



The Scottish Parliament
Pàrlamaid na h-Alba

RURAL ECONOMY AND CONNECTIVITY COMMITTEE

AGENDA

4th Meeting, 2017 (Session 5)

Wednesday 1 February 2017

The Committee will meet at 9.00 am in the Mary Fairfax Somerville Room (CR2).

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

2. **Rail services in Scotland:** The Committee will take evidence from—

Humza Yousaf, Minister for Transport and the Islands, Bill Reeve, Director of Rail, Transport Scotland, and Gary Bogan, Head of Franchise Management Unit, Scottish Government.

3. **Draft Climate Change Plan (RPP3):** The Committee will take evidence from—

Professor Pete Smith, Chair in Plant & Soil Science, University of Aberdeen;

Peter Ritchie, Executive Director, Nourish Scotland;

Andrew Bauer, Deputy Director of Policy, NFU Scotland;

Steven Thomson, Agricultural Economist, SRUC;

Alastair Nairn, Farmer and Environmental Spokesperson, STFA;

and then from—

Professor Robin Matthews, Leader of the Nurturing Vibrant and Low Carbon Communities Research Theme, The James Hutton Institute;

Charles Dundas, Public Affairs Manager - Scotland, Woodland Trust;

Alan Carter, Chair, Reforesting Scotland;

Stuart Goodall, Chief Executive, Confor;

George McRobbie, Managing Director, Tilhill Forestry Ltd.

4. **Digital Economy Bill (UK Parliament legislation):** The Committee will consider the legislative consent memorandum lodged by the Cabinet Secretary for Rural Economy and connectivity (LCM(S5)8).
5. **Implications of the EU Referendum for Scotland:** The Committee will consider its approach to scrutiny of the impact of the UK's departure from the EU on policy areas within its remit.

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The papers for this meeting are as follows—

Agenda Item 2

Rail Services in Scotland

REC/S5/17/4/1

PRIVATE PAPER

REC/S5/17/4/2 (P)

Agenda Item 3

Draft Climate Change Plan RPP3 Cover Note

REC/S5/17/4/3

PRIVATE PAPER

REC/S5/17/4/4 (P)

Agenda Item 4

UK Digital Economy Bill - LCM

REC/S5/17/4/5

Agenda Item 5

PRIVATE PAPER

REC/S5/17/4/6 (P)

Rural Economy and Connectivity Committee

4th Meeting, 2017 (Session 5), Wednesday, 1 February 2017

Rail Services in Scotland

Background

1. The Committee will take evidence from the Minister for Transport and the Islands on rail services in Scotland. This session was originally scheduled for 18 January 2017, but had to be postponed. It forms part of a series of regular updates the Committee receives to allow it to monitor rail network and rail service performance issues.
2. Transport Scotland wrote to ScotRail on 26 August 2016 to request the development of an improvement plan, as performance had fallen below contractual requirements. A summary of the [plan](#) was published on 20 October 2016, with a list of the 250 actions set out in the full plan [published](#) on 29 November 2016. The plan aims to bring ScotRail performance back up to contractual requirements through improvements to rolling stock, infrastructure and operations.
3. At its meeting on 18 January, the Committee received an update from the Scotrail Alliance on its progress towards meeting those objectives and on recent performance.
4. Mr Yousaf last appeared before the committee on 26 October, to provide a general update on transport. On 24 January the Minister provided an [update](#) on the Scotrail Performance Improvement Plan in the Chamber.

Claire Murrie
Rural Economy and Connectivity Committee
January 2017

Rural Economy and Connectivity Committee
4th Meeting, 2017 (Session 5), Wednesday, 1 February 2017
Draft Climate Change Plan (RPP3)

Introduction

1. This paper outlines the background to, and contents of, the draft Climate Change Plan (third report on policies and proposals also known as RPP3), as well as the details of the approach to Parliamentary scrutiny of the document.

Background

2. The [Climate Change \(Scotland\) Act 2009](#) (the Act) was passed by the Scottish Parliament in June 2009. This provides a statutory framework to reduce emissions of greenhouse gases in Scotland by setting the following targets:

- Interim target of 42% reduction (from 1990 levels) by 2020¹ with the power for this target to be varied based on expert advice
- 80% reduction (from 1990 levels) by 2050

3. To help ensure the delivery of these targets, the Act also requires the Scottish Ministers to set annual targets for Scottish emissions from 2010 to 2050.

4. It is a requirement of the Act that the Scottish Government must produce regular reports on its policies and proposals to meet Scotland's annual climate change targets to 2032. The first version of this plan, "[Low Carbon Scotland: Meeting the Emissions Reduction Targets 2010-2022: The Report on Proposals and Policies](#)", often known as RPP1 was published in 2011. The second iteration of the plan, "[Low Carbon Scotland: Meeting our Emissions Reduction Targets 2013-2027: The Draft Second Report on Proposals and Policies](#)", known as RPP2, was published in draft form in January 2013.

Draft Climate Change Plan (RPP3)

5. The [draft third report on policies and proposals](#) was published on 19 January 2017. It focuses on how the climate change targets for the period 2017-2032 can be achieved. In addition it includes an assessment of the progress towards implementing policies and proposals in respect of the targets set out in the RPP2.

Parliamentary procedure

6. Parliament has a period of 60 days, from the date of laying, in which to consider the draft Climate Change Plan (of which a minimum of 30 must be days on which the Parliament is not dissolved or in recess). It is open to any Committee to consider relevant aspects of the draft Climate Change Plan (RPP3) and report to Parliament, after which there will be a debate in the Chamber.

7. The Scottish Government is required by the Act to take account of the representations of the Parliament in its final draft of the Climate Change Plan.

Approach to scrutiny of the draft Climate Change Plan

A co-ordinated parliamentary approach

8. Building on the experience of collaborative scrutiny of the RPP2, four Committees have agreed a joint approach to reviewing the Plan. The Committees will scrutinise the parts of the plan aligned to their remits. The Committees are:

- [Economy, Jobs and Fair Work Committee](#)
- [Environment, Climate Change and Land Reform Committee](#)
- [Local Government and Communities Committee](#)
- [Rural Economy and Connectivity Committee](#)

9. The Rural Economy and Connectivity Committee has agreed to focus its scrutiny on 3 areas:

- Agriculture
- Forestry
- Transport

10. The Committees will focus its scrutiny on four key questions:

- progress to date in cutting emissions within the sector/sectors of interest and implementing the proposals and policies set out in the RPP2;
- the scale of reductions proposed within their sector/s and appropriateness and effectiveness of the proposals and policies within the draft RPP3 for meeting the annual emissions targets and contributing towards the 2020 and 2050 targets;
- the appropriateness of the timescales over which the proposals and policies within the draft RPP3 are expected to take effect;
- the extent to which the proposals and policies reflect considerations about behaviour change and opportunities to secure wider benefits (e.g environmental, financial and health) from specific interventions in particular sectors.

Evidence

Written Evidence

11. A [joint call for evidence](#) was issued on 19 January 2017 with a closing date set for 10 February 2017. Stakeholders and the public have been asked to respond to specific committees as appropriate.

Oral Evidence

12. The REC Committee has three panel sessions scheduled. On 1 February it will focus on agricultural and forestry issues. At its meeting on 8 February the Committee will consider the draft Climate Change Plan as it relates to transport. There will be a further evidence session held on 22 February with the Cabinet Secretary for the Rural Economy and Connectivity.

Annex A - Written submissions

Annex B - Letter from Environment, Climate Change and Land Reform Committee to Scottish Government on Soil Testing

Claire Murrie
Assistant Clerk
Rural Economy and Connectivity Committee
January 2017

RURAL ECONOMY AND CONNECTIVITY COMMITTEE

SUBMISSION FROM NFU SCOTLAND

THE DRAFT CLIMATE CHANGE PLAN (RPP3)

Introduction

1. The farmers and crofters of Scotland are on the front line in experiencing the impacts of Climate Change. It is testament to their resilience and professionalism that they continue to produce high quality food in the face of a challenging market and support system, uncertainty generated by the vote to leave the EU, and increasingly volatile weather.
2. Scottish farmers and crofters are enthusiastically adopting new technology and knowledge to produce food in ever more efficient ways. The drive to farm more efficiently, profitably and sustainably is evidenced by the emissions reductions already achieved within agriculture (25 percent from 1990 to 2014) and by the interest farmers and crofters have shown in initiatives like 'Farming for a Better Climate'.
3. Farmers and crofters also steward much of the farmland, forestry and peatlands that acts as a huge carbon sink – an effort they receive no formal recognition for in international carbon accounting.
4. NFU Scotland broadly welcomes the proposals set out in the plan, and in particular the commitment from Scottish Government to work with the sector to ensure that policies are implemented in a pragmatic way.
5. It is right and proper that Scottish agriculture shows willingness to play its part in addressing the challenges presented by Climate Change, and opportunities exist for farmers and crofters to do this in a way that is also to the benefit of their businesses. NFU Scotland is committed to playing a positive role in that effort.

General observations

6. NFUS believes that a regulatory approach to reducing emissions risks not delivering achieving genuine attitudinal and behaviour change. NFUS instead advocates that most profound and long-lasting changes in attitudes and behaviour are achieved where farmers and crofters are shown what the challenge is and what they can do about it, and are then empowered to make decisions and changes in their business.
7. If a regulatory approach is adopted, the approach taken by SEPA in the Diffuse Pollution Priority Catchments is a model of best. Furthermore, whilst this effort has not directly aimed to reduce Climate Change emissions, it has done so indirectly.
8. Unlike all other sectors apart from forestry, agricultural emissions are in large part due to a biological (rather than chemical or mechanical) process. It is recognised that baseline data and monitoring of such processes are improving but far from ideal, and that mitigating biological emissions is very challenging.
9. The Intergovernmental Panel on Climate Change (IPCC) guidance on calculating emissions and sequestration, and the ensuing UK Greenhouse Gas Inventory, mean that the reductions indicated in the agricultural carbon envelopes do not take account of farmers and crofters sequestering carbon via management of forestry and peatlands, nor the generation of renewable energy on-farm.
10. Farming for a Better Climate (FFBC) has been strongly supported by NFUS and many within farming. It is a successful model that now needs some adjustment and additional resources to reach new audiences. In time, the scheme could also be developed and co-opted to assist with the marketing of Scottish produce in international markets for its green credentials.

11. Whilst FFBC has been success, NFUS advocates that more knowledge transfer is needed to engage more than the 'early adopters'. There is a growing body of research, good practice and new technology which needs to be made accessible and digestible for farmers and crofters.
12. There is a vital role for the education and training system in embedding the required knowledge and attitudes at an early stage of farmers' and crofters' lives, and reinforce and update it thereafter. Furthermore, it is important that efforts are made to reduce or remove some of the artificial and counter-productive barriers between the study of 'environment and land use' and 'agriculture'.
13. Scotland has a valuable network of professional advisors, stretching from consultants to agronomists, as well as a Farm Advisory Service. Their capacity to deliver good quality advice to farmers and crofters on how to reduce their emissions and increase their resilience should be increased and used more frequently, taking care to avoid duplication and mixed messages.
14. Scotland's land managers are enthusiastic about using new technology, such as that in precision farming, to increase their efficiency. The fixed costs for new machinery and technologies can be unaffordable for many, meaning there is a need to help to spread these costs through partnership and cooperative working (e.g. machinery rings).
15. Extensive livestock production is less reliant on technology than other parts of the agricultural economy, so emissions reduction from this and the wider livestock sector, will be delivered through improvements in breeding, animal welfare and disease. The Scottish Government's Beef Efficiency Scheme and disease eradication initiatives are welcome investments in this area.

16. NFUS considers it sensible to focus on raising awareness and knowledge transfer in the early years of the Climate Change Plan, as there still needs to be much deeper and wider engagement beyond the 'early adopters'. From the second year onwards, significant policies will come into effect and it is important that these are well designed to encourage uptake, minimise bureaucracy and deliver real improvements.

Comment on policies and proposals

17. Establish an agri-tech group – NFUS welcomes this but urges that it compliments rather than duplicates the UK agri-tech strategy.

18. Consult on how best to ensure maximum take up of carbon audits – If done well, NFUS is supportive of measures such as carbon audits.

19. Develop a low carbon package for tenant farmers – NFUS acknowledges the particular challenges of investing in some tenant farms, and looks forward to working with Scottish Government and others to overcome these.

20. Introduce a Low Carbon Farming marketing scheme – NFUS welcomes the willingness to explore the potential of such a scheme, but cautions that it will take considerable investment if it is to be a success and is likely to deliver results for a relatively small part of the agricultural sector. It should be pursued but there must be realism about its potential to transform the sector.

21. Developing a science-based target for reducing emissions from nitrogen fertiliser – NFUS believes that such an exercise would be better done at individual farm level, by businesses being encouraged to make informed decisions, rather than a top-down recommendation.

22. Soil testing – NFUS agrees with the intent of encouraging farmers to test their soils. NFUS would like to see robust data on current uptake and to work with Scottish Government to ensure this is rolled out proficiently, professionally and avoiding compulsion and bureaucracy wherever possible.

23. Minimum leguminous crops in rotation – NFUS is opposed to a mandatory requirement (not least due to geographical limits on production) but believes that Scottish Government could facilitate a significant increase planting of leguminous crops by changing the existing Nitrogen Fixing Crop (NFC) rules within the Greening regulations. This could be done by removing the requirement for two NFC to be grown on one farm, by removing the requirement for a field margin around NFC, and by changing the date after which NFC can be harvested from 1 August to 1 July.
24. Plant varieties with improved nitrogen use efficiency – NFUS welcomes new breeding programmes and investment in our research capabilities here in Scotland. These varieties need to deliver good nitrogen use efficiency but also need to be able to deal with the volatile climate, pests and diseases, as well as being acceptable to customers and consumers.
25. Publish emissions intensity figures for beef, lamb and milk – NFUS supports benchmarking at a peer-to-peer level, but is concerned that if done at a sector or Scotland level will become a tool to unfairly blacklist certain agricultural products or sectors.
26. Livestock feed additives to reduce methane – NFUS would wish to be clear that investment in this area was going to deliver not only emissions reductions but also value to the farm business, particularly if the cost is significant.
27. Self-financing large-scale anaerobic digesters – NFUS would support further examination of this however it is a very complex area and again, members would need to be sure of the economic viability before investing heavily. NFUS also notes that it is likely that these sites would be in livestock areas as that is where the feedstock is. Whilst this captures these products and minimises emissions, it is important not to deprive arable or mixed units of valuable slurries and manures, nor see the concentration of digestate application in areas close to the anaerobic digesters. NFUS also notes that for many, there are pre-existing issues in getting such developments off the ground due to issues with the planning system and/or gaining a connection to the grid.

28. Inclusion of livestock grazing in rotation on current arable land – NFUS can see the value in this proposal, however notes that it would require relationships to be built between the farmers of the two farming systems.
29. Minimise emissions from slurry storage – NFUS notes that this proposal does present challenges in terms of cost, as well as health and safety.
30. Increased planting of trees and hedgerows – NFUS supports this policy provided it is implemented sensitively (i.e. the right tree in the right place) and neither skews the land market, nor affects the critical mass of agricultural businesses in certain areas. NFUS also advocates that the Greening rules be amended to include the hedgerows and trees options, and that the requirement for new hedges to have a two metre no-cultivation strip alongside them be removed.
31. Payment for carbon sequestration – NFUS supports further examination of this and urges this work to happen as soon as possible. The example of the Peatland Code is evidence that this can work.
32. Forestry and woodland cover for agricultural land – Scotland already has ambitious tree planting targets which we are now beginning to achieve. NFUS sees no need or value in Government dictating where those trees should go. NFUS would rather this was done as a mutually beneficial and economically rationale partnership between farmers and foresters.

NFU Scotland
26 January 2017

RURAL ECONOMY AND CONNECTIVITY COMMITTEE
SUBMISSION FROM REFORESTING SCOTLAND
THE DRAFT CLIMATE CHANGE PLAN (RPP3)

1 Nourish Scotland is a membership-based non-government organisation working for a fairer and more sustainable food system in Scotland. While Nourish is a member of Scottish Environment Link and Stop Climate Chaos Scotland, this submission represents Nourish Scotland's position.

Summary

2 Nourish welcomes the proposals and policies for agriculture in the draft Climate Change Plan. We are pleased that Scottish Government is emphasising the co-benefits, both to farm profitability and to the wider environment, of greenhouse gas reduction measures in agriculture.

3 We welcome the focus on livestock health and look forward to seeing the emissions intensity figures from QMS and the proposals for how to improve the animal health performance of under-performing livestock farms.

4 **However, in comparison with other sectors, expectations are far too low.**

5 Much more could and should be expected of agriculture in meeting Scotland's ambitious climate change targets, and the measures required will make farming businesses more profitable and sustainable.

6 We argue for:

- Strengthening two areas of the draft plan – **nitrogen** and **agroforestry**
- The inclusion of **organic** targets in the plan
- Investing in change: helping farmers and the farming institutions **learn** and **adapt**. Transformational change also requires vocal **leadership** on tackling greenhouse gas emissions in and through agriculture from the most senior people both in government and in industry bodies.

7 Finally, a clear framework for monitoring progress is needed, including:

- A clear and consistent baseline/metric. The draft plan acknowledges that the TIMES model does not work well for agriculture.

