but there is a desperate need for further consolidation. The Wildlife and Countryside Act 1981 is wholly unfit for use, with so many “cut-and-paste” amendments having been made and the same sections existing in substantially different forms for Scotland and rest of Great Britain. Moreover, for those using the law in practice, a lot of the detail of the law and its application will not be in the Bill but in subsequent regulations and the Codes of Practice. The Code of Practice will play a vital role in effect defining the limits of criminal liability for non-native species, while the broad licensing powers for protected species and muirburn will alter the position in many circumstances, and the powers to delegate licensing powers may again complicate the picture for those wanting to know what they are allowed to do.

The Bill makes some good progress, but does not cure the fundamental problem that the law in this area is complex and fragmented. The legislation is hard to piece together and to understand and therefore hard to follow and to enforce, especially when the impact of the various licensing powers is taken into account. We may have to accept that in terms of

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1 See, for example, the opposition to the cull of the (North American) ruddy duck to prevent hybridisation with the (Eurasian) white-headed duck, e.g. http://www.animalaid.org.uk/h/n/CAMPAIGNS/wildlife/ALL/355/
content a degree of complexity is the inevitable consequence of the complexity of the natural world and the absence of a coherent consensus across society on our relationship with it, in practical, economic, emotional and moral terms. But at least from the perspective of legislative technique, more could be done to help all of us who struggle to make sense of the law which we are all deemed to know.

WRITTEN SUBMISSION FROM SCOTTISH RAPTOR STUDY GROUPS

The following views on the Wildlife and Natural Environment (Scotland) Bill are submitted on behalf of the Scottish Raptor Study Groups (hereinafter “SRSGs”) for Stage 1 of the Bill. SRSGs comprise experienced fieldworkers who, largely on a voluntary basis, carry out monitoring of raptors throughout Scotland. They provide the bulk of the data on raptor numbers, distribution and productivity required by Scottish Natural Heritage to enable it to fulfil certain legal duties under the Wildlife and Countryside Act 1981 as amended by the Nature Conservation (Scotland) Act 2004 and under the European Community’s Wild Birds Directive 79/409/EEC.

SRSGs have as part of their remit raptor conservation as well as monitoring, hence the views set out below. SRSGs feel that the Bill would be improved by incorporating in it provisions along the following lines:

LIVESTOCK DEFINITION – SRSGs consider that the present definition of livestock in Section 27(1) of the Wildlife and Countryside Act 1981 as including any animal which is kept for the provision or improvement of shooting or fishing is too wide and that instead the definition should extend only to any animal kept for this purpose that is wholly confined, meaning in the case of a game bird before it is put out to a release pen or equivalent. Logically livestock should be seen as kept wholly or primarily for food; for sport shooting “livestock”, in this case game birds, are kept primarily for shooting and only secondarily for food. SRSGs advocate such an amendment in order to counter what they consider to be unjustified calls for licensed control of certain raptor species at game bird release pens. If required during the passage of the Bill, SRSGs can demonstrate several reasons for labelling such calls for licensed control as unjustified.

RELEASE OF NON-NATIVE GAME BIRDS – This matter is linked with and follows on from the above point. SRSGs note that the Bill proposes measures to prevent further release of non-native species, apart from pheasants and red-legged partridges. SRSGs feel that the Bill should make available to Scottish Ministers a power to regulate the release of pheasants and red-legged partridges. It might be that in practice such a power would relate mainly to habitat damage by one or other of these two species - although as a side issue competitive feeding effect of the two species on native wildlife, for example, has still to be properly assessed. Nevertheless, it must be acknowledged that to release large numbers of either non-native species into an alien (and for them, arguably hostile) environment is to invite, indeed to encourage, the attention of predators (including raptors) which in turn can lead to unjustified calls for their licensed control.
VICARIOUS LIABILITY – Current measures to reduce wildlife crime (in this instance, criminal persecution of rapt ors) appear to be ineffective or at least to be far less effective than they might otherwise be. This is borne out by, for example, the frequent reports of poisoned raptors – and such instances are rightly called “the tip of the iceberg.” Poisoning and other forms of criminal activity have been shown to be restricting Scottish populations of, for instance, red kites, hen harriers and golden eagles. More effective law enforcement in this area is clearly needed. To this end, the Bill should contain a provision making employers and their agents absolutely criminally liable in cases of court convictions of their employees for certain wildlife offences. Consideration should be given to the types of offences in relation to which such a sanction would apply. The sanction is one that was highlighted in “Natural Justice”, the report of the recent joint thematic inspection by Her Majesty’s Inspectorate of Constabulary for Scotland and the Inspectorate of Prosecution in Scotland on arrangements for preventing, investigating and prosecuting wildlife crime, as one that merited consideration by the Scottish Parliament.

