**ANNEX C**



**Earned Recognition Practice Guidance (Scotland)**

# 1.0 Overview

1.1 Article 3 of EU Regulation 882/2004 requires Member States to consider a number of parameters when determining the frequency of inspections to ensure controls are carried out on a risk basis and with appropriate frequency. The frequency of delivering official controls is not prescribed by law. These parameters take into account risk associated with feed and business activity; record of compliance; the reliability of any own checks and any information that might indicate non-compliance.

 The general approach to earned recognition has been designed with these parameters in mind and has been designed to better recognise feed business operators ‘own checks’. Whilst there is no definition of ‘own checks’ in EU Regulation 882/2004, FSS considers a feed business operator, who is a compliant member of an assurance scheme can be used as the basis for certain feed establishments to qualify for earned recognition. An assurance scheme sets specific safety and quality standards and are accredited by the United Kingdom Accreditation Service (UKAS). Assurance schemes use regular independent inspections to check that members are meeting those specific standard. Such assurance schemes whose standards require compliance with feed law and include independent third party audit of member establishments to verify compliance are referred to as being ‘approved’ in this guidance document.

 Earned recognition is a reduction in the frequency at which inspections are delivered, taking into account compliance history, risk and or individual steps a business takes to ensure compliance. Earned recognition aims to reduce the burden on compliant businesses whilst concentrating enforcement activity at those businesses which are less compliant.

 Recognition of current compliance levels and management controls should be applied to all feed business operators depending on whether a Feed Business Operator is a member of an approved assurance scheme or not. This guidance document describes two approaches as to how a feed business may qualify for earned recognition:

* a business which is a member of an approved assurance scheme and demonstrates satisfactory or broad compliance; or
* a business which is not a member of an assurance scheme but demonstrates broad compliance.

Paragraph 4.1.5 of the Feed Law Code of Practice (Scotland) provides further information on these two approaches to Earned Recognition.

# 1.2 Primary Production

Earned recognition for primary feed and food production was introduced as a pilot in Scotland in 2008. Information on membership of assurance schemes and levels of compliance were gathered over a three year period. According to statistical analysis of the data, differences in levels of compliance between members and non-members were negligible leading to the conclusion that membership of assurance schemes was not a useful predictor for compliance in Scotland.

Businesses that were members of assurance schemes showed satisfactory levels of compliance as did those that were not members and it was considered that assurance scheme membership drives up compliance amongst members and non-members alike due to competitive forces.

As a result, in 2012, FSA in Scotland agreed that the local authority inspection schedule should be developed in accordance with the following table, as detailed in Annex 10 of the Food Law Code of Practice

<http://www.foodstandards.gov.scot/sites/default/files/CoPFood-FSS-final.pdf>

|  |  |  |
| --- | --- | --- |
|  | 2% list | 25% list |
| What goes on the list | All unrated establishments shall default to a 2% risk rating (regardless of assurance scheme membership)ANDPreviously inspected establishments that were given a 2% rating | Previously inspected establishments that were given a 25% rating |
| Developing the inspection schedule | Randomly select 2% from this list for inspection. Priority should be given to those where:* local knowledge exists to suggest there may be issues
* they are readily identified as not being members of assurance schemes
 | All establishments on this list must be inspected every 4 years |

FSS does not intend to change this primary production risk rating, as agreed in Scotland, although it may be subject to review in the future. It is therefore outside the scope of this guidance and previous guidance issued on primary production must be followed (Guidance issued 29 March 2012).

However, if a primary producer also carries out non-primary production activities on farm e.g. on farm mixing with additives (R10) or haulage facilities from a farm base, then those activities (but not the farm) will not be covered by the primary production risk rating, and will be covered by the scope of this guidance.

# 2.0 Role of the Central Competent Authority and the Competent Authorities

# 2.1 Food Standards Scotland

Together with the Food Standards Agency (FSA), it is the FSS’s role to assess individual assurance schemes which have applied for ‘approved’ status. This will be done using the criteria set out in Appendix 1 below, and monitored as described in Section 3.

When FSS is confident that an assurance scheme meets the criteria, a Memorandum of Understanding (MOU) will be agreed by FSS with the assurance scheme, which details:

* the relevant scheme standard for which earned recognition has been awarded.
* any limitations to the scope of earned recognition awarded.
* arrangements which permit FSS to regularly review the approved status of the scheme.
* the expected frequency of inspection for members of the scheme.
* how Competent Authorities can access the membership details of the assurance scheme.

FSS will regularly update Appendix 2 of this document to include all those assurance schemes which currently have approved status, together with a copy of the relevant MOU.

FSS will review and verify the approved status of assurance schemes on a regular basis using both information provided by the assurance schemes and enforcement authorities together with other relevant intelligence e.g. RASFF[[1]](#footnote-1) notifications. FSS will agree actions to be taken by an assurance scheme where the general standards of compliance by its members are causing concern. This does not affect the role of the enforcement authority in ensuring that individual establishments take corrective action to deal with non-compliance or their role in removing earned recognition from an establishment if it fails to attain a minimum level of satisfactory compliance.

FSS will share with enforcement authorities, through appropriate national forums, the outcome of reviews of approved assurance schemes, including sharing relevant summary data on assurance scheme audit findings.

# 2.2 Enforcement Authorities

It is the role of the enforcement authorities to assess compliance of all feed business operators with feed law. In doing this enforcement authorities will be able to:

* assess whether feed businesses which are not members of an approved assurance scheme can be awarded earned recognition or have it removed if they are found not to be broadly compliant[[2]](#footnote-2).
* assess whether individual feed businesses which have earned recognition as a member of an approved assured scheme is satisfactory or broadly complaint and can retain its reduced level of inspection.
* ensure that any non-compliance is rectified in a timely way.