- A ranking of the relative contribution to the overall target which the different measures in the plan are expected to make over the period of the plan, and the anticipated level of investment in these measures;
- A more comprehensive analysis of emissions sector by sector, along with analysis of farmer opinion and practices, as provided in the DEFRA Agricultural Statistics and Climate Change series.

Specific comments

Nitrogen

- 8 Emissions from the production and application of bagged nitrogen accounts for around a quarter of agricultural emissions, or around 5% of Scotland's total GHG emissions. This is from a combination of the energy used and CO₂ emitted in producing nitrogen fertiliser and the N₂O emitted when fertiliser is applied.
- 9 Scotland had a net nitrogen balance of 161,000t in 2015, around 87kg per hectare of all agricultural land (crops and grassland). In other words, 161,000t more nitrogen was applied to the land than was taken off in crops/livestock products.ⁱ
- 10 Many farmers could use nitrogen much more efficiently, with financial benefits for their businesses as well as environmental benefits. The cheapest measure is to test their soil and ensure that the pH is right by putting on lime as needed: the right pH makes nitrogen more available to the crop, encourages clover growth and reduces the negative effects of aluminium in the soil. Using nitrogen fertiliser tends to make soils more acid, potentially setting up a cycle where N application is increasingly unproductive.
- 11 While all farmers should test their soils regularly and keep the pH within the optimum range, most don't. A 2016 report by SAC for example showed that only 21% of the soil on Skye is in the optimum range for growing grass or clover on mineral soils.ⁱⁱ **Making soil testing compulsory** will increase the proportion of farmers in Scotland whose land is at the right pH for using nutrients efficiently.
- 12 Many other factors influence how efficiently nitrogen is used on farm, and some farmers are much better than others at putting on the right amount in the right way at the right time. This applies to the use of organic nitrogen in manures and slurries. There is limited uptake in Scotland and the UK of more efficient measures of slurry spreading methods such as injection and the use of trailing shoes. Nearly all slurry is still spread with the splash plate, which has been banned in Germany (now one of the global leaders in nitrogen use efficiency).

- 13 We recommend a programme of support to machinery rings to invest in modern spreading technology suitable for local soil conditions. This could be linked to the proposals in the draft plan to set up co-operative anaerobic digestion plants, since application of digestate is also more efficient with modern methodsⁱⁱⁱ.

Nitrogen budget for Scotland

- 14 We welcome the proposal to ‘work with industry to develop a science-based target for reducing emissions from nitrogen fertiliser’ and recommend strengthening this proposal to include developing a full nitrogen budget for Scotland. Many countries now have established a ‘nitrogen budget’ showing how nitrogen flows through the food and farming system, and highlighting opportunities for reducing losses (with benefits to farmers and the environment).
- 15 Denmark, for example, has had a nitrogen budget since 1990, and this has helped to focus actions which cumulatively have halved the nitrogen losses to the atmosphere and to water.^{iv} There is an established UN methodology for this^v and Scotland hosts one of the leading global nitrogen research teams at the Centre for Ecology and Hydrology.

Operational Group

- 16 We propose the early establishment of an Operational Group (as part of the EIP-Agri scheme which is delivered through Scottish Government’s Knowledge Transfer and Innovation Fund) bringing academic expertise, government and industry together to agree cost-effective measures for improving nitrogen use efficiency over the next 15 years.

Agroforestry

- 17 While agroforestry is referred to in the section on co-benefits in Annex E of the draft plan, it does not feature in the main text either in agriculture or forestry. We note the aspiration that:
- 18 “By 2030 we want most farmers to have considered and undertaken appropriate planting of woodland/forestry and hedgerows. Farmers and land managers may also be receiving payments to sequester carbon in soils, woodland/forestry and hedgerows”
- 19 but again we think this is too little, too late.
- 20 Scotland is leading the UK in implementation of the Woodland Carbon Code which validates claims about carbon sequestration and thus is

able to attract private finance investment. This could be extended to well-planned and well-executed agroforestry schemes.

- 21 The UKCCC 'high ambitions' scenario estimates that a reduction of 0.16 MtCO₂e can be delivered by 2030 by establishing agroforestry on 0.6% of agricultural land area. This reduction would increase in subsequent years as schemes mature, and in our view 6% rather than 0.6 % is not an unreasonable target, provided that the right trees are planted in the right places.
- 22 As the recent ClimateXchange briefing from Forestry Research and James Hutton Institute states^{vi}:
- 23 "Agroforestry systems can provide multiple benefits, including diversification of farm income, shelter for livestock, fuelwood, carbon sequestration, nutrient management, reductions in soil erosion and leaching, biodiversity enhancement, and amenity value."
- 24 Evidence cited in that report from Scotland's long-running trial at Glensaugh showed 'no detectable decrease in livestock production over 12 years'.
- 25 Co-operative agroforestry schemes such as Pontbren can also encourage diversification and innovation, as well as improvements in livestock productivity and catchment hydrology.^{vii}
- 26 Agroforestry at scale could make a significant contribution to meet the ambitious increased planting targets. We welcome the inclusion of agroforestry as a measure in SRDP but note the very low level of uptake and the lack of effective promotion of the benefits to farmers (though we acknowledge the valuable efforts of Soil Association Scotland and SNH in this respect). We also recognise the good work being done on sheep and trees by the National Sheep Association.^{viii}
- 27 At farm level, agroforestry should be discussed as an option as part of carbon audits and whole farm reviews. At regional/landscape level, co-operative schemes for agroforestry at scale should be promoted.
- 28 Again, we recommend an Operational Group to look at how agroforestry could be promoted and implemented more effectively. One option is the establishment of a dedicated virtual team bringing together expertise from farmers already engaged in agroforestry, SNH, RPID, Forestry Commission, RSPB, Scottish Woodland Trust, NFU, SEPA and Scottish Water to promote agroforestry jointly.

Organic agriculture

- 29 It is remarkable that the draft plan makes absolutely no reference to organic farming, despite the Scottish Government's 2016 Organic Ambitions plan, where the Cabinet Secretary highlighted the co-benefits of organic farming:
- 30 "We want to create a stronger Scotland, one that is fairer and more prosperous and in 2015, our Year of Food and Drink, I announced that Scotland's food and drink sector was booming, with consistent year on year growth which is strengthening the Scottish economy. Organics has an important role to play in adding to this growth so that we continue to see a sustainable increased turnover.
- 31 We recognise the wider public benefits of organic farming such as encouraging biodiversity, tackling climate change, improving soils and protecting our water environment."
- 32 Organic Ambitions specifies in details the links between organic production and meeting climate change targets.
- 33 Research consistently identifies that organic farming uses less energy and delivers lower greenhouse gas emissions per unit of area and in most cases per unit of product.^{ix} For example, in a study of fifteen Irish farms engaged in suckler-beef production (five conventional, five in an Irish agri-environmental scheme, and five organic units) the average emissions from the conventional units were around 15% higher per kg of beef than the organic units, and more than twice as high per hectare^x.
- 34 In addition, organic management typically leads to higher soil carbon sequestration^{xi}.
- 35 There are many reasons for this. Organic farming does not use bagged nitrogen (a major contributor to ghg emissions in agriculture), relying more on biological nitrogen fixation from clover and other legumes. It also uses much lower levels of anthelmintics and antibiotics, both of which can have adverse impacts on soil biota, particularly dung beetles^{xii}. Dung beetles help to reduce greenhouse gas emissions from cow pats by up to 7% and by the pasture as a whole by 12%.^{xiii}
- 36 Scotland is an outlier in Europe in terms of its organic food market (at around 0.5% of grocery spend it is around twenty times smaller per

head than for example the Swedish and Danish markets). However, signs of growth are visible:

- Scots are significantly more likely to opt for organic – they represent 11% of all organic consumers in the UK
- 50% of Scottish consumers would buy more organic food and drink if it were available
- 36% of Scottish independent retailers say sales have increased over the last 12 months and 64% expect this to rise in 2016
- Scotland's organic wholesalers have seen a steady increase in sales across recent years – organic sales from Glasgow-based Greencity Wholefoods increased by 17% in 2015

37 The land area under organic management in Scotland declined from 4% to 2.3% in the five years to 2015, while in the same period the EU average increased by 21% to over 6%. Organic land area increased in those five years by 52% in Ireland and by 61% in France. ^{xiv}

38 Organic food is increasingly part of the mainstream, with McDonalds UK using organic milk for all its teas and coffees. Costco has overtaken Wholefoods to become the largest US organic retailer with \$4bn in organic sales and is now lending farmers money to expand organic production to meet demand. ^{xv}

39 Organic farming also brings multiple co-benefits:

- Higher gross margins and farm profitability, both in Europe and globally^{xvi}. Anecdotally, organic dairy farmers have been unaffected by the dairy crisis in Scotland.
 - More employment on farms. ^{xvii}
 - Increased biodiversity below and above ground. Organic farming demonstrates clear advantages for biodiversity over conventional farming. Depending on altitude, organic farms have between 46 and 72 per cent more semi-natural habitats and host 30 per cent more species and 50 per cent more individuals than non-organic farms. ^{xviii}
 - Reduced antibiotic usage, supporting the implementation of the O'Neill report. ^{xix}
 - Export opportunities into the European and global markets
 - Enhancing the food offer for tourists: many of our visitors come from countries with vibrant organic sectors and will be used to eating organic food at home

- 40 We call for an ambitious target for organic farming (eg 5% of land in each of the three CAP 'regions' to be organic or in conversion by 2020). Achieving this will need mainstream support from QMS, Scotland Food and Drink, Scottish Crofting Federation and NFUS, as well as from Scottish Government. These area-based targets for organic management must be matched by commensurate investments in supply chains and marketing of Scottish organic produce.
- 41 We think the notion of a 'low carbon' marketing scheme to be unhelpful and unnecessary. While many non-organic (and not-yet-organic) farms demonstrate excellent practice in fertiliser use, soil management, animal welfare and so on, there is an established organic brand at European and global level which reads across all these issues, has an inspection and certification infrastructure, and provides a passport to export markets as well as high brand recognition among Scottish UK consumers.
- 42 Organic standards ensure a number of co-benefits such as inspections of animal welfare, antibiotic use, prohibition of GM feed. A low carbon marketing scheme which focuses solely on greenhouse gas emissions could, depending on how the analysis is done, favour the most intensive and confined livestock systems^{xx}.

Investing in change

- 43 We welcome the existing initiatives such as 'Farming for a Better Climate' and the proposal for 'climate change champions'. However, the draft plan wholly underestimates the investment of resources and political capital needed to transform agriculture in Scotland to become a world leader in green farming and play its full role in meeting climate change targets.
- 44 This is fundamentally a cultural as much as a technical change: and ISM provides a useful framework for understanding the factors which encourage or discourage low carbon behaviours in Scotland's farming industry.
- 45 The DEFRA report on agriculture and climate change statistics^{xxi} surveys farmers regularly.
- 46 In 2016 they found that 9% of farmers reported that it was "very important" to consider GHGs when making decisions relating to their land, crops and livestock and a further 39% thought it "fairly important", a small decrease for both on 2015. Just over half of respondents

placed little or no importance on considering GHGs when making decisions or thought their farm did not produce GHG emissions.

- 47 For those farmers not undertaking any actions to reduce GHG emissions, informational barriers are important i.e. the lack of information (35%) and lack of clarity on what to do (29%) were key reasons for not taking action. This could be described as 'personal capacity for action'. However there is also a wider issue around understanding or willingness to take action with 47% not believing any action is necessary, 18% believing there is not much they can do and 11% believing they have done enough.

Leadership

- 48 Influential farming bodies have not to date taken a sufficient leadership role in relation to climate change and at times appear to collude with the perception that 'tackling climate change' and 'helping farms be profitable' is a zero sum game, when the evidence is to the contrary. Other sectoral bodies take a more positive approach to the tightening of the pro-climate regulatory framework, which itself drives innovation^{xxii}.
- 49 The splitting of the previous RACCE committee into two means that Government needs to underline its core message that climate change is everyone's business: there is not one place to talk about the food and farming economy and forget the environment and another place to talk about food and farming's impact on the environment and forget the economy.
- 50 While we welcome the commitment to 'Ensuring much of the £4.6 million we provide annually to the Farm Advisory Service is used for advice on mitigation' we think this service may be under-powered in relation to the scale of the task in terms of changing attitudes, building farmer knowledge and skills in relation to ghg mitigation, and supporting the investments to help farmers adapt their businesses. As a comparator, the Danish agricultural advisory services collectively employ 3,000 people.^{xxiii}
- 51 Advisors themselves may also need more training to ensure they are fully up to speed. Climate change mitigation needs to be a primary goal of the farmers they advise, on a level with and complementary to financial goals, not a nice to have. The French law on agroecology for example includes a commitment to retrain not just advisors but also the lecturers who are teaching the next generation of farmers.

- 52 Nourish calls for farming like other professions to have its own continuing professional development framework (CPD). Whether this is delivered on a college basis or on a peer-to-peer basis, it could support dissemination of new thinking and best practice on climate change mitigation and a range of other modernization issues
- 53 Finally, we would emphasise that agricultural (and food) policy should be aligned more closely with the climate change mitigation imperative and more generally with the Sustainable Development Goals and the progressive policy agenda in Scotland. We need a new **social contract** with farmers, emphasising and supporting the service they provide to the public in terms of tackling climate change as well as nourishing people and nurturing wildlife.
- 54 Public support for agriculture depends on agriculture delivering public goods.

References

- ⁱ www.gov.uk/government/uploads/system/uploads/attachment_data/file/552438/agriclimate-7edition-12sep16.pdf
- ⁱⁱ http://www.thescottishfarmer.co.uk/news/14695116.Changes_needed_for_Skye_soil/?ref=mr&lp=15
- ⁱⁱⁱ www.iea-biogas.net/files/daten-redaktion/download/publi-task37/Digestate_Brochure_Revised_12-2010.pdf
- ^{iv} <https://phys.org/news/2015-09-danish-nitrogen-nutshell.html>
- ^v (http://www.clrtap-tfrn.org/sites/clrtap-tfrn.org/files/documents/EPNB_new/ECE_EB.AIR_119_ENG.pdf)
- ^{vi} climalexchange.org.uk/files/4614/7619/2023/CXC-Woodlands_agroforestry_policy_brief.pdf
- ^{vii} https://www.academia.edu/6891491/Pontbren_Project_Evaluation
- ^{viii} <http://www.nationalsheep.org.uk/policy-work/2326/the-role-of-trees-in-sheep-farming/>
- ^{ix} **Lynch, D. et al The Carbon and Global Warming Potential Impacts of Organic Farming: Does It Have a Significant Role in an Energy Constrained World?** *Sustainability* **2011**, *3*, 322-362; doi:10.3390/su3020322
- ^x Casey, J.W.; Holden, N.M. Greenhouse gas emissions from conventional, agri-environmental scheme, and organic Irish suckler-beef units. *J. Environ. Qual.* **2006**, *35*,231-239.
- ^{xi} Gattinger, A. et al <http://www.pnas.org/content/109/44/18226>
- ^{xii} <http://www.nature.com/articles/srep13912>
- ^{xiii} <http://www.nature.com/articles/srep18140>
- ^{xiv} http://ec.europa.eu/eurostat/statistics-explained/index.php/Organic_farming_statistics
- ^{xv} http://www.huffingtonpost.com/entry/costco-organic-produce-farmers-partnership_us_570d0a80e4b01422324a1f6c
- ^{xvi} Crowder, D. and J. Reganold. 2015. Financial competitiveness of organic agriculture on a global scale. Proceedings of the National Academy of Sciences. June 1, 2015, doi: 10.1073/pnas.1423674112
- ^{xvii} http://ec.europa.eu/agriculture/rica/pdf/FEB4_Organic_farming_final_web.pdf
- ^{xviii} <http://www.fibl.org/en/themes/biodiversity.html>
- ^{xix} <https://amr-review.org/>
- ^{xx} http://www.fcrn.org.uk/sites/default/files/FCRN_int_vs_ext_livestock.pdf
- ^{xxi} www.gov.uk/government/uploads/system/uploads/attachment_data/file/552438/agriclimate-7edition-12sep16.pdf

^{xxii} <http://www.lse.ac.uk/GranthamInstitute/wp-content/uploads/2016/01/Dechezlepretre-et-al-policy-brief-Jan-2016.pdf>

^{xxiii} <http://www.proakis.eu/sites/www.proakis.eu/files/Country%20Report%20Denmark%2006%2006%202014.pdf>

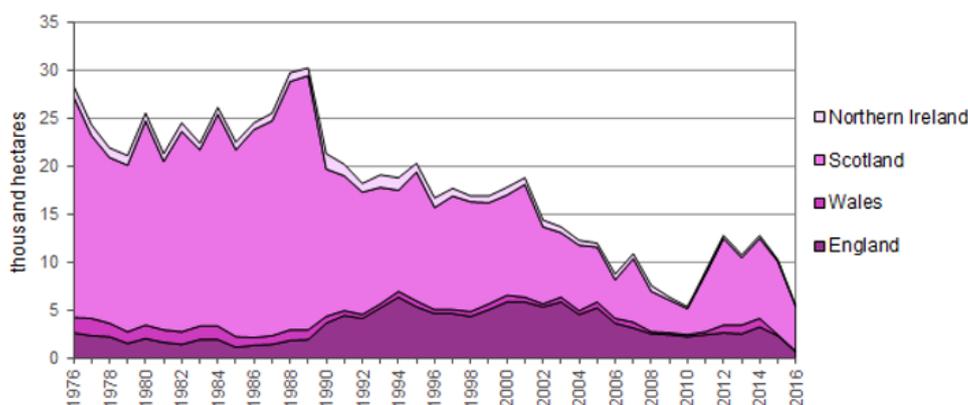
Nourish Scotland
26 January 2017

**RURAL ECONOMY AND CONNECTIVITY COMMITTEE
SUBMISSION FROM CONFOR
THE DRAFT CLIMATE CHANGE PLAN (RPP3)**

**Progress to date in cutting emissions within the sector/sectors of interest
and implementing the proposals and policies set out in the RPP2:**

1. Progress on the forestry targets set in RPP1 and RPP2 have been patchy.
2. In RPP1 (2010) “the Scottish Ministers [...] pledged to plant 100 million trees by 2015 [...] To achieve [this...], the planting rate will need to increase towards 10,000ha/yr. [...] Looking ahead, it may become appropriate to increase planting rates towards 15,000ha/yr.” (7.53-4)
3. RPP2 (2013) lowered ambitions, on the basis that the Woodland Expansion Advisory Group (WEAG) had failed to identify enough land for planting. WEAG “recommended that the focus of activity should be on creating 100,000 hectares of new woodland between 2012 and 2022, [...] 10,000 hectares per year.”
4. Woodland creation levels did rise to 9,000ha in 2011-12, justifying optimism that the 10,000ha target would be achieved and maintained. However, as the graph below (Forestry Commission, *Forestry Statistics 2016*) shows, woodland creation

Figure 1.6 New planting in the UK, 1976-2016



has fallen back to only 4,600ha in 2016.