LICENSING OF LANDHOLDINGS ETC. – SRSGs note that the Bill proposes an element of deregulation of the game shooting industry, for example through removal of the requirement for a licence to take and kill game. While not querying simplification measures such as this but taking into account the points made under the vicarious liability heading above, SRSGs consider that there will remain a major gap in wildlife law enforcement unless the Bill rectifies the position. This gap is the lack of an overall system licensing system for game bird management and shooting. SRSGs advocate a system of licensing for both individual landholdings and individual persons including corporate persons, whether owners, tenants, managers (including gamekeepers) or sporting agents. SRSGs suggest that the licensed activities should include game bird management in a broad sense, letting of game bird shooting and an absolute right of game bird shooting – in other words in hand, non-let shooting. Such a system would have to guard against the possibility of, for example, an owner sub-contracting shooting rights to a company under his or her control. SRSGs believe that a licensing system of this nature – whereby licences would be withdrawn in instances of conviction for wildlife crime – would help considerably in reduction of that crime.

SRSGs feel that the various above measures, were they to be enacted, would not disadvantage to any material extent the law-abiding sector in game bird management and shooting and would increase only marginally the cost burden thereon. SRSGs are of the opinion that (1) the livestock definition and release of non-native game bird measures proposed would help to put game bird rearing and shooting on a more appropriately modern, conservation-compliant and sustainable basis and (2) the suggested licensing of landholdings/persons measures would reduce significantly raptor-related wildlife crime incidences, as described above or otherwise.
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.

Agriculture and Fisheries Council

The Cabinet Secretary has written to the Convener providing a short report on the above, which he attended in Brussels on 27 September. The text of the report can be found in annexe A.

Maria Damanaki, European Commissioner for Maritime Affairs and Fisheries, has issued speaking points for the press conference held at the Council. The press release can be accessed here:

EUROPA - Press Releases - Maria Damanaki European Commissioner for Maritime Affairs and Fisheries Speaking points for the press conference Agriculture and Fisheries Council Brussels, 27 September 2010

Brussels Bulletin

Issue 47 of the Brussels Bulletin has been published. CAP is covered on page 3 of the bulletin, which can be accessed here:


Scottish Government EU Engagement – Annual Report

The Scottish Government recently published its first annual report of its European engagement. The report reflects what has been achieved in the 12 months since the European Engagement Action Plan was launched in September 2009 and the extracts relating to the Government’s four priority areas of (i) energy and climate change, (ii) marine environment, (iii) research and creativity, and (iv) freedom, security and justice, are attached below. The section on the marine environment is on page 3.
Scottish Government Forward Look

The Government’s Forward Look for its European action during the Belgian Presidency of the Council (July to December 2010) contains some information on CAP and fisheries and is attached below:

Agricultural Council – GMO discussion

On 13 July, the Commission proposed a revised legal framework regulating genetically modified (GM) food and feed in the EU. A press release is included in annexe B.

ANNEXE A

AGRICULTURE AND FISHERIES COUNCIL: 27 SEPTEMBER 2010

Fisheries

The Commission presented a discussion paper on the ongoing mackerel crisis with Iceland and Faroes. This was in order to seek a mandate for the upcoming Coastal States negotiations and to gauge the positions of the Member States.

It was agreed that Scotland would speak for the UK. The UK intervention highlighted the urgency of reaching a deal in order to protect the long-term sustainability of the stock, and therefore the industry. We then argued for a pragmatic approach recognising that the EU will have to do a deal with Faroes and Iceland. However, the UK, like all Member States, highlighted that the EU must not do a deal at any price and irresponsible behaviour must not be rewarded. The UK pushed for contingency measures to be put in place, perhaps similar to the ban imposed by Norway, in case no deal was possible. This position was supported by other key Member States.

In her summing up, Commissioner Damanaki noted that Council had given her a strong mandate to urgently find a solution to the crisis, but that any deal should not be seen to reward the unilateral action by Iceland and Faroes. She noted that Member States desired an agreement with all Coastal States, but that if any party is unwilling to negotiate, a deal should be sought with those who behave reasonably. She finished by saying that she sensed a desire to explore all possibilities in relation to sanctions if a deal cannot be reached.

Agriculture

The rest of the agenda was taken up by agriculture items.

The Council discussed a Commission proposal to amend EU legislation on genetically modified (GM) crops, which would give greater flexibility for administrations to restrict or prohibit cultivation of such crops on their territory. Although the lead responsibility lies with the Environment Council, the Presidency
placed the item on the agenda in order to give Agriculture and Fisheries Ministers an opportunity to state their views. In the discussion, mixed views emerged with some Member States expressing support for the proposal and others questioning or opposing it. There are important legal issues relating to the proposal which will need to be clarified - including whether the Scottish Government would be able to make use of the proposed new flexibility. The European Commission said that it would work with the legal service of the Council to produce guidance on these issues.

The Council was presented with the regular quarterly report on the situation in the dairy sector, and discussed draft Council Conclusions on the work of the Commission's High Level Group on dairying. In the event, the Presidency was unable to find the necessary consensus in favour of the draft - four Member States were unable to support it, including the United Kingdom - and it was therefore adopted as Presidency Conclusions instead. The Commission confirmed that it will bring forward proposals to amend the management of the dairy market, by the end of the year.