5. In addition, it should be noted that the Canopy Cover Report¹ showed that woodland 'in transition' (clearfelled and not yet restocked) had risen from 97,100ha in 2006 to 204,700ha in 2015. This is a large area. It can be counted for, in part, by management delays between harvesting and replanting. However, it is important that the Scottish Government establishes what the statistic means in the context of Scotland's forest as a carbon sink. As a first step, any outstanding areas 'in transition' on the National Forest Estate should be replanted as early as possible.
6. The proof of concept research programme exploring the viability of Scottish softwood in timber panel construction systems (RPP2 9.5.16) was delivered successfully; however, this research will only deliver in terms of carbon reductions if it can be made commercial.

The scale of reductions proposed within their sector/s and appropriateness and effectiveness of the proposals and policies within the draft RPP3 for meeting the annual emissions targets and contributing towards the 2020 and 2050 targets:

7. Confor warmly welcomes the new commitment to a target of 15,000 hectares per year new planting in RPP3, and to increase the use of Scottish wood products in construction from its current level of 2.2 million cubic metres to 2.6 million cubic metres by 2021-22 and 3 million cubic metres by 2031-2.
8. It is clear from the Scottish Government debate on Forestry in the Scottish Parliament (24 January) that there is cross-party consensus to deliver greater tree planting and the Cabinet Secretary for Rural Affairs and Connectivity is committed to hitting these ambitious targets. The strong focus on forestry in the speech to parliament a week earlier by the Cabinet Secretary for Environment, Climate Change and Land also testified to this commitment, while the REC and ECCLR committees also appear very supportive. Moreover, it is clear that the

1

[http://www.forestry.gov.uk/pdf/Preliminary_estimatesofthechangesincanopycoverinBritishwoodlandsbetween2006and2015.pdf/\\$FILE/Preliminary_estimatesofthechangesincanopycoverinBritishwoodlandsbetween2006and2015.pdf](http://www.forestry.gov.uk/pdf/Preliminary_estimatesofthechangesincanopycoverinBritishwoodlandsbetween2006and2015.pdf/$FILE/Preliminary_estimatesofthechangesincanopycoverinBritishwoodlandsbetween2006and2015.pdf) p.45.

ministers and committees are well-informed as to the barriers which have prevented previous RPP targets from being delivered.

9. Confor is optimistic that the targets of 10,000ha rising to 15,000ha will be met if this commitment is sustained. As Fergus Ewing said “We are putting in place all the necessary components for success: funding, appetite, process, innovation, land, skills and political will.” We welcomed the Scottish Government’s commissioning and acceptance of the Mackinnon Report on why targets had been missed, and the practical proposals made to address this.
10. Confor is delighted that the potential for the greater use of timber in construction has been identified. Off-site timber construction can play an increasingly significant role in providing the tens of thousands of warm, high-quality and sustainable homes that Scotland needs.
11. There are, however, important areas of concern which should be considered in the final draft:
12. **Restocking and restructuring:** The restocking and restructuring of forests is not mentioned in RPP3. However, failure to understand the scale of the issue and to tackle it effectively could begin to undermine the gains achieved from new woodland creation. The final draft should include:
 - A policy to ensure felled areas are restocked within less than 5 years, and the ‘backlog’ of restocking on the National Forest Estate is caught up.
 - The policy of compensatory planting to ensure that woodland lost to development or conversion to other habitats is effectively in place.
13. **Sufficient funding:** We would refer to the words of Edward Mountain MSP in the Forestry debate on 24 January: “Grants for costs for the establishment of forestry need to be in the region of £4,500 per hectare. Simple maths suggests that, to achieve a target of 13,000 hectares per annum, the budget should be in the region of £59 million. If the new target of 10,000 hectares per annum is accepted,

the budget will need to be £45 million. The fact is that the figure that has been set aside for planting in the 2017-18 budget is £40 million.”

14. A focus on planting: The Forestry Commission (FC) has a wide remit and has not always focused sufficient energy on delivering the planting targets. The FC’s response to the Mackinnon report has been welcome, and it is vital that the FC works in partnership with the private sector through Confor to ensure the correct tools are in place and the focus on meeting the targets is retained.

The appropriateness of the timescales over which the proposals and policies within the draft RPP3 are expected to take effect:

15. We welcome the enormous ambition for forestry and timber displayed in RPP3.

16. We are confident these targets can be met within the proposed timescales if the current cross-party consensus remains, the FC focuses on delivering the target in partnership with the private sector and appropriate measures are in place to engage positively with the farming community and other land managers. A key component will be maintaining momentum in planting levels year-on-year, as yo-yoing planting rates create problems for the industry and particularly for the nursery sector.

17. The extent to which the proposals and policies reflect considerations about behaviour change and opportunities to secure wider benefits (e.g. environmental, financial and health) from specific interventions in particular sectors: Forestry delivers multiple benefits, and through the UK Forest Standard, every forest is designed to provide a combination of all of these benefits.

19. It provides rural jobs, not just in forestry but in timber processing from sawmills to off-site timber house construction.

20. It is good for the wider economy by producing a home-grown valuable product we can use or export.

21. It is good for sustainable development by producing a natural, renewable pollution-free material which can replace everything from steel to plastic.
22. It improves upland water management, helping to reduce flooding and restore uplands damaged by grassland drainage improvement.
23. It provides tremendous recreational opportunities for our communities through walking, wildlife-watching, cycling and more high-octane pursuits like mountain bike trails and Go Ape.
24. It is good for wildlife, by diversifying upland habitat and particularly benefiting iconic species like Red squirrel.

Confor
26 January 2017

RURAL ECONOMY AND CONNECTIVITY COMMITTEE

SUBMISSION FROM REFORESTING SCOTLAND

THE DRAFT CLIMATE CHANGE PLAN (RPP3)

Thank you for the opportunity to comment on the draft RPP3. The following comments will cover:

- progress to date on the forestry-related targets in RPP2;
- reasons for the shortfall in woodland creation;
- whether the revised targets in RPP3 are likely to be achieved under the current policies and proposals;
- whether the revised targets are sufficient;
- what new proposals might increase the chance of meeting or exceeding the targets; and
- opportunities to secure wider benefits from the proposals.

Progress to date on RPP2 targets

1. The new woodland creation targets of 10,000ha per year laid out in RPP2 have not been met. The promising trend in planting noted in RPP2 stalled the same year and has remained stagnant since, with the result that there is by now a 13,500ha deficit compared to the targets.ⁱ
2. We believe that there have been two major reasons for this shortfall:
 - the poorly functioning tree planting grant and approval system in place; and
 - the current system of land-based subsidy which makes tree planting unattractive compared to activities which make a large relative loss when subsidies are excluded.
3. The first issue was the subject of a recent report by James Mackinnonⁱⁱ. We believe that this report ably describes the problem and that the solutions proposed would go a long way towards solving it.
4. Unfortunately, however, we do not believe that this in itself will be sufficient to meet the targets due to the second problem. Much of the land suitable for afforestation in Scotland, both for timber production and for native woodland is currently subsidised for other uses. These subsidies vary for different uses and in places create a non-level playing field which seriously skews management choices towards options which are in themselves unprofitable and unproductive and which do not contribute to climate targets.
5. Ongoing research by SAC Consulting at Eskdalemuirⁱⁱⁱ is comparing the actual returns on an area of upland forestry with typical returns from a comparable area of hill sheep farm. The latest results show the forestry making a moderate profit and receiving a small public subsidy while the hill sheep farming makes a small loss offset by a far larger subsidy.

	Income	Subsidy	Total
Forestry	£205	£16	£221
Hill sheep	-£47	£79	£32

Figures per hectare from Eskdalemuir study – 2014 update.

We will come back below to the question of the wider benefits of different upland land uses but for now we note that the public subsidy to hill sheep farming is sufficient to swing it from loss to profit and significantly reduce the attractiveness of switching to forestry. It is highly likely that there are areas, still marginal for sheep farming but by a lesser degree than that in the study, where sheep farming is more profitable than forestry with the subsidy despite being less so without.

6. Note that this is not meant as an attack on sheep farming. On improved in-bye land sheep farming can still be productive and profitable. However there are large areas of Scotland that are comparable to the area of the Eskdalemuir study, where the economics can be expected to be similar.
7. Another perverse subsidy is the support of grouse moorlands with agricultural subsidy, either directly or by subsidising the use of sheep as ‘tick mops’. These are recreational areas that cannot be called agricultural by any stretch of the imagination. The regular burning of grouse moors prevents forest regeneration. We believe that there should be an aim of reducing public subsidy of grouse moors to zero.
8. The root cause of these perverse subsidies is the EU Common Agricultural Policy (CAP), which currently constrains Scottish policy options. The CAP is concerned with maintaining the supply of agricultural land and defines agricultural land not by its productivity or profitability (it may be unproductive and loss-making) but by the absence of trees and native vegetation.

We are currently faced with the prospect of Scotland leaving the EU and hence the CAP. Most Scots did not vote for and do not support this option, but it remains to be seen whether Scotland will find a way to remain in the EU or will be taken out along with the rest of the UK. We believe that it is necessary to make parallel plans for either option, either for taking full advantage of the opportunity to reform land subsidy that exit would bring or for making the most of the limited options within the CAP.

Targets

9. We welcome the increased woodland creation targets but feel that there is room for further ambition. The aim of 21% forest cover is low considering that the European average is closer to 33%. While Scotland has larger areas than most European countries which are naturally treeless, a target of 25% ought to be reasonable and achievable.
10. The RRP3 targets focus solely on planned woodland creation. However much new woodland worldwide and in Europe has been the result of unplanned natural regeneration. We believe that policies should also acknowledge the need to create favourable conditions for the natural regeneration of woodland.

Policies and proposals

11. We welcome all the policies and proposals on forestry in the draft report.
12. However, we do not believe that the policies and proposals are sufficient to meet either the draft targets or the more ambitious ones that we believe are possible. The reason for this is the subsidy of competing land uses described above. If Scottish forests and forestry are to meet their full potential on climate change this issue has to be addressed.
13. Subsidy 'bidding wars' of one land use against another do not achieve land use change but simply create a subsidy to land ownership in general. Guaranteed subsidies are factored into land prices and therefore rents. As such, this land subsidy does not even support rural communities in areas of tenant farming.
14. One proposal should therefore be to commission an assessment of the current subsidy regime and possible alternatives in terms of their climate impacts. This would then inform policy in the event of Scotland leaving the EU. To leave this assessment until events dictate would be to leave it too late.
15. Proposals should also take account of the potential for agroforestry or silvopastoralism, the growing of trees in combination with pasture, to have a significant impact. Research by the James Hutton Institute at Glen Saugh has shown this potential in a Scottish context^{iv}. On trial plots, the right density of planting was shown to maintain grass production under the trees even as wood yields increased, due to the shelter effect. In other words, wood production and carbon storage come for free in terms of grass and animal production.

For a long time agroforestry has been impossible under CAP rules but a recent change now allows up to 60 trees per hectare. This has been built into the Scottish SRDP but much more could be done to promote what is still an unfamiliar concept, including further research and extension work. In the longer term, we suggest that agroforestry should be required as a condition to any subsidy of grazing land.

16. Proposals should also consider influences on woodland health and regeneration beyond tree planting and planned woodland creation. It is widely acknowledged that deer numbers are at a historical, unsustainable high and that browsing and grazing are preventing both the regeneration of existing woodlands and their spread to new areas by natural regeneration. The spread of tree pests and diseases by trade in plants and timber also has the potential to disrupt forestry and kill large numbers of trees.

Wider benefits

17. The wider benefits of increased woodland creation are considerable and include rural wealth creation and the support of rural communities, improved wildlife habitat, increased shelter for livestock, improved recreational amenity, landscape enhancement and downstream flood protection. All these benefits are dependent on good forest design, without which there may also be negative impacts.

18. It is worth repeating the figures from the Eskdalemuir study cited earlier. The forestry studied brought in an annualised income of £550 and received a subsidy of £16 per hectare per year. With costs of £345 this gives a profit of £205 per hectare per year before subsidy. By contrast the hill sheep studied produced an income of £117 and received a subsidy of £79 per hectare per year. With costs of £164 that results in a loss before subsidy of £47 per year.

The two areas compared were chosen to be as similar as possible, so if we assume that the costs of each activity are spent within the local area we can say that in the study area the annual subsidy of £79 per hectare for hill sheep is in fact impoverishing the rural economy by £433 per hectare as a consequence of displacing forestry. If we focus instead only on profit, the figure is £252. The Eskdalemuir study also found that the forestry created 30% more employment than the hill sheep.

Therefore it seems clear that an expansion of forestry in comparable areas would do much to better support rural communities.

19. The benefits of flood mitigation due to forest cover are difficult to quantify, but we can compare the damage done in December 2016 in the North of England and South of Scotland by Storm Desmond with that done in South West Norway by the same storm, there called Synne. Both delivered comparable amounts of rain to similar areas of land. In the Norwegian regions most affected the average insurance claim per person for damage by the flood was less than a ninth of that in Scotland and England. Many factors will have affected this but the main difference between the two areas is that Southern Norway is heavily wooded, largely by recent natural regeneration, and without drainage ditches. Further research into which factors influence flood damage would be beneficial.^v
20. The key to delivering most of the wider benefits of forestry is multi-purpose forestry, in which timber production is integrated with a network of native woodland and open space which opens up the whole for recreation and wildlife use, improves visual impact and absorbs water.

Many postwar plantations are now being restructured along the principles of multi-use forestry. This is very much to be welcomed, but does come with a risk. A restructured forest is optimised for a wide range of economic and public benefits, not just for timber production, so it is inevitable that the timber production per hectare of a restructured forest falls. This risks displacing Scottish timber demand overseas and contributing to global deforestation. The only way to take full advantage of the synergies between timber production and wider benefits is to expand the total area of woodland.

21. Finally, a wider benefit not mentioned in the current draft is the ability of woodland creation to contribute towards the establishment of wildlife corridors for climate change resilience. Climate change will require many species to move their ranges and it is important that they be able to do so. The Forestry

Commission (Scotland) should be given the task of identifying key core areas and corridors and provided with extra funding for woodland creation in those areas.

Peat

22. We also welcome the policies and proposals included in the section on peat. Clearly woodland expansion should not be at the expense of peatland and the carbon store that it represents.

See Annex for power point slides on Storm Desmond aka Synne- N England&Borders and SW Norway comparative effects

ⁱ 'Analysis of Current Arrangements for the Consideration and Approval of Forestry Planting Proposals' by James Mackinnon CBE (2016), <http://www.gov.scot/Resource/0051/00511591.pdf>

ⁱⁱ *ibid*

ⁱⁱⁱ 'Eskdalemuir: A comparison of forestry and hill farming; productivity and economic impact' by SAC Consulting (2014), available at <http://www.forestryscotland.com/media/284436/eskdalemuirreportmay2014.pdf>. Summary of 2015 update including 2014 data available at

http://www.forestryscotland.com/media/302976/33_eskdalemuir2015execsummary.pdf

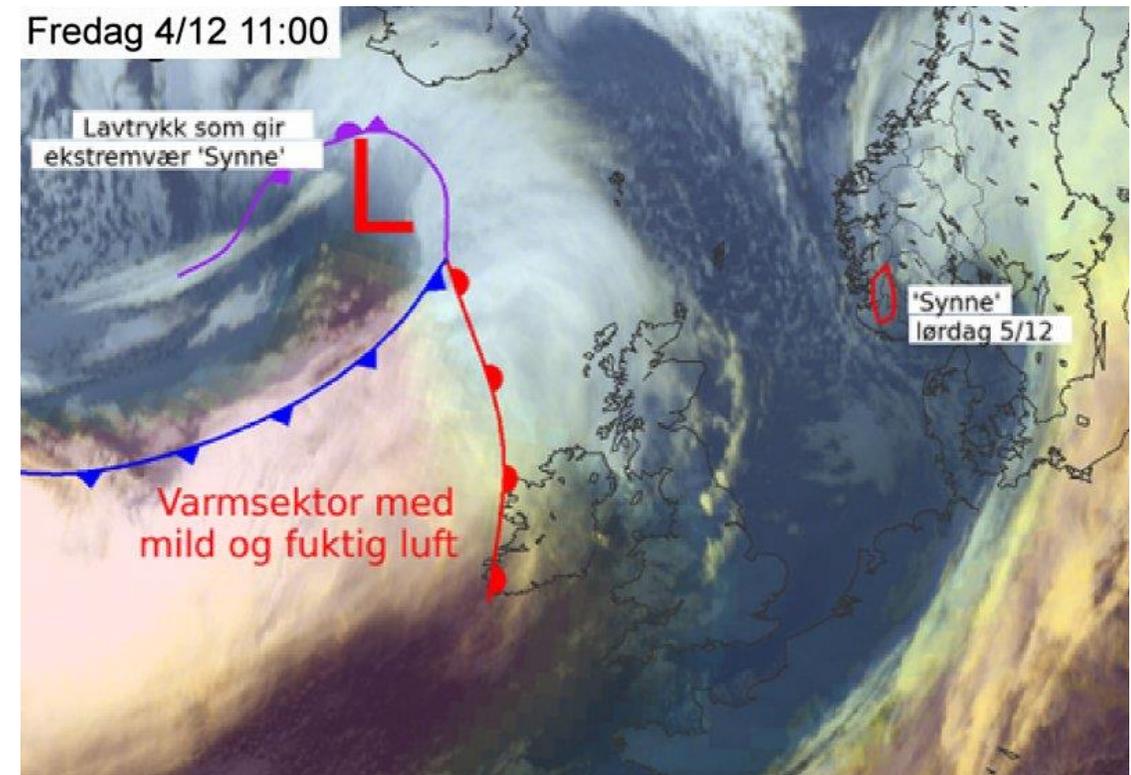
^{iv} <http://www.hutton.ac.uk/about/facilities/glensaugh/agroforestry>

^v 'Comparison of Storm Desmond (Synne) Economic Damage in SW Norway and N England/S Scotland' by Dr Duncan Halley, unpublished work (attached)

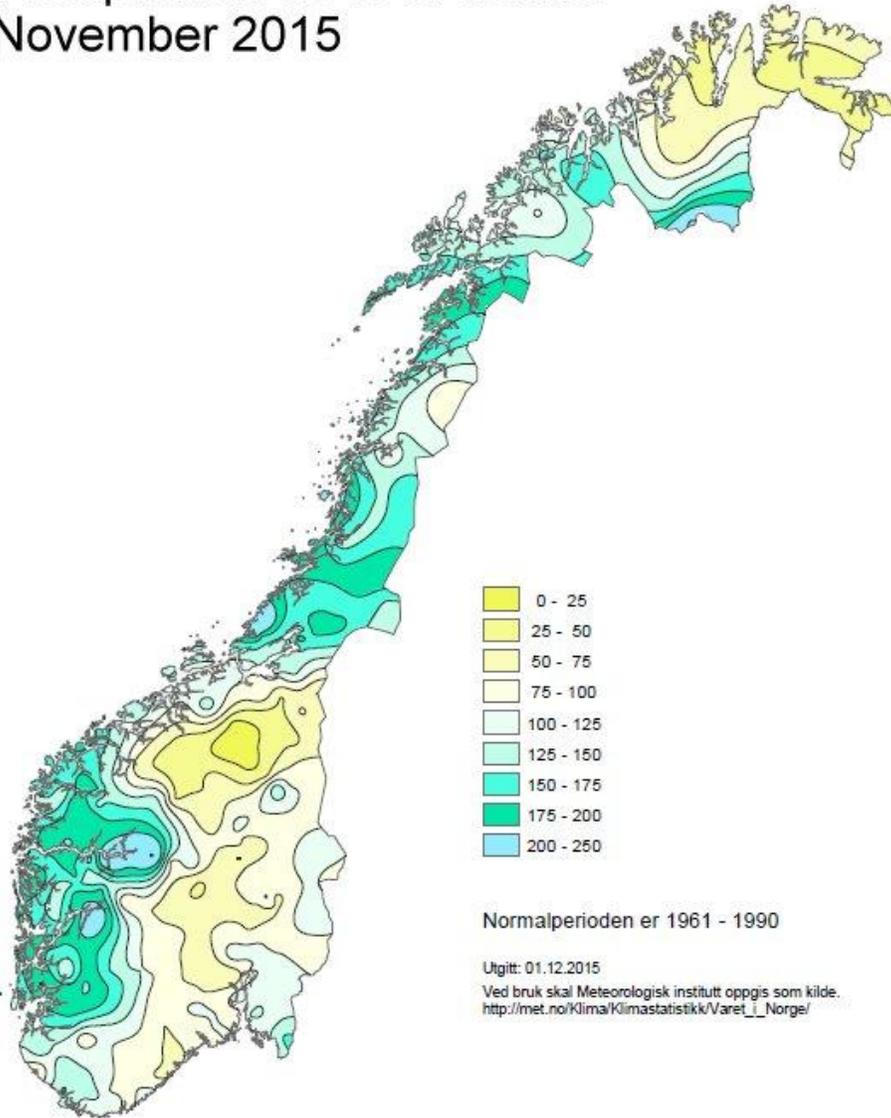
Comparison of Storm Desmond (Synne) Economic Damage in SW Norway and N England/S Scotland

Dr. Duncan Halley

- Storm Desmond affected N England/S Scotland in the period 4-6 December 2016.
- Known as Storm Synne, the same system arrived in Norway about 18 hours after its onset in Britain.
- Temperatures were above zero in all areas throughout, except a few mountain peaks. Almost all precipitation fell as rain on ground already wet from a wet November, in both Britain and SW Norway.



Precipitation as % of normal November 2015

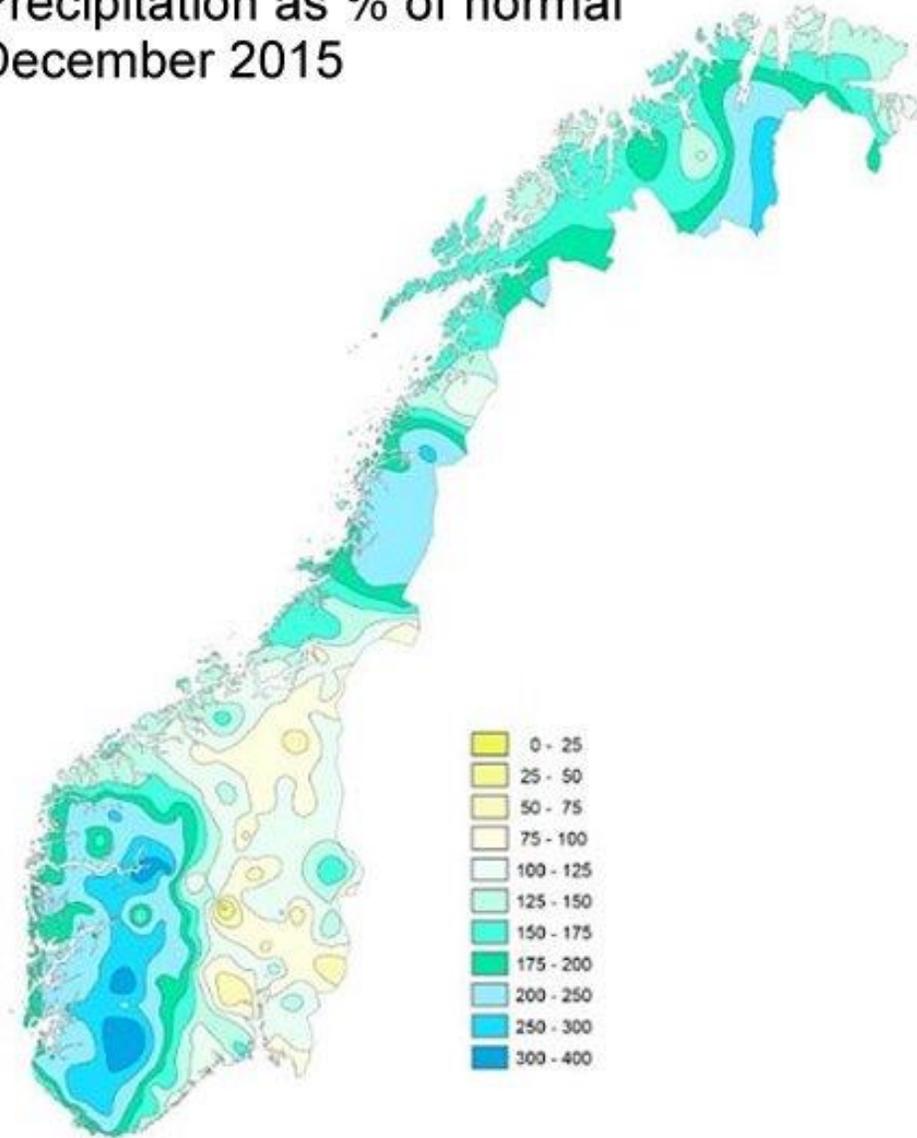


Normalperioden er 1961 - 1990

Utgitt: 01.12.2015

Ved bruk skal Meteorologisk institutt oppgis som kilde.
http://met.no/Klima/Klimastatistikk/Varet_i_Norge/

Precipitation as % of normal December 2015



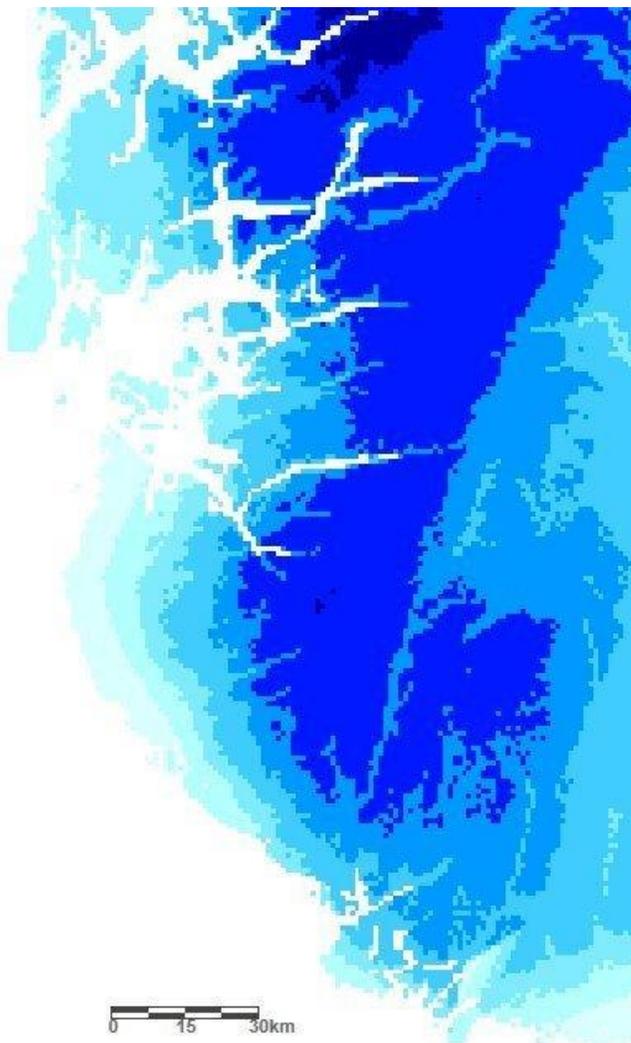
Storm Desmond (aka Synne)



UK Floods "Storm Desmond"
Accumulated Rainfall 4-6 Dec 2015 (COSMO-EU Model)



Source: COSMO-EU, DWD
Copyright © 2016 PERILS AG



Precipitation

<07-07hrs 4-5 December

07-07hrs 5-6 December>

2015

▼ Døgnedbør

Observasjonsbasert

Utstedt 17.12.2015 kl 13:46

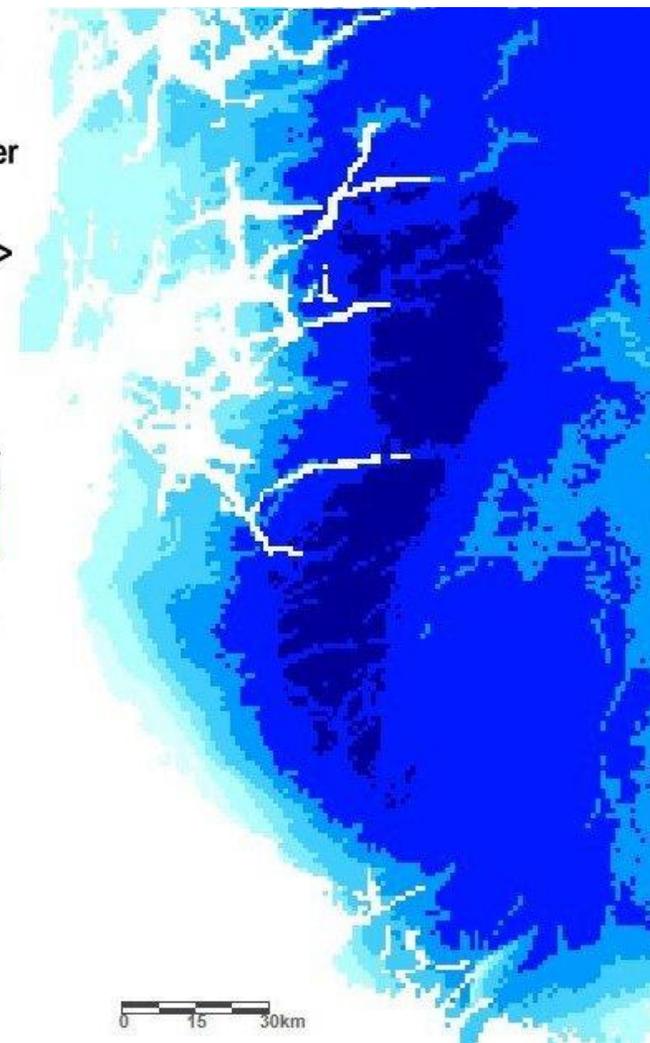
Basert på interpolerte værdata

Kartet viser nedbørmengde siste 24 timer.

Oppdateres ca kl 0, 6, 8, 9, 12, 18, 19 og 21 normalt.

Dataeier: Meteorologisk institutt

mm



- Heaviest accumulated rainfall band N England/S Scotland (PERILS map): >90mm
- Large areas of SW Norway at least 225mm



Storm Desmond (Synne) Economic Damage

	Lancashire, Cumbria, Co. Durham, Northumberland, Scottish Borders	Vest Agder, Rogaland, Hordaland
Area (km ²)	22309	29818
Population	2 887 570	1 067 588
Population density (km ²)	129	36
	UK	Norway
Storm Desmond/Synne Insurance claims estimates	<u>€833.6 million</u>	<u>€31.8 million</u>
Insurance claim/person main affected area, defined above	€289	€30

‘severe flooding mainly affected the counties of Cumbria and Lancashire’ (PERILS AG catastrophe insurance market news, 4th March 2016) (Population Cumbria & Lancashire: 1.9 million)

Conclusion

- Detailed comparative research would be useful to compare river flood profiles* and damage levels, to explain the apparent very large differences in economic damage levels (> nine times greater per head in affected region of Britain) from an event of similar or greater magnitude [in SW Norway](#).
- These will likely have complex causes. However, the main land cover difference between the areas, a factor known to strongly affect runoff rates, is the difference in **extent and character of woodland cover**. SW Norway is largely wooded, mostly by natural regeneration in recent decades and almost entirely without artificial drainage. There is comparatively little woodland in N England & S Scotland, with large areas of open hill; woodland mainly artificially drained commercial plantations.
- data for Norwegian hydrological stations is publically available at www.xgeo.no



The Scottish Parliament
Pàrlamaid na h-Alba

Fergus Ewing
Cabinet Secretary for Rural Economy
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27 January 2017

Dear Fergus,

Draft Climate Change Plan (RPP3) – agriculture and soil testing

I am writing with regard to the Scottish Government's recently published draft Climate Change Plan.

As you will be aware, the following Scottish Parliament Committees have adopted a collaborative approach to scrutiny of this plan, in order to ensure the specialist expertise of each Committee is applied when reviewing each sector:

- Economy, Jobs and Fair Work Committee
- Local Government and Communities Committee
- Rural Economy and Connectivity Committee
- Environment, Climate Change and Land Reform Committee

The Environment, Climate Change and Land Reform Committee is considering the following areas of the plan:

- Overview, development of draft Climate Change Plan;
- Climate change governance (including monitoring and evaluation);
- Water Industry;
- Resource use;
- Land use (including peatlands and land use by the public sector); and
- Behaviour change

The Committee has hosted one evidence session to date and took evidence from Scottish Government officials involved in the development of the document to hear more about the overall plan and climate change governance. The official report of this meeting is available [here](#).