The Commission presented a proposal to amend the EU programme for distributing food to deprived people and communities. Several Member States criticised the proposal, some because they felt such measures should come within social policy rather than the Common Agricultural Policy, and others because they objected to the proposed requirement for national co-financing. The Commission also presented a proposal to amend the special CAP programme which applies to the outermost regions of the EU (the Azores and Madeira, the Canary Islands, and the overseas départements of France). The proposal is designed to make minor improvements to the functioning of the programme as well as to bring the legislation into line with changes introduced in the Lisbon Treaty; no objections were raised on the substance of the changes, but some Member States questioned whether the proposal cites the correct article of the Treaty as its legal base. Both these proposals will now be subject to negotiation in the Special Committee on Agriculture before returning to the Council at a later date.

Under Any Other Business, the Commission announced that it would release about 2.8 million tonnes of cereals from intervention stocks onto the market by the end of the year, in response to the recent tight market situation and rise in prices, and that it would consult with Member States about possible revisions to the Temporary Framework governing state aids. Latvia pressed the Commission to approve its request to amend its national BSE monitoring programme. Italy requested the introduction of marketing standards and labelling rules for processed tomato products, in order to protect its producers against competition from outside the EU, a suggestion supported by some Member States but opposed by others.

The next Agriculture and Fisheries Council meeting will take place in Luxembourg on 25-26 October.
GMO / Research: Report on concrete measures to avoid mixing of GM and conventional maize

A report presented today by Health and Consumer Policy Commissioner John Dalli to the Agriculture Council concludes that specific measures relating to storing and the application of isolation distances can help limit or avoid the co-mingling of genetically modified (GM) maize with conventional and organic maize. In particular, the Best Practice Document, prepared by the European Coexistence Bureau (ECoB) and published by the European Commission’s Joint Research Centre (JRC), notes that storing seeds adequately and applying spatial isolation are the best ways to limit or avoid co-mingling. Alternative practices based on temporal isolation (shifting flowering times of GM and non-GM fields) are possible in several EU countries with specific climatic conditions.

Presenting the Report today to the Agriculture Council, Commissioner in charge of Health and Consumer Policy, John Dalli, said: "The suggested practise contained in this important document are applicable within the framework of the Commission's new approach to coexistence and GMO cultivation adopted in July. They are in full accordance with the spirit and aims of the proposal, which provides Member States with more flexibility to organise the co-existence of GM, conventional and organic crops". To add: "This document details a set of non-binding practices, which aim to assist Member States develop and refine their national or regional approaches to co-existence".

Best Practice

The "best practice" document covers the cultivation of GM maize up to the first point of sale. It deals with three types of productions: grain, whole plant and sweet maize. The European Coexistence Bureau (ECoB) analysed the potential sources of admixture and reached a set of consensually agreed, best agricultural management practices that will ensure coexistence while maintaining the economic and agronomic efficiency of the farm.

For example, among other practices, the ECoB proposes isolation distances of 15-50m to reduce cross-pollination between GM maize and non-GM maize and to limit GMO content in conventional food and feed to levels below 0.9% (the legal labelling threshold). Larger distances (100-500 m) are proposed for lower targets of admixture levels (e.g. 0.1%, which is the usual estimate for the limits of quantification).

The European Coexistence Bureau

In 2006, the Council invited the Commission to further work on coexistence in order to identify best practices for technical segregation measures and to develop crop-specific guidelines for coexistence. The Commission created the ECoB in 2008.

The Bureau consists of experts nominated by interested Member States (20 Member States currently participate) and a scientific secretariat provided by the Joint Research Center's Institute for Prospective and Technological Studies (IPTS).

Work on the "best practice" document was carried out in close cooperation with stakeholders and the final outcome allows EU Member States the necessary flexibility to adapt the measures to their specific regional and local conditions.

Facts & Figures
In 2009, **GM crops** were cultivated worldwide on **134 million hectares**. The main cultivating countries are the USA (48% of global GMO area), Brazil (16%) and Argentina (16%). The four main GM crops, either insect resistant or herbicide tolerant, are: soybean (77% of global soybean crop area), cotton (49% of global cotton crop area), maize (26% of global maize crop area), and rapeseed (21% of global rapeseed crop area).

In the EU, only three GM crops have been authorised for cultivation:

- Two GM maize products, of which only the insect-resistant Bt maize MON810 is cultivated in the EU.
- One GM potato (GM starch potato, authorised March 2010).

**Background**

On July 13, the Commission adopted a comprehensive proposal that provides the Member States the freedom to allow, restrict or ban the cultivation of GMOs on their territory, while keeping intact the EU's science-based GM authorisation system. The adopted package consisted of a new Recommendation on co-existence of GM crops with conventional and/or organic crops and a draft Regulation proposing a small change to the GMO legislation.

The proposal for revising Directive 2001/18/EC aimed to secure legal certainty for Member States when they decide on GMO cultivation on grounds other than science. It will be adopted through co-decision with the European Parliament and the Council.

**To download the "best practice" document, please visit:**

**For more information, please go to:**
http://ec.europa.eu/food/food/biotechnology/index_en.htm

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