The Environment, Climate Change and Land Reform Committee has also previously considered the Committee on Climate Change's (CCC) report on [Reducing Emissions in Scotland – 2016 Progress Report](#) and the CCC Adaptation Sub Committee's [assessment](#) of Scotland's Climate Change Adaptation Programme. As part of this, the Committee [took evidence](#) from Roseanna Cunningham, Cabinet Secretary for Environment, Climate Change and Land Reform, on 25 October 2016 and she made the following statement:

*“Obviously, **compulsory** soil testing is going to be part of the climate change plan—this is a rare occasion on which I can tell you about something that will be in it—and there will be a separate consultation on the compulsory soil testing scheme subsequent to the draft climate change plan being published.”*

Upon publication of the draft Climate Change Plan, the Committee were interested to note the language used in describing the policy associated with this commitment. The draft Climate Change Plan states:

*“From 2018, we will **expect farmers** to test the soil in all improved land every 5/6 years, and we will work with them to establish how best to achieve this. This will be for pH and we will consult on including testing for potassium and phosphorus”.*

As part of its exploration of how the carbon envelopes for each sector were established in the development of the plan, the Committee asked about this language with Scottish Government officials at its meeting this week. You can find the relevant exchange [here](#).

It is consequently not clear to the Committee whether the plan is mandating farmers to carry out compulsory soil testing from 2018 and we would appreciate confirmation from you on the following points:

- Will soil testing be compulsory for all farmers?
- If so, how will this be audited and evaluated?
- Will this be compulsory from 2018? If not, what are the timescales for the implementation of this policy?
- On which types of soil will farmers be required to carry out this testing?
- How often will testing be required?
- When will the consultation on compulsory soil testing be published? The Committee previously asked this in a [letter](#) to Cabinet Secretary for Environment, Climate Change and Land Reform, Roseanna Cunningham, following its consideration of the CCC Adaptation Sub Committee report on Scotland's Climate Change Adaptation Programme and has not received a response on this point as it was indicated the answer would be included in the plan.
- What information the Scottish Government holds on current levels of uptake of soil testing across Scotland?

I would be grateful for your prompt attention to these questions and request a response by **Wednesday 1 February 2017**. This will allow the Committee to take account of your response when questioning stakeholders on issues relating to peatland and land use at its meeting on 7 February 2017.

The Scottish Parliament's Rural Economy and Connectivity Committee is considering the sections of the plan on the agriculture and forestry sectors, and as such I am copying this correspondence to Edward Mountain MSP, the Convener of the Committee. I am also copying this to the Cabinet Secretary for Environment, Climate Change and Land Reform as it references previous correspondence and evidence she has provided to the Committee.

I look forward to hearing from you.

Yours sincerely,

A handwritten signature in dark ink, appearing to be 'Graeme Dey', with a stylized flourish at the end.

Graeme Dey MSP

Convener

Environment, Climate Change and Land Reform Committee

cc. Edward Mountain MSP, Convener, Rural Economy and Connectivity Committee and Cabinet Secretary for Environment, Climate Change and Land Reform, Roseanna Cunningham

Rural Economy and Connectivity Committee
4th Meeting, 2017 (Session 5), Wednesday, 1 February 2017
UK Digital Economy Bill
Legislative Consent Memorandum

Background

1. The Legislative Consent Memorandum (LCM) process is the mechanism for the Scottish Parliament to give its consent to the UK Government to legislate in the UK Parliament on matters which are within the legislative competence of the Scottish Parliament.
2. Legislative Consent Memorandums are usually lodged in the Scottish Parliament by the Scottish Government. They relate to Bills under consideration in the United Kingdom Parliament which contain what are known as “relevant provisions”. These provisions could:
 - change the law on a “devolved matter” (an area of policy which the UK Parliament devolved to the Scottish Parliament in the Scotland Act 1998); or
 - alter the “legislative competence” of the Scottish Parliament (its powers to make laws) or the “executive competence” of Scottish Ministers (their powers to govern).
3. Under an agreement known as the ‘Sewel Convention’, the UK Parliament will not normally pass Bills that contain relevant provisions without first obtaining the consent of the Scottish Parliament. Committees will undertake scrutiny of the Memorandum after which the Government will lodge a Legislative Consent Motion which is taken in the Chamber.
4. The procedure for scrutiny of Legislative Consent Memorandums and Motions is set out in [Chapter 9B](#) of the Parliament’s standing orders.

UK Digital Economy Bill

5. A LCM has been lodged regarding the UK Digital Economy Bill. The memorandum and the Bill can be found on the Scottish Parliament website. <http://www.parliament.scot/parliamentarybusiness/Bills/103079.aspx> . It has also been made available at Annexe B.
6. Nearly all aspects of the Bill extend to Scotland. However, the majority deals with matters which are reserved to the UK Parliament and make no alteration to the executive competence of the Scottish Ministers. The areas of the Bill where the consent of the Scottish Parliament is required relates to:
 - a) the Scottish Ministers laying down fees for the Lands Tribunal for Scotland (“the Tribunal”) to charge for hearing any disputes under the Code and laying down rules for the Tribunal to follow in any such cases; and

- b) the Digital government provisions on data sharing between public authorities and statistical data from larger undertakings.
7. Provision A enables Scottish Ministers to make any rules and lay down fees for cases heard in the Lands Tribunal for Scotland relating to disputes associated with installation and maintenance of communications networks under the Electronic Communications Code. This is the aspect of the LCM which falls directly within the Committee's remit. A SPICe briefing on this aspect is attached at Annexe A.
8. Provision B relates to data sharing across public bodies (both within Scotland and cross-border) for the purposes of (a) public service delivery (b) addressing debt owed to the public sector (c) addressing fraud against the public sector (d) research (e) statistics. Considering the breath of the data sharing provision it would likely be of interest to a variety of subject Committees across the Parliament.

Committee consideration

9. The Rural Economy and Connectivity Committee has been designated as lead Committee. The Delegated Powers and Law Reform Committee will meet to consider the LCM and report on the day before the REC Committee meeting on 31 January.

10. The Committee is required to reflect upon the Memorandum and then agree whether it is content with its terms and report its findings to the Parliament.

Annexe A – SPICe briefing

Annexe B – Legislative Consent Memorandum

**Heather Lyall
Senior Assistant Clerk
Rural Economy and Connectivity Committee
January 2017**

Annexe A

**Rural Economy and Connectivity Committee
4th Meeting, 2017 (Session 5), Wednesday 1 February 2016
Legislative Consent Memorandum on the Digital Economy Bill –
communications infrastructure**

Purpose

The purpose of this briefing is to give the Committee background information on the communications infrastructure aspect of the Digital Economy Bill.

The Committee is considering a [Legislative Consent Memorandum](#) (LCM) in relation to this aspect of the Bill. The LCM also deals with data sharing powers.

The Digital Economy Bill

The Digital Economy Bill is a UK Government Bill. The Bill has completed its passage through the House of Commons and is currently being considered by the House of Lords.

According to the UK Government¹:

“The purpose of the Bill is to enable access to fast digital communication services for citizens and businesses, to enable investment in digital communications infrastructure, to shape the emerging digital world to the benefit of children, consumers and businesses, and to support the digital transformation of government, enabling the delivery of better public services, world leading research and better statistics.”

Telecommunications and internet services are reserved². Thus the UK Government is entitled to legislate for the UK on these issues. The vast majority of the Bill’s contents are within reserved competence.

However, the Bill would give Scottish Ministers a new power to make rules in relation to procedure before the Lands Tribunal for Scotland in certain cases. It is this specific aspect of the communications infrastructure proposals which requires legislative consent.

The Electronic Communications Code

The Electronic Communications Code sets out in statute the regime under which communications infrastructure can be installed on public and private land. Communications infrastructure would include things like mobile phone masts and internet cabling.

¹ Digital Economy Bill 2016-17 (HL Bill 80), [Explanatory Notes](#), paragraph 2.

² See head C10, Schedule 5 to the Scotland Act 1998

The current code appears in the Telecommunications Act 1984. It is considered to be complex, legally unclear and out-of-date.

The Digital Communications Bill would provide for a new code, set out in Schedule 1 to that Bill. The proposals are based on recommendations from the Law Commission (for England and Wales).

This area has been the subject of previous unsuccessful attempts at reform by the UK Government. The House of Commons Library briefing "[Reforming the Electronic Communications Code](#)" (2016) contains more information.

The main element of the Code to be reformed is the payments which communications infrastructure operators must make to land owners. The new Code would make it clear that payments are to be calculated on the basis of the value of the land to the land owner – not its value to the operator.

The UK Government argues that this would enable operators to invest in mobile and superfast broadband infrastructure, thus expanding services. It would also prevent operators being held to ransom by individual land owners.

It could also be seen as recognising the importance of communications services in modern life. The provisions would put communications infrastructure on the same footing as infrastructure for gas and electricity.

However, the proposals will reduce the payments made to land owners. This would include public service providers whose land is used to site communications infrastructure (e.g. fire stations) as well as private land owners. They have therefore attracted some controversy.

Detractors argue that the provisions represent a significant concession to the mobile phone and broadband industry. However, there is no explicit requirement for there to be an improvement in services as a result.

It is important to stress that these arguments relate to reserved policy areas. They are not matters for which the consent of the Scottish Parliament is being sought to legislate.

The Lands Tribunal for Scotland

Tribunals are usually set up to provide a more user-friendly forum than the courts to deal with disputes, or because specific, technical expertise is required. The Lands Tribunal for Scotland provides a bit of both.

The Lands Tribunal only has the power to hear a case (in other words "jurisdiction") if a piece of legislation confers it. It can deal with various disputes over obligations in relation to land, for example:

- "title conditions" requiring one land owner to do something for the benefit of another land owner (eg. an obligation to allow access to land);
- the former "right to buy" for tenants in the social rented sector; and

- valuation issues – for example, in relation to compulsory purchase, rates disputes and farm tenants’ rights.

Scottish Ministers already have the power to make rules and set fees in relation to these, and a number of other, areas³.

Proposals in the Digital Economy Bill relating to the Lands Tribunal

Disputes over issues in the Electronic Communications Code – such as the valuation of land to be used for communications infrastructure – are currently dealt with by the sheriff courts.

The Digital Economy Bill would give the Secretary of State the power to transfer jurisdiction for such disputes to the Lands Tribunal for Scotland⁴. The power would be exercised by laying regulations before the UK Parliament.

If such regulations were laid, the Scottish Ministers would have the power to make rules and set fees for cases proceeding under the new jurisdiction⁵. Legislative consent is only being sought for this specific aspect of the Bill’s proposals in relation to communications infrastructure.

The Legislative Consent Memorandum summarises the Scottish Government’s reasons for believing that the legislative consent of the Scottish Parliament is required (paragraph 22):

“Without this provision, there could be some doubt as to whether fees and rules for the Tribunal in relation to disputes under the Code would be made by the Secretary of State (given that the Code is reserved) or the Scottish Ministers. Given that the Scottish Ministers make fees and rules for the Tribunal in other areas, the UK Government and the Scottish Government agreed it was sensible to put beyond doubt that the Scottish Ministers could make fees and rules for the Tribunal in relation to disputes under the Code.”

Abigail Bremner
SPICe Research
27 January 2017

Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.

The Scottish Parliament, Edinburgh, EH99 1SP www.scottish.parliament.uk

³ These powers often derive from the piece of legislation creating the jurisdiction. There are residual powers to make rules under section 3(6) of the Lands Tribunal Act 1949.

⁴ Digital Economy Bill 2016-17 (HL Bill 80), Schedule 1, paragraph 91.

⁵ Digital Economy Bill 2016-17 (HL Bill 80), Schedule 1, paragraph 106.

LEGISLATIVE CONSENT MEMORANDUM

DIGITAL ECONOMY BILL

Background

1. This memorandum has been lodged by Fergus Ewing MSP, Cabinet Secretary for the Rural Economy and Connectivity, under Rule 9B.3.1(a) of the Parliament's Standing Orders. The Digital Economy Bill ("the Bill") was introduced by the UK Government in the House of Commons on 5 July 2016 and brought to the House of Lords on 29 November 2016. The Bill can be found at: <http://services.parliament.uk/bills/2016-17/digitaleconomy.html> Due to the technical nature of the Bill, the requirement for clarity on the effect of provisions on Scotland and consequent requirement for amendments to the Bill, there has been a prolonged discussion with the UK Government which has led to delay in lodging this memorandum.

Content of the Bill

Overview

2. The Bill contains measures on:

- electronic communications infrastructure and services;
- restricting access to online pornography;
- protection of intellectual property in connection with electronic communications;
- data-sharing;
- functions of OFCOM in relation to the BBC;
- determination by the BBC of age-related TV licence fee concessions;
- the regulation of direct marketing;
- OFCOM and its functions

3. The Bill is in seven parts:

- Part 1 relates to access to digital services.
- Part 2 relates to digital infrastructure and includes provisions on the Electronic Communications Code ("the Code").
- Part 3 contains provisions on on-line pornography and, in particular, provisions aimed at preventing access by persons under the age of 18.
- Part 4 contains provisions on intellectual property.
- Part 5 contains provisions on data sharing between public authorities.
- Part 6 makes provision on OFCOM, the BBC and the Direct Marketing Code.
- Part 7 contains general provision.

Part	Title	Consent required
Part 1	Access to Digital Services	No
Part 2	Digital Infrastructure	Yes
Part 3	Online pornography	No
Part 4	Intellectual Property	No
Part 5	Digital Government	Yes
Part 6	Miscellaneous	No
Part 7	General	No

Provisions which relate to Scotland and require legislative consent

4. Nearly all of the Bill extends to Scotland. However, much of the Bill deals with matters which extend to Scotland but are reserved to the UK Parliament by Schedule 5 to the Scotland Act 1998 and make no alteration to the executive competence of the Scottish Ministers. The areas of the Bill where the consent of the Scottish Parliament is needed relate to:

- the Scottish Ministers laying down fees for the Lands Tribunal for Scotland (“the Tribunal”) to charge for hearing any disputes under the Code and laying down rules for the Tribunal to follow in any such cases; and
- the Digital government provisions on data sharing between public authorities and statistical data from larger undertakings.

Reasons for seeking consent - general

The Electronic Communications Code

5. The Code is reserved by Section C10 of Schedule 5 of the Scotland Act 1998, which reserves telecommunications and wireless telegraphy. Nearly all of the provisions in the Bill on the Code relate to reserved matters. Clause 4 of the Bill introduces a new Code, contained in Schedule 1 of the Bill, which inserts Schedule 3A into the Communications Act 2003. This would replace the existing Code in Schedule 2 of the Telecommunications Act 1984.

6. Under the new Code, jurisdiction for disputes under the Code may be moved from the Sheriff Court to the Lands Tribunal for Scotland (referred to in this memorandum as “the Tribunal”). The Scottish Ministers can make rules and lay down fees for cases heard in the Tribunal. However, as the Code is reserved, paragraph 106 makes express provision enabling the Scottish Ministers to make any rules and lay down fees for cases heard in the Tribunal relating to the Code. This provision affects the executive competence of the Scottish Ministers and, therefore, legislative consent is needed.

7. Without this provision, it may be uncertain whether the Secretary of State or the Scottish Ministers would have the power to make rules or lay down fees for cases heard in the Tribunal relating to the Code.

Data sharing

8. For a public authority to access information held in another part of the public sector it requires appropriate legal powers, which are often provided by express legal gateways, to disclose information. At present, there is a wide variety of legal provisions which may be relevant to data sharing. Accordingly, there can be a lack of clarity as to what can be shared by whom. In addition, some of the procedures are complex and lengthy, resulting in long delays for projects to get underway.

9. The Bill firstly provides a gateway to enable public authorities, to be specified by regulations, to share personal information for tightly constrained reasons under the Bill and to be approved by the relevant Parliament, where the purpose is to improve the welfare of the individual in question. To use the gateway, the proposed sharing of information must be for the purpose of one of the specified objectives, which will be set out in regulations. Illustrative draft data-sharing regulations have been prepared¹.

10. The Bill also streamlines the data sharing landscape for research purposes; enables Her Majesty's Revenue and Customs (HMRC) to overcome their restrictive powers to share data under the right conditions for restrictive research purposes; and allows the UK Statistics Authority (UKSA) to obtain identifiable data from the public, private and third sectors to improve national statistics whilst reducing cost and burdens. The Bill contains provisions for relevant identifiable data to be onward shared with the devolved administrations. This package has the potential to substantially enhance the range and quality of insights which Scottish Government analysts can provide to the development and evaluation of policy.

11. The legislative proposals fall into a number of strands:

- Public service delivery (Chapter 1 of Part 5 of the Bill).
- Civil registration (Chapter 2 of Part 5). These provisions do not directly impact on Scotland and so the legislative consent of the Scottish Parliament is not needed for Chapter 2 of Part 5.
- Debt owed to the Public Sector (Chapter 3 of Part 5).
- Fraud against the Public Sector (Chapter 4 of Part 5).
- Sharing for research purposes (Chapter 5 of Part 5).
- Her Majesty's Revenue and Customs (Chapter 6 of Part 5). These provisions about HMRC relate to a reserved matter and so the legislative consent of the Scottish Parliament is not needed in respect of HMRC.
- Statistics (Chapter 7 of Part 5).

¹ The draft data-sharing regulations are at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/535311/2016-07-05_Digital_Government_Disclosure_of_Information_draft_regs.pdf

12. Legislative consent is needed as the data-sharing provisions affect a number of devolved matters:

- There are regulation-making powers which would be exercised by the Scottish Ministers.
- There are provisions which relate to sharing of devolved matters and functions.

13. The Scottish Ministers are of the view that data sharing in these areas would enable better public service delivery; would allow issues relating to debt owed to the public sector and prevention of fraud to the public sector to be better tackled and would allow data sharing for research and statistical purposes. Therefore, the Scottish Ministers are of the view that legislation in this area would help to achieve more efficient and effective management of the public sector in Scotland. There will be UK Codes of Practice in relation to data-sharing under this Bill. Drafts of these Codes of Practice have been prepared².

Structure of this Memorandum

14. This Memorandum is structured as follows:

- The main body reflects the detailed reasons for seeking consent.
- Annex A outlines the provisions in the Bill for which an LCM is sought.
- Annex B outlines the delegated powers which the Bill would provide to the Scottish Ministers.

Reasons for seeking consent – detail

15. Annex A gives more details of provisions in the Bill which apply to Scotland and for which legislative consent is sought. This part of the memorandum outlines where more detail can be found in Annex A.

The Code: relevant provisions in relation to the LCM – paragraph 106 of schedule 3A of the Communications Act 2003 (as inserted by schedule 1 of the Bill).

Policy intent

16. The Code enables electronic communication network providers to install and maintain electronic communication networks by giving network operators certain rights. The policy intent is to update the Code to reflect the up to date position in relation to electronic communications. The key aim of reform in this area is to help roll-out of digital communications infrastructure.

² Draft Codes of Practice are at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/567319/2016-10-20_Digital_government_codes_of_practice.pdf

Background

17. The UK Government asked the Law Commission for England and Wales to review the Code in 2012. The Law Commission published a detailed [report](#) on 28 February 2013. In early 2015, the previous UK Government introduced amendments to the UK Infrastructure Bill, which would have reformed the Code along the lines of the Law Commission's recommendations. However, the measure was subsequently removed from the Bill, to allow further consultation and research to take place.

18. Following public [consultation](#) in February 2015 and further analysis work, on 17 May 2016 the UK Government published [A New Electronic Communications Code](#), setting out plans to legislate.

19. Amongst other things, the Bill:

- Restates and reforms the current statutory Code which enables electronic communication network operators to install and maintain electronic communications apparatus on land. This includes provision about the consideration payable by operators to other persons, usually the occupiers of land, for installing the apparatus.
- Paragraph 23 of the proposed new Code provides for this consideration to be based on market value, assessed on the basis of the value to the relevant person rather than the value to the operator, and without having regard to the use which the operator intends to make of the land.
- Provide new rights to upgrade and share infrastructure.

20. The Code is reserved by Section C10 of schedule 5 of the Scotland Act 1998, which reserves telecommunications and wireless telegraphy. Paragraph 95 of the proposed new Code contains a regulation-making power which would enable the Secretary of State to transfer the jurisdiction for hearing disputes under the Code from the ordinary courts to tribunals. The types of disputes that might arise relate to whether an agreement should be made in the first place; what consideration and compensation should be payable in relation to an agreement and whether agreements should be brought to an end. In relation to Scotland, transferring the jurisdiction would mean cases being heard by the Tribunal rather than the Sheriff Courts. This proposal reflects that the Tribunal is specialist and is well suited to deal with disputes about consideration and compensation payable for use of land. Before making any regulations in relation to Scotland, the Secretary of State must consult the Scottish Ministers (paragraph 95(5)(a) refers).

Reasons for requiring legislative consent

21. The Scottish Ministers generally make rules and lay down fees for cases heard in the Tribunal. However paragraph 106 makes express provision to make it clear that the Scottish Ministers can make rules and lay down fees for cases heard in the Tribunal relating to the Code. This affects the executive competence of the Scottish Ministers, and therefore, legislative consent is required.

22. Without this provision, there could be some doubt as to whether fees and rules for the Tribunal in relation to disputes under the Code would be made by the

Secretary of State (given that the Code is reserved) or the Scottish Ministers. Given that the Scottish Ministers make fees and rules for the Tribunal in other areas, the UK Government and the Scottish Government agreed it was sensible to put beyond doubt that the Scottish Ministers could make fees and rules for the Tribunal in relation to disputes under the Code.

Data-sharing: public service delivery: Chapter 1 of Part 5: relevant provisions in relation to the LCM: clauses 30, 31, 32, 33, 34, 36, 37 and 38 [Paragraphs 2 to 23 of Annex A of this memorandum gives more details].

Policy intent

23. The proposal is to introduce a permissive power for defined public authorities to share data with other defined public authorities for the purposes of improving the delivery or targeting of public services in areas of social policy and resulting in an offer of help to an individual or household. This power is intended to operate in accordance with a number of principles. The defined authorities must be a public authority or an authority providing services to a public authority. Where the latter is the case, its ability to disclose information is limited to functions it exercises for that public authority.

Background

24. Public service delivery is dependent on timely and accurate data to ensure that citizens receive the services they need. Public authorities are reliant on the existence of appropriate legal gateways to access data held elsewhere in the public sector for the purposes of improving service delivery. The current legal landscape of data sharing for public service delivery is complex and inconsistent across public services and organisations. This legislation will create a single gateway to enable public authorities to share personal data for tightly constrained reasons agreed by Parliament, so long as its purpose is to improve the welfare of the individual in question. Any scheme would have to be developed but in Scotland the legislation could, for example, potentially be used to:

- allow local authorities to find out who is eligible for free school meals and to automatically apply it to eligible families;
- enable a targeted childcare offer to 2 year olds in Scotland. Eligibility is based on receipt of UK wide benefits.

Reasons for requiring legislative consent

25. Data in this area covers devolved matters and reserved matters. Given the impact on devolved matters, legislative consent is required.

26. Given that data sharing in this area requires co-operation from both UK and Scottish bodies, the Scottish Ministers considers that there are good reasons for granting legislative consent. For example, the Department for Work and Pensions (DWP) and the Scottish Prison Service (SPS) may need to share data. This would enable the SPS to tell DWP advance of individuals leaving prison so that benefits can be claimed prior to release.

Data-sharing – debt owed to the public sector – Chapter 3 of Part 5: relevant provisions in relation to the LCM: clauses 41, 42, 43, 45, 46, 47 and 48. [Paragraphs 24 to 44 of Annex A of this memorandum gives more details]

Policy intent

27. The debt proposals would help citizens manage their debt more effectively and reduce the estimated £24.1bn of overdue debt owed to government across the UK as a whole. Public authorities would be able to pilot projects that identify where individuals have debts with a number of public agencies, and then have a single interaction with them to help manage those debts.

Background

28. Debt owed to the public sector is due by individuals and businesses, and comes from a wide range of sources including overdue tax liabilities, outstanding fines, benefit or tax credit overpayments, and court confiscation orders, but is not limited to these. Public authorities already have the ability to share debt data. Around 86 legal gateways to share debt data have grown organically across the public sector over a number of years. However, these gateways are restrictive, often misinterpreted, and are complex and time consuming to use. The legislation would enable specified public authorities (and private bodies who fulfil a public function on behalf of a public authority) to share identified debt data to:

- a) identify those individuals or businesses with multiple debts to government, so government can provide greater support to those who have difficulties repaying;
- b) avoid multiple contacts from government with individuals and businesses in relation to outstanding debts; and
- c) ensure more efficient and effective cross-government debt recovery and management.

Reasons for requiring legislative consent

29. Debt can be owed to the Scottish Government (which, by definition, deals with devolved matters) and, therefore, legislative consent is required. Given that debt may be owed to both UK and Scottish Governments, the Scottish Government considers that legislative consent should be given to enable the two Governments to work together. The gateway would allow for sharing between UK and Scottish bodies to allow the potential for cross-border pilots enabling individuals to consolidate their public sector debt and develop repayment plans.

Data-sharing – fraud against the public sector – Chapter 4 of Part 5: relevant provisions in relation to the LCM: clauses 49, 50, 51, 53, 54, 55 and 56 [Paragraphs 45 to 63 of Annex A of this memorandum give more details]

Policy intent

30. The objective is a legal gateway to clarify what is permissible by way of data sharing for the purposes of preventing, detecting, investigating and prosecuting of fraud and bringing civil proceedings and taking administrative action.

31. The gateway will be „purposive“ (one that is constrained by the purposes for which the data will be used).

32. The new powers would supplement, rather than replace, existing powers.

33. The proposed gateway will allow public bodies to share identified information in alignment with Data Protection Act principles (e.g. adequate, relevant and not excessive to the purpose for which they are processed).

Background

34. Tens of billions of taxpayers’ pounds are lost through fraud against the public sector every year. It is difficult to give an exact figure as there are unquantifiable considerations such as the activity of the shadow economy, Cabinet Office provided estimates ranging from £20bn to £67bn across the UK as whole. This represents a significant loss both in terms of taxpayers’ money and potential business revenue. At present there are numerous express gateways which allow specific public authorities to share types of data for the purposes of combating different types of fraud, including fraud against government. However, they lack the flexibility to adapt to changing circumstances. The new power will enable better sharing of information to combat fraud against government, improving the prevention, detection and investigation of fraud by:

- a) aiding better targeting and threat profiling of potentially fraudulent individuals;
- b) saving taxpayers’ money by streamlining processes; and
- c) increasing the ability for Government to act more quickly on fraud and simplifying the legislative landscape.

Reasons for requiring legislative consent

35. Legislative consent is needed as fraud against the public sector may be against devolved public sector bodies.

36. Given that fraud may be against both reserved and devolved public bodies, the Scottish Government considers that legislative consent should be given to enable the two Governments to work together. The gateway would allow for sharing between UK and Scottish bodies to tackle fraud. In Scotland, this power could be used to share information to aid Revenue Scotland’s compliance activity undertaken

in order to reduce avoidance and tax evasion. This could involve sharing data with HMRC or other UK Government departments.

Data-sharing – sharing for research purposes – Chapter 5 of Part 5: relevant provisions in relation to the LCM: clauses 57, 58, 59, 61, 62, 63 and 64 [Paragraphs 64 to 81 of Annex A of this memorandum gives more details].

Policy intent

37. These provisions create a generic legal gateway for sharing personal data that has been “de-identified” (i.e. has had personal identifiers removed) thus simplifying the complex patchwork of existing provisions. They are based on the Scottish Government’s own successful model of sharing with a trusted third party, for example for medical research purposes. A great deal of our analytical and policy modelling work can be carried out using de-identified data and as such these clauses will deliver a lot for analysts working in the Scottish Administration, as well as researchers outwith the Scottish Administration.

Background

38. At present there are various data sharing agreements in place across the public sector drawing on specific pieces of legislation. However, the existing provisions can be complex and time consuming and in places there may be a lack of clarity as to whether data which it would be desirable to share can be lawfully shared. The intention here is to provide a new generic data sharing gateway which can also help to streamline this activity, drive up consistency of decision making and standards as well as saving time. The proposals do not limit the circumstances in which data can be shared apart from using the new gateway. The proposals were subject to a Cabinet Office Open Policy Making Process during 2014 and 2015, with subsequent UK wide consultation in February 2016.

39. In order that the data is handled appropriately and to reassure the public of the integrity of this work, the proposals include having the UK Statistics Authority (“UKSA”) develop a Code of Practice and also accredit:

- the research facilities where the data will be made available,
- the individuals using the data, and
- the research proposals themselves – which must be in the public interest.

40. UKSA will also publish and maintain a register of all of this activity and will be empowered to remove accreditation.

41. The Scottish Ministers will be consulted on the Code and in time the UKSA can delegate the accreditation to the Chief Statistician in the Scottish Government as there is provision for this in clause 63. Until such time as this is enacted, the UKSA would be accrediting research on devolved as well as reserved matters.

Reasons for requiring legislative consent

42. Statistics related to devolved functions in Scotland are devolved and as such an LCM is required.

43. The Scottish Government's understanding of complex societal issues would be enhanced by the ability to link data from Departments like DWP and HMRC to the Scottish Government's own statistics. In addition, the quality of economic statistics could be greatly improved through better access to HMRC and private sector data. The Scottish Government often only requires access to de-identified data in order to carry out analysis such as modelling the potential impact of new policies on different types of individual or business. These powers would improve the current position, in particular by allowing the Scottish Government to use linked administrative data to understand outcomes. A further gain is that such work maximises the value for money of existing data.

Revenue Scotland and planned amendments

44. The provisions also generally cover disclosure of information by Revenue Scotland. The UK Government have agreed to amend the Bill to make clear Revenue Scotland (and the Welsh Revenue body) can enable information to be disclosed for de-identified research purposes in the public interest, as can HMRC under clause 60 of the Bill. Provision would also be made so it cannot be disclosed onwards to others without Revenue Scotland and the Welsh Revenue body's consent, again consistent with the treatment for HMRC in the Bill, and with the penalty of criminal sanctions for unlawful disclosure.

Data-sharing – statistics – Chapter 7 of Part 5: relevant provisions in relation to the LCM: clauses 67, 68 and 69 [Paragraphs 82 to 104 of Annex A of this memorandum gives more details].

Policy intent

45. This Chapter covers the sharing of identifiable data for statistical purposes with the UKSA, and with the scope for onward transmission of such data pertaining to each of the devolved administrations should they require it for their own statistical (not operational) purposes. The clauses span the public, private and third sectors – and in doing so are intended to provide the UK wide statistical system with full access to relevant data for their statistical purposes. This should, among other things, save money through the use of administrative data as opposed to running surveys.

Background

46. Government statistics in Scotland is part of a UK wide statistical service with professional accountability to the UK National Statistician, who is accountable to the four legislatures of the UK as well as to Eurostat, the European statistical body, in respect of EU-wide statistics. Following the crisis which hit the Greek economy there were changes to EU statistical legislation which came into force in June 2016³. Provision was made for each Member State's National Statistics Institute (in the case of the UK the Office for National Statistics (ONS) which is the executive office of the UKSA) to have the right to access administrative records from the public sector to the extent necessary to produce European statistics. More recently, ONS received heavy criticism by Prof Sir Charles Bean in his independent review of economic statistics for reliance on surveys where administrative data from business could be more accurate and timely – and also less of a burden on business to supply. The clauses in this chapter give UKSA access for statistical purposes to administrative data from the public, private and third sector. This includes Crown bodies such as (for Scotland) the Scottish Government, National Records of Scotland, Registers of Scotland etc.

47. The provisions will benefit the statistical functions of the devolved administrations. In particular (with the consent of the original data provider) UKSA will be able to onward share the relevant data they obtain with each of the devolved administrations. This gives the Scottish Government the opportunity to benefit, together with ONS, from more comprehensive and up to date data at no extra cost, except the cost to data providers of supplying the data.

48. The process involved will be governed by a Code of Practice that spans both the principles involved and the practicalities such as security of IT systems. The Scottish Ministers will be consulted on this Code, which will be laid before the Scottish Parliament.

49. At present the UK statistical system does not enjoy the benefits of having modern data sharing legislation. These proposals not only put the UK on a par with other countries, but go further in so far as they span access to private and third sector data. Not only does this reduce the cost of providing data and improve timeliness, it will also drive up quality through more extensive analysis of the information flushing out any data quality problems.

Reasons for requiring legislative consent

50. Statistics relating to devolved functions in Scotland are devolved. Scottish statisticians produce data which reflects the devolved nature of services (e.g. statistics on the NHS) and data for international comparisons (e.g. the European Health Interview Survey). The devolved nature of statistics is also reflected in the four different Pre-release Access Orders for the Statistics and Registration Services Act 2007⁴ ("the SRSA 2007"), reflecting the different requirements across the UK. The new clauses replace and supplement provisions in the SRSA 2007, which

³ Regulation (EC) 223/2009 on European statistics, amended by Regulation (EU) 2015/759 of 29 April 2015.

⁴ e.g. the Pre-release Access to Official Statistics (Scotland) Order 2008 (SSI 2008/399)

required an LCM, and provide powers to the UKSA to obtain data from Crown bodies, other public bodies, business and charities.

51. Although the existing SRSA 2007 allows for the creation of data sharing orders the two key limitations of this are considered to be:

- the lengthy process which can span 18-24 months by which time things have moved on; and
- it is not possible to use them for bodies which came into being after 2007 (notably Revenue Scotland).

Consultation

The Code

52. The UK Government asked the Law Commission for England and Wales to review the existing Electronic Communications Code in 2012. The Law Commission published a detailed [report](#) on 28 February 2013.

53. In early 2015, the previous UK Government introduced amendments to the UK Infrastructure Bill, which would have reformed the code along the lines of the Law Commission's recommendations. However, the measure was subsequently removed from the Bill, to allow further consultation and research to take place.

54. The Department for Culture, Media and Sport (DCMS) issued a public [consultation](#) in February 2015. Whilst this consultation was live, the DCMS, the Scotland Office and the Scottish Government organised a round table discussion on 16 March 2015 with stakeholders in Scotland about the Code.

Data-sharing

55. The UK Government carried out a [consultation](#) earlier this year on better use of data in Government. In parallel, the UK National Statistician issued a [paper](#) setting out why the data sharing for research and statistics is needed and what the benefits are flowing from that. This all followed a two year long Open Policy Making Process which included a Cabinet Office consultation event in Scotland in March 2015.

Financial implications

The Code

56. DCMS obtained some financial analyses on the impact of the proposed changes to the Code. Following these analyses, DCMS estimates that the communications sector is likely to see benefits of £1 billion over a 20 year period. The figure relates to the United Kingdom as a whole⁵.

⁵ This [Impact Assessment](#) by the UK Government provides more details in relation to the potential financial impact of the new Electronic Communications Code.

57. The changes to the Code may lead to more disputes going to judicial resolution (as the consideration paid by communications operators to occupiers and other relevant persons for installing equipment on land will be lower than at present). This could have resource implications for the Lands Tribunal for Scotland. As the Code is reserved, the Scottish Government has advised the United Kingdom Government that, in line with principle 10 of paragraph 1.17 of HM Treasury's [Statement of Funding Policy](#), the UK Government will need to meet any additional costs arising for the Scottish Administration.

Data-sharing

58. Part of the drive for this is to save money through ONS not having to run surveys of business and also through transforming population statistics such as the census. The savings from ONS accessing HMRC data as opposed to running ten of their surveys alone were quantified in the business case as being £23.2m per annum for ONS and £3.4m per annum for businesses. In addition a material gain will be through more effective use of the administrative data to support more sophisticated analysis in support of new policies and in the evaluation of the effectiveness of existing ones. Better data and analysis should also improve the Scottish Government's allocation of increasingly scarce resources – thus improving the cost effectiveness of policies.

Conclusion

59. In relation to the Electronic Communications Code, the Bill puts beyond doubt that the Scottish Ministers could lay down fees and rules for the Lands Tribunal in Electronic Communications Code cases.

60. In relation to data sharing, the Bill will allow UK and Scottish bodies to improve public service delivery and tackle debt owed to the public sector and fraud against the public sector. The Bill also allows data sharing for research and statistical purposes.

61. The Scottish Government invites the Scottish Parliament to agree the Legislative Consent Motion.

Draft Legislative Consent Motion

62. The draft motion, which will be lodged by the Cabinet Secretary for the Rural Economy and Connectivity, is:

63. “That the Parliament agrees that the relevant provisions of the Digital Economy Bill, introduced in the House of Commons on 5 July 2016, relating to the Scottish Ministers laying down fees and rules for the Lands Tribunal for Scotland in cases concerning the Electronic Communications Code and Part 5 (Digital government), so far as these matters fall within the legislative competence of the Scottish Parliament, or alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament.”

Scottish Government
January 2017

ANNEX A

PROVISIONS IN THE DIGITAL ECONOMY BILL WHICH APPLY TO SCOTLAND AND FOR WHICH CONSENT IS SOUGHT IN TERMS OF THE LEGISLATIVE CONSENT MOTION

Part 2 of the Bill: Digital Infrastructure

Paragraph 106 of schedule 3A of the Communications Act 2003 (as inserted by schedule 1 of the Bill)

1. Paragraph 106 contains express provision to make it clear that the Scottish Ministers can make rules and lay down fees for cases heard in the Tribunal relating to the Code. This provision is for the avoidance of any doubt and is in line with the usual current practice in relation to cases heard in the Tribunal.

Chapter 1 of Part 5 of the Bill: Public Service delivery

Clause 30: Disclosure of information to improve public service delivery

2. Clause 30 provides a gateway which enables specified persons to share information with other specified persons for the purposes of a specified objective. The clause sets out that the definition of specified persons means a person specified, or of a description specified, which will be set out in regulations made under clause 30(2) by the appropriate national authority.

3. By virtue of clause 38(2) of the Bill, the appropriate national authority making regulations defining specified persons for Scotland is the Scottish Ministers, where the specified persons are a “Scottish body”. “Scottish body” is defined by clause 38(3) as:

- (a) a person who is part of the Scottish Administration;
- (b) a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998); or
- (c) a person providing services to a person within paragraph (a) or (b).

4. Under clause 37(9) of the Bill, any regulations made by the Scottish Ministers under Chapter 1 of Part 5 of the Bill are subject to the affirmative procedure.

5. In deciding whether to make regulations under clause 30(2), the appropriate national authority must consider the systems and procedures the person(s) in question have in place to ensure secure handling of information shared.

6. In deciding whether to make regulations which remove a specified person from the list of persons permitted to exercise the power, the appropriate national authority must consider whether the person in question has had regard to the code of practice to be prepared under clause 36.

7. Clause 30(6) provides that a specified objective means an objective specified in regulations made by the appropriate national authority.

8. An objective may be specified by regulations only if it complies with two conditions laid down by the clause:

- The first condition is that the objective has as its purpose either (a) the improvement or targeting of a public service provided to individuals or households or (b) the facilitation of the provision of a benefit (whether or not financial) to individuals or households.
- The second condition is that the objective has as its purpose the improvement of the well-being of individuals or households.

Clause 31: Disclosure of information to gas and electricity suppliers

9. Clause 31 allows the persons specified in regulations made under clause 30 to disclose information to licensed gas or electricity suppliers. The disclosure must be for the purpose of reducing the energy costs, or improving energy efficiency or the health or financial well-being of people living in fuel poverty and it must be disclosed for use in connection with an energy supplier obligation scheme. These schemes are the Warm Home Discount (which is made under Part 2 of the Energy Act 2010); the Energy Company Obligation (which is made under various provisions of the Gas Act 1986 and the Electricity Act 1989) and grants made by the Scottish and Welsh Governments.

10. Under clause 31(4)(a), the appropriate national authority can make regulations, subject to the affirmative procedure, amending the list of permitted recipients of the information. Under clause 31(4)(b), the appropriate national authority can make regulations, subject to the affirmative procedure, and amending the list of support schemes for which the information may be disclosed. The purpose of the disclosure must always be to assist people living in fuel poverty.

11. Under clause 38(2), the Scottish Ministers are the appropriate national authority:

- Where the regulations would add or remove a person or a description of persons who is a Scottish body (defined as outlined in paragraph 3 of this Annex).
- Where the regulations would have the effect only of enabling a Scottish body to disclose information for the purposes of an objective which does not relate to a reserved matter.

Clause 32: disclosure of information by gas and electricity suppliers

12. Clause 32 allows gas and electricity suppliers (and any other permitted recipient of information under the previous clause) to share information with specified persons, for the purpose of assisting people living in fuel poverty by reducing their energy costs; or improving efficiency in their use of energy; or improving their health or financial well-being. This clause will enable energy suppliers to share details of their customers with the public authority, or with the person providing

services to the public authority, who will then be able to „flag“ which of the supplier’s customers should be eligible for assistance under the fuel poverty support scheme.

Clause 33: further provisions about disclosures under section 30, 31 or 32

13. Clause 33 provides that the person receiving the information can only use it for the purpose for which it was disclosed, unless it meets one of the exceptions set out in clause 33(2).

14. These exceptions provide that information can be shared if:

- the information is already lawfully in the public domain; or
- the data subject has given consent to the information being shared; or
- the data is to be used for the prevention or detection of crime or the prevention of anti-social behaviour; or
- the data is to be used for the purposes of criminal investigations; or
- the data is to be used for the purposes of civil or criminal legal proceedings; or
- the information can be used to prevent serious physical harm to a person, prevent loss of human life, safeguard vulnerable adults or children, respond to an emergency or protect national security.

15. The exceptions do not apply to information disclosed by HMRC unless the Commissioners for HMRC have provided consent.

16. Information cannot be disclosed in ways which contravene the Data Protection Act 1998 or if it is prohibited in Part 1 of the Regulation of Investigatory Powers Act 2000.

Clause 34: confidentiality of personal information

17. Clause 34 is designed to ensure personal information is only disclosed to appropriate persons and used for appropriate purposes. A person receiving the information under clause 30, 31 or 32 or any other person who receives that information either directly or indirectly from the original person cannot disclose that personal information, unless one of the exceptions apply.

18. The exceptions are if the disclosure:

- is required or permitted by any enactment (including, by virtue of clause 38, an Act of the Scottish Parliament and secondary legislation made under Acts of the Scottish Parliament); or
- is required by an EU obligation; or
- is made following a court order; or
- relates to information which is already lawfully in the public domain; or
- is for the prevention or detection of crime or the prevention of anti-social behaviour; or
- is for the purposes of criminal investigations or civil or criminal legal proceedings;
- is made with the consent of the data subject; or

- is for the purpose of preventing serious physical harm to a person, preventing loss of human life, safeguarding vulnerable adults or children, responding to an emergency or protecting national security

19. Any person who knowingly or recklessly contravenes this prohibition on further disclosure is guilty of an offence.

20. Clause 34 does not apply to personal information disclosed by HMRC under the power at clause 30 or 31.

Clause 36: Code of practice

21. Clause 36 provides that a code of practice must be issued by the Secretary of State or the UK Minister for the Cabinet Office about the disclosure and use of information under clauses 30, 31 and 32. All specified persons disclosing or using information under the power must have regard to the code of practice. Before issuing or reissuing the code of practice, the Secretary of State or the Minister must consult the Information Commissioner, the Scottish Ministers and others. The code of practice must be laid before the Scottish and UK Parliaments when it is issued and every time it is reissued.

Clause 37: Regulations under this Chapter

22. Clause 37 makes provision on regulation making functions under Chapter 1 of Part 5. In relation to regulation making powers to be exercised by the Scottish Ministers, this impacts on the powers at clauses 30(2), 30(6), 31(4)(a) and 31(4)(b).

Clause 38: Interpretation of this Chapter

23. Clause 38 makes provision on the interpretation of Part 5 of Chapter 1 of the Bill.

Chapter 3 of Part 5 of the Bill: Debt owed to the public sector

Clause 41: Disclosure of information to reduce debt owed to the public sector

24. Clause 41 provides a gateway that enables specified persons to share information with other specified persons for the purposes of taking action in connection with debt owed to a specified person or the Crown.

25. A specified person must be a public authority or a person providing services to a public authority. The power to make regulations laying down specified persons is conferred on the appropriate national authority by clause 41(4).

26. By virtue of clause 48(2) of the Bill, the appropriate national authority making regulations defining specified persons for Scotland is the Scottish Ministers, where the specified persons are a “Scottish body”. “Scottish body” is defined as outlined in paragraph 3 of this Annex above.

27. Where a specified person is a person providing services to a public authority its ability to disclose information is limited to the functions it exercises for that public authority.

28. In deciding whether to make regulations under clause 41(4), the appropriate national authority must consider the systems and procedures the person(s) in question have in place to ensure secure handling of information shared.

29. In deciding whether to make regulations which remove a specified person from the list of persons permitted to exercise the power, the appropriate national authority must consider whether the person in question has had regard to the code of practice to be issued under clause 45.

Clause 42: Further provision about power in section 41

30. This clause provides that the person receiving the information can only use it for the purpose for which it was disclosed, unless one of the exceptions set out in clause 42(2) applies.

31. The exceptions are if:

- the information is already lawfully in the public domain; or
- the data subject has given consent to the information being used for another purpose; or
- the use is for the prevention or detection of crime or the prevention of anti-social behaviour; or
- the use for the purposes of criminal investigations; or
- the use is for civil or criminal legal proceedings; or
- the use is for the purpose of safeguarding vulnerable adults or children; or
- the use is for the purposes of protecting national security.

32. The exceptions do not apply to information disclosed by HMRC unless the HMRC Commissioners have provided consent.

33. Information cannot be disclosed or used in ways which contravene the Data Protection Act 1998 or if it is prohibited in Part 1 of the Regulation of Investigatory Powers Act.

Clause 43: confidentiality of personal information

34. This clause aims to provide safeguards to ensure personal information is only disclosed to appropriate persons and used for appropriate purposes. It provides that a person receiving personal information under the power at clause 41 or any other person who receives that information either directly or indirectly from that original person cannot further disclose that personal information, unless one of the exceptions applies.

35. The exceptions are if the disclosure:

- is required or permitted by any enactment (including, by virtue of clause 48, an Act of the Scottish Parliament and secondary legislation made under Acts of the Scottish Parliament); or
- is required by an EU obligation; or
- is made following a court order; or
- relates to information which is already lawfully in the public domain; or
- is for the prevention or detection of crime or the prevention of anti-social behaviour; or
- is for the purposes of criminal investigations or civil or criminal legal proceedings; or
- is made with the consent of the data subject; or
- is for the purpose of safeguarding vulnerable adults or children; or
- is to protect national security

36. Any person who knowingly or recklessly contravenes this prohibition on further disclosure is guilty of an offence

37. Clause 43 does not apply to personal information disclosed by HMRC under the power at clause 40.

Clause 45: Code of practice

38. Clause 45 provides that a code of practice must be issued by the Secretary of State or the UK Minister for the Cabinet Office about the disclosure and use of information under clause 41. All specified persons disclosing or using information under the power must have regard to the code of practice. Before issuing or reissuing the code of practice, the Secretary of State or the Minister must consult the Information Commissioner, the Scottish Ministers and others. The code of practice must be laid before the Scottish and UK Parliaments when it is issued and every time it is reissued.

Clause 46: Duty to review operation of Chapter

39. Clause 46 provides that three years after Chapter 3 of Part 5 comes into force, the Secretary of State or the UK Minister for the Cabinet Office must, as soon as is reasonably practicable, carry out a review of the operation of the power to determine whether it should be amended or repealed.

40. Before carrying out the review the Secretary of State or Minister must publish criteria against which the determination will be made.

41. In carrying out the review, the Secretary of State or Minister is required to consult the Information Commissioner, the Scottish Ministers and others.

42. Upon completion of the review, the Secretary of State or Minister must publish a report setting out its findings, and have a copy of the report laid before the Scottish and UK Parliaments. The clause provides a regulation-making power for the Secretary of State or the Minister to amend or repeal the Chapter as a result of

the review. The Secretary of State or the Minister may only make any such regulations with the consent of the Scottish Ministers if the regulations:

- repeal Chapter 3 of Part 5; or
- amend or remove the power of the Scottish Ministers to make regulations under clause 41(4); or
- affect the disclosure of information under clause 41 by a Scottish body to another such body; or
- affect the use by a Scottish body of information disclosed under that section by such a body; or
- affect the further disclosure to a Scottish body by such a body, or by a member, officer or employee of such a body, of information disclosed under Chapter 3 of Part 5 by a Scottish body.

Clause 47: Regulations under this Chapter

43. Clause 47 makes provision on regulation making functions under Chapter 3 of Part 5. This impacts on the powers exercised by the Scottish Ministers at clause 41(4).

Clause 48: Interpretation of this Chapter.

44. Clause 48 makes provision on the interpretation of Chapter 3 of Part 5 of the Bill.

Chapter 4 of Part 5 of the Bill: Fraud against the public sector

Clause 49: Disclosure of information to combat fraud against the public sector

45. This clause provides a gateway, which enables specified persons to share information with other specified persons for the purposes of taking action in connection with fraud against a public authority.

46. The specified persons permitted to make use of the power provided in the clause will be set out in regulations. A specified person must be a public authority or a person providing services to a public authority. The power to make regulations laying down specified persons is conferred on the appropriate national authority by clause 49(5).

47. By virtue of clause 56(2) of the Bill, the appropriate national authority making regulations defining specified persons for Scotland is the Scottish Ministers, where the specified persons are a “Scottish body”. “Scottish body” is defined as outlined in paragraph 3 of this Annex above.

48. Where a specified person is a person providing services to a public authority its ability to disclose information is limited to the functions it exercises for that public authority.

49. In deciding whether to make regulations, the appropriate national authority must consider the systems and procedures the person(s) in question have in place to ensure secure handling of information shared.

50. In deciding whether to make regulations which remove a specified person from the list of persons permitted to exercise the power, the appropriate national authority must consider whether the person in question has had regard to the code of practice to be prepared under clause 53.

Clause 50: further provisions about power in section 49

51. Clause 50 provides that the public authority or person receiving the information can only use it for the purpose for which it was disclosed, unless one of the exceptions applies. The exceptions are if:

- the information is already lawfully in the public domain; or
- the data subject has given consent to the information being used for another purpose; or
- the data is to be used for the prevention or detection of crime or the prevention of anti-social behaviour; or
- the data is to be used for the purposes of criminal investigations; or
- the data is to be used for the purposes of civil or criminal legal proceedings; or
- the data is to be used for the purpose of preventing serious physical harm to a person; or for preventing loss of human life; or for safeguarding vulnerable adults or children; or for responding to an emergency or for protecting national security.

52. The exceptions do not apply to information disclosed by HMRC unless the HMRC Commissioners have provided consent.

53. Information cannot be disclosed or used in ways which contravene the Data Protection Act 1998 or if it is prohibited in Part 1 of the Regulation of Investigatory Powers Act 2000.

Clause 51: confidentiality of personal information

54. Clause 51 is designed to provide safeguards to ensure personal information is only disclosed to appropriate persons and for appropriate purposes. It provides that a person who receives personal information under the power at clause 49, or any other person who receives that information either directly or indirectly from that original person, cannot further disclose that personal information subject to some exceptions.

55. The exceptions are if the disclosure:

- is required or permitted by any enactment (including, by virtue of clause 56, an Act of the Scottish Parliament and secondary legislation made under Acts of the Scottish Parliament); or
- is required by an EU obligation; or

- is made following a court order; or
- relates to information which is already lawfully in the public domain; or
- if made for the prevention or detection of crime or the prevention of anti-social behaviour; or
- is made for the purposes of criminal investigations; or
- is made for the purposes of civil or criminal legal proceedings; or
- is made with the consent of the data subject; or
- is for the purpose of preventing serious physical harm to a person; or for preventing loss of human life; or for safeguarding vulnerable adults or children; or for responding to an emergency or for protecting national security.

56. Any person who knowingly or recklessly contravenes this prohibition on further disclosure is guilty of an offence.

Clause 53: Code of practice

57. Clause 53 provides that a code of practice must be issued by the Secretary of State or the UK Minister for the Cabinet Office about the disclosure and use of information under clause 49. All specified persons disclosing or using information under the power must have regard to the code of practice. Before issuing or reissuing the code of practice, the Minister must consult the Information Commissioner, the Scottish Ministers and others. The code of practice must be laid before the Scottish and UK Parliaments when it is issued and every time it is reissued.

Clause 54: Duty to review operation of Chapter

58. Clause 54 provides that three years after Chapter 4 of Part 5 comes into force, the Secretary of State or the UK Minister for the Cabinet Office must, as soon as is reasonably practicable, carry out a review of the operation of the power to determine whether it should be amended or repealed.

59. Before carrying out the review the Secretary of State or Minister must publish criteria against which the determination will be made.

60. In carrying out the review, the Secretary of State or Minister is required to consult the Information Commissioner, the Scottish Ministers and others.

61. Upon completion of the review, the Secretary of State or Minister must publish a report setting out its findings, and have a copy of the report laid before the Scottish and UK Parliaments. The clause provides a regulation-making power for the Secretary of State or the Minister to amend or repeal the Chapter as a result of the review. The Secretary of State or the Minister may only make any such regulations with the consent of the Scottish Ministers if the regulations:

- repeal Chapter 4 of Part 5; or
- amend or remove the power of the Scottish Ministers to make regulations under clause 49(5); or

- affect the disclosure of information under clause 49 by a Scottish body to another such body; or
- affect the use by a Scottish body of information disclosed under that section by such a body; or
- affect the further disclosure to a Scottish body by such a body, or by a member, officer or employee of such a body, of information disclosed under Chapter 4 of Part 5 by a Scottish body.

Clause 55: Regulations under this Chapter

62. Clause 55 makes provision on regulation making functions under Chapter 4 of Part 5 of the Bill. This impacts on the powers exercised by the Scottish Ministers under clause 49(5).

Clause 56: interpretation of this Chapter.

63. Clause 56 makes provision on the interpretation of this Chapter of the Bill.

Chapter 5 of Part 5 of the Bill: Sharing for research purposes

Clause 57: Disclosure of information for research purposes

64. Clause 57 allows public authorities to share information that they hold, including personal information, for the purpose of research in the public interest. Public authorities are defined in clause 64 and exclude bodies which only have functions which relate to the provision of health services or adult social care services.

65. Personal information may only be disclosed if conditions laid down by clause 57 are met:

- Information provided must be de-identified, that is modified by removing any information (such as name or address) that could lead to direct identification of an individual or legal entity.
- It must not be reasonably likely that the identity of an individual or organisation will be deduced, even when information is combined with other information.
- Each person involved in processing the information for disclosure must take reasonable steps to minimise the risk of the accidental disclosure of information which identifies a particular person and prevent the deliberate disclosure of such information (except in accordance with Chapter 5 of Part 5 of the Bill).
- Information provided for interrogation by researchers must be provided either by the public authority that holds the information or by a person who processes the data on its behalf for this purpose.
- All research carried out under these provisions must be accredited (as set out at clause 62).
- All those who are involved in processing information for this purpose, and researchers who examine the information provided must be accredited as set out at clause 62.

- Each person who discloses the information or processes it for disclosure under this clause must have regard to the code of practice to be prepared by the UK Statistics Authority (“the UKSA”) under clause 61.

Clause 58: Provisions supplementary to section 57

66. This clause sets out the parameters of the Chapter 5 of Part 5 power to share for research purposes and how it interacts with existing statute or common law. It:

- provides that disclosure of information under this power does not breach duties of confidentiality or any other restrictions on disclosing the information;
- provides that information cannot be disclosed under this power if to do so would breach the Data Protection Act 1998 or Part 1 of the Regulation of Investigatory Powers Act 2000;
- provides that it does not authorise disclosure of information held by an authority with health or social care functions in connection with those functions;
- provides that clause 57 does not limit any power to disclose that exists apart from this clause;
- allows public authorities to charge fees for providing information to researchers. Fees must be charged on a cost recovery basis.

Clause 59: bar on further disclosure of personal information

67. Clause 59 is designed to provide safeguards to ensure personal information is only disclosed to appropriate persons and used for appropriate purposes, when the information is being processed so it is de-identified for disclosure under clause 57.

68. The person receiving the information or any other person who receives that information either directly or indirectly from the original person cannot disclose personal information disclosed under the power, unless an exception applies.

69. The exceptions are if the disclosure:

- is required or permitted by any enactment (including, by virtue of clause 59(4), an Act of the Scottish Parliament and secondary legislation made under Acts of the Scottish Parliament); or
- is required by an EU obligation; or
- is made following a court order; or
- relates to information which is already lawfully in the public domain; or
- is made for the prevention or detection of crime or the prevention of anti-social behaviour; or
- is made for the purposes of criminal investigations; or
- is made for the purposes of civil or criminal legal proceedings; or
- relates to information the data subject has given consent to being shared.

70. Any person who knowingly or recklessly contravenes this prohibition on further disclosure is guilty of an offence.

Revenue Scotland

71. The Bill also covers disclosure of information by Revenue Scotland and restricts the onward disclosure of personal information disclosed by Revenue Scotland. Amendments are planned so they may not be further disclosed without the consent of Revenue Scotland. Criminal sanctions apply for unlawful disclosure.

Clause 61: Code of practice

72. Clause 61 provides that a code of practice must be issued by the UKSA about the disclosure, processing, holding or use of information under clause 57.

73. Under clause 61:

- a public authority must have regard to the code of practice in disclosing or participating in the processing of information;
- a person accredited to process information for disclosure under clause 62(1)(a) must have regard to the code of practice in participating in the processing of information for disclosure;
- a person accredited to receive or use information under clause 62(1)(b) or (c) must have regard to the code of practice in holding or using information.

74. Before issuing or reissuing the code of practice, the UKSA must consult the Information Commissioner, the Scottish Ministers and others. The code of practice must be laid before the Scottish and UK Parliaments when it is issued and every time it is reissued.

Clause 62: Accreditation for the purposes of Chapter 5

75. Clause 62 sets out the requirements by which the UKSA as the oversight body for the conditions set out in clause 57 accredits persons and research.

76. Clause 62 gives the UKSA the power to accredit, and withdraw accreditation, for:

- a person who may process information;
- persons to whom information may be disclosed;
- researchers for the purposes of clause 57; and
- research for the purposes of clause 57.

77. Clause 62 imposes duties on the UKSA to establish and publish conditions for accrediting the persons or research as well as for withdrawing accreditation.

78. The conditions for accreditation must include that persons must be fit and proper persons to carry out the function for which they are seeking accreditation, and that the proposed research is in the public interest. The conditions for withdrawal of

accreditation must include the ground that the person failed to have regard to the code of practice issued under clause 61.

79. Clause 62 requires the UKSA to consult the Scottish Ministers and others before publishing conditions for accredited persons and research to meet and before publishing grounds for the withdrawal of accreditation.

Clause 63: Delegation of functions of Statistics Board (UK Statistics Authority)

80. Clause 63 provides the UKSA with the power to delegate any of its functions under clause 62 to another person providing that the person is a fit and proper person and has expertise in statistical research and analysis. This has the potential for the accreditation to be delegated to statisticians in the Scottish Administration.

Clause 64: Interpretation of this Chapter

81. Clause 64 makes provision on the interpretation of this Chapter of the Bill. It includes provisions defining health services and adult social care.

Chapter 7 of Part 5 of the Bill: Statistics

Clause 67: Disclosure of information by public authorities to the Statistics Board

82. Clause 67 inserts new section 45A into the Statistics and Registration Service Act 2007 (“the 2007 Act”) to make provision for the disclosure of information held by public authorities to the UKSA where the public authority is satisfied that UKSA requires that information for the purposes of any one or more of the UKSA’s functions.

83. Such information may not be used by the UKSA for the purposes of its functions under section 22 of the 2007 Act (statistical services), and personal information may not be disclosed by the UKSA to an approved researcher for the purposes of statistical research, without the consent of the public authority providing that information.

84. Clause 67 provides that any such disclosure does not breach any obligation of confidence, or other restriction on disclosure, however imposed.

85. Clause 67 does not authorise a disclosure that would:

- contravene the Data Protection Act 1998; or
- be prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000; or
- would contravene EU legislation.

86. This clause replaces sections 47 to 49 of the 2007 Act which make provision for regulations to authorise disclosure to the UKSA.

Clause 68: Access to information by Statistics Board

87. Clause 68 inserts new sections 45B to 45G into the 2007 Act to give the UKSA access to information held by a range of different bodies.

Crown bodies

88. It includes in section 45B a right of access by the UKSA to information held by Crown bodies, as well as the Bank of England, a subsidiary undertaking of the Bank of England, the Financial Conduct Authority and the Payment Systems Regulator established under the Financial Services (Banking Reform) Act 2013. Crown bodies include the UK central government departments, the Scottish Administration and, for example, Revenue Scotland. This allows the UKSA to make a formal written request for information from those bodies. The body must respond in writing, either indicating it is willing to provide the information (and the date it will provide it) or that it is not willing to provide the information (and give reasons for not providing it).

89. This clause makes provision that the UKSA may only issue a request or a notice if the information to be disclosed is required by the UKSA for any one or more of the UKSA's functions. Information disclosed in response to a request or a notice may not be used by the UKSA for the purposes of its functions under section 22 of the 2007 Act (statistical services). Personal information may not be disclosed by the UKSA to an approved researcher for the purposes of statistical research, without the consent of the public authority or undertaking providing that information.

90. The UKSA must prepare and publish a statement of principles and procedures by which it will exercise its functions under this clause. In preparing or revising the Statement, the UKSA must consult the Information Commissioner, the Scottish Ministers and others. The UKSA must lay the Statement before the UK and Scottish Parliaments

91. If the authority is unwilling to provide the information or the UKSA considers it has failed to take reasonable steps to do so, the UKSA may choose to lay the correspondence with the public body before the relevant legislature. The relevant legislature is the Scottish Parliament if the authority is part of the Scottish Administration or is a Scottish public authority with only devolved functions or with mixed devolved and reserved functions.

92. The clause specifies that section 45B does not authorise a disclosure that:

- contravenes the Data Protection Act 1998; or
- is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000; or
- contravenes EU legislation.

Other public authorities and undertakings

93. Clause 68 also includes at inserted sections 45C and 45D the power for the UKSA, by notice, to require the disclosure of information held by other (non-Crown) public authorities and some undertakings, but not from small or micro businesses.

The information required will be specified in the notice. The clause provides that a disclosure in compliance with a notice does not breach any obligation of confidence or any other restriction on disclosure.

94. Sections 45C and 45D do not authorise a disclosure that is:

- prejudicial to national security; or
- contravenes the Data Protection Act 1998; or
- is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000; or
- expressly in the case of section 45C, contravenes EU legislation.

95. The UKSA must obtain the consent of the Scottish Ministers before giving a notice to a Scottish public authority with only devolved functions or with mixed devolved and reserved functions.

96. Under section 45E, also inserted by clause 68, the UKSA may only use information obtained from such a request or notice if it is required by the UKSA for any one or more of the UKSA's functions. Information disclosed in response to a request or a notice may not be used by the UKSA for the purposes of its functions under section 22 of the 2007 Act (statistical services). Personal information may not be disclosed by the UKSA to an approved researcher for the purposes of statistical research without the consent of the public authority or undertaking providing that information.

97. The UKSA must prepare and publish a statement of principles and procedures by which it will exercise its functions under this clause. In preparing or revising the Statement, the UKSA must consult the Information Commissioner, the Scottish Ministers and others. The UKSA must lay the Statement before the Scottish and UK Parliaments.

98. Section 45F, also inserted by this clause, makes provision for it to be an offence for the public authorities or undertakings to fail to comply with a notice under section 45C or 45D without reasonable excuse or, in purporting to comply with a notice, to knowingly or recklessly provide false information.

Notices and Code of practice on processes for collecting, organising, storing or retrieving information and providing information to the UKSA

99. The provision for notices in inserted sections 45C and 45D includes provision that the UKSA may include in a notice a requirement for a public authority (but not a Crown body) or undertaking to consult the UKSA before making changes to its processes for collecting, organising, storing or retrieving information to which the notice relates, or to processes for supplying such information to the UKSA.

100. The UKSA must also prepare, consult on (including with the Scottish Ministers), and publish a code of practice setting out guidance that public authorities need to take into account when making those changes, and the code must be laid before the Scottish and UK Parliaments.

Clause 69: Disclosure by the Statistics Board to devolved administrations

101. Clause 69 inserts a new section 53A into the 2007 Act. Section 53A will allow the UKSA to disclose information it holds in relation to the exercise of any of its functions to a devolved administration (including the Scottish Administration).

102. Information may only be disclosed under section 53A for the purpose of any or all of the statistical functions of the devolved administration.

103. Section 53A does not authorise a disclosure which would:

- breach any obligation of confidence owed by the UKSA; or
- contravene the Data Protection Act 1998; or
- be prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000; or
- breach any other restriction on the disclosure of the information (however imposed).

104. Section 53A sets out the procedure by which the devolved administration must request the information. Section 53A only permits disclosure in specific circumstances, including in the case of information received from public authorities that the public authority consents to its disclosure. Section 53A allows the UKSA to set conditions the devolved administration must meet before the information will be disclosed. Section 53A also limits use of the information disclosed to the purposes for which it was disclosed.

Scottish Government
January 2017

ANNEX B

PROVISIONS IN THE BILL WHICH RELATE TO DELEGATED POWERS EXERCISABLE BY THE SCOTTISH MINISTERS

Introduction

1. This Annex briefly outlines, for convenience, provisions in the Digital Economy Bill which relate to delegated powers exercisable by the Scottish Ministers.

“The appropriate national authority”

2. As outlined in the table below, a number of the powers in the Bill are to be exercised by “the appropriate national authority”. The Bill contains provisions (at clause 38 [in Chapter 1 of Part 5 of the Bill], clause 48 [in Chapter 3 of Part 5 of the Bill] and clause 56 [in Chapter 4 of Part 5 of the Bill] which lay down that the Scottish Ministers are “the appropriate national authority” in relation to regulations which deal with a “Scottish body”. A “Scottish body” is defined as meaning:

- (a) a person who is a part of the Scottish Administration,
- (b) a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998), or
- (c) a person providing services to a person within paragraph (a) or (b).

Summary of delegated powers

3. The table below gives a brief summary of the delegated powers in the Bill to be exercised by the Scottish Ministers and also outlines one proposed repeal of a delegated power.

Provision	Purpose	Power exercised by	Parliamentary procedure
Clause 30(2)	Power to make regulations specifying persons who may disclose information in relation to public service delivery.	The appropriate national authority	Affirmative
Clause 30(6)	Power to make regulations to specify objectives for which information may be disclosed in relation to public service delivery.	The appropriate national authority	Affirmative
Clause 31(4)(a)	Power to make regulations to amend the list of permitted recipients of information from specified persons for use in connection with fuel poverty support schemes.	The appropriate national authority	Affirmative
Clause 31(4)(b)	Power to make regulations to amend the second condition that must be met for the disclosure of information to gas and electricity suppliers for fuel poverty purposes	The appropriate national authority	Affirmative
Clause 41(4)	Power to make regulations specifying persons who may disclose information in relation to debt owed to the public sector.	The appropriate national authority	Affirmative
Clause 49(5)	Power to make regulations specifying persons who may disclose information in relation to tackling fraud against the public sector.	The appropriate national authority	Affirmative
Clause 67(3)(b) repeals section 48 of the Statistics and Registration Act 2007.	Clause 67 inserts section 45A into the Statistics and Registration Act 2007. This makes provision on public authorities disclosing information to the UKSA. As a consequence, clause 67(3)(b) repeals section 48 of the 2007 Act, the power for the Scottish Ministers to make regulations for the purpose of authorising a Scottish public authority, so far as exercising functions which relate to matters which are not reserved, to disclose information to the UKSA.	Not applicable – repeal of a delegated power	
Paragraph 106 of Schedule 3A of the Communications Act 2003 (inserted by Schedule 1 of the Bill).	Power to make rules for the Lands Tribunal for Scotland	The Scottish Ministers	Laid

In addition:

- the Bill requires UK Ministers to review after 3 years, the operation of Chapter 3 of Part 5 (on disclosure of information to reduce debt owed to the public sector) and Chapter 4 of Part 5 (on disclosure of information to combat fraud against the public sector). The Bill then empowers UK Ministers to make regulations amending or repealing these two chapters: clauses 46 and 54 refer. Clauses 46 and 54 provide that the consent of the Scottish Ministers must be obtained before any such regulations impacting on devolved matters are made.
- the Bill empowers UK Ministers to make regulations moving functions under the Electronic Communications Code to the Lands Tribunal for Scotland: paragraph 95 of the new Code at Schedule 1 to the Bill refers. Under paragraph 95, the Scottish Ministers must be consulted before any such regulations impacting on Scotland are made.

Scottish Government
January 2017

This Legislative Consent Memorandum relates to the Digital Economy Bill (UK legislation) and was lodged with the Scottish Parliament on 19 January 2017

DIGITAL ECONOMY BILL – LEGISLATIVE CONSENT MEMORANDUM

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