When FSS has approved an assurance scheme, enforcement authorities must adjust the frequency of inspection of all members of the assurance scheme in their area to that required by this guidance and published by FSS. Except in those circumstances where an initial inspection is required for new establishments, or for a change of Feed Business Operator, earned recognition will be applied to members of approved assurance schemes by making the adjustments set out in the table in Section 6, figure 3 below. Such establishments will be regarded as being ‘assessed’ and having satisfactory levels of compliance. However, should the competent authority be aware that an individual member of an assurance scheme is not meeting satisfactory levels of compliance then it should not apply earned recognition to that establishment.

Feed establishments that are subject to on-going enforcement or are known not to have at least satisfactory levels of compliance should not qualify for earned recognition until the next programmed inspection shows that they meet qualifying criteria for earned recognition.

When an enforcement authority becomes aware that a feed business will lose earned recognition and is a member of an approved assurance scheme, this must be notified to the FSS as soon as possible using the earned recognition exception report form that can be found in Appendix 4 of this guidance and at: WEBSITE LINK REQUIRED and send to the mail box at animal.feed.enforcement@fss.scot. This information is important in helping the FSS carry out its verification role of approved assurance schemes.

The FSS will also work with enforcement authorities through national forums to channel information on non-compliances found during inspections (which do not lead to establishments losing their earned recognition status) to assurance schemes. This information will help FSS identify trends of minor non-compliances which it anticipates will be useful information to improve compliance levels.

Where earned recognition has been obtained by virtue of membership of an approved assurance scheme, inspections by the enforcement authority must not coincide with the assurance scheme audit. If officers wish to witness an assurance scheme audit this should be arranged to take place at an establishment outside of the local authority area or areas in which the officer is authorised. This is to avoid any conflict of interest and to ensure independency of the official controls.

# 3.0 Continued Monitoring of Approved Assurance Schemes

Once FSS has approved an assurance scheme, steps will be taken to ensure continuing confidence in the scheme through verification. The verification process will enable FSS to be assured that the scheme continues to deliver high standards, good governance and impartiality that lead to approved status. The inspections and audits of feed business establishments which are members of an approved assurance scheme will form an essential element in this process and enforcement data provided to FSS, and other intelligence gathered from official controls carried out by the enforcement authorities will be key sources of information.

This on-going positive verification will enable FSS and enforcement authorities to have continued confidence in the approved assurance scheme. Verification will also allow FSS to intervene should the scheme fail to meet criteria that lead to approved status. FSS will work with the assurance scheme to ensure criteria for approval is met, but ultimately FSS can remove approved status. Should this step be taken, FSS will liaise with competent authorities and issue advice as to what adjustments will be made to the risk rating / visit frequency for those businesses concerned.

FSS will meet with FSA on a regular basis to review the following:

• the assurance scheme against the earned recognition requirements, criteria referred to in Appendix 1 and the MOU;

• agreed and up to date data is exchanged between the FSA, FSS, enforcement authorities and the assurance scheme;

• levels of compliance, non-conformities and rectification timescales;

• contact details are maintained for the FSA, FSS, enforcement authorities and the assurance scheme;

• membership information is made available to enforcement authorities, including businesses that have left or joined the scheme;

• the assurance scheme and certification body maintain a plan of work to ensure assessments are delivered in line with schemes requirements;

• work with the assurance scheme to understand the type and frequency of non-conformities found to inform the support that the FSA, FSS, enforcement authorities and assurance scheme can provide;

* assess compliance through enforcement authority inspections;
* verify audit performance through the assurance scheme;
* check the quality of audits through direct assessment with the assurance scheme and through enforcement authorities undertaking relevant sample checks of qualifying businesses

• the criteria that lead to approved status being awarded, to ensure assurance schemes continue to meet such criteria.

The process and criteria by which an assurance scheme obtains ‘approved’ status is set out in **Figure 1.**

**Figure 1: The process for gaining earned recognition and the verification process**



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# 3.1 On-going Internal Governance Arrangements

To support the implementation of feed earned recognition the internal governance arrangements will ensure:

* a continuing connection between operational implementation and strategic development of earned recognition within FSS;
* the decision making process for approval, continuing approval or termination of approval is fair, consistent, robust and evidence based;
* a system of accountability exists to define responsibilities for approval and monitoring of earned recognition;
* earned recognition supports the FSS’s Strategic Plan[[3]](#footnote-3) and the delivery of official feed controls.

##

# 4.0 Loss of earned recognition (when granted as a result of membership of an approved assurance scheme)

Circumstances which may lead to loss of earned recognition include:

### 4.1 Suspension of a Member

When a business which is a member of an approved assurance scheme is suspended by the assurance scheme, the FSA and FSS will be notified immediately. This will enable the FSA and FSS to track suspensions and enquire as to what action the enforcement authority has taken to deal with the business. All enforcement authorities will have access to assurance scheme data bases to track membership and suspensions.

### 4.2 Membership is Removed

The circumstances under which a business leaves an approved assurance scheme will dictate what action the enforcement authority should take. Businesses that are non-compliant with scheme standards will usually be suspended prior to removal of membership. In such circumstances the enforcement authority should aim to inspect the business as soon as possible and re-risk rate the business.

Businesses may choose to leave an assurance scheme as membership no longer benefits them. The enforcement authority should visit such businesses, inspect and re-risk rate them in accordance with the Code.

###  4.3 Removal of Earned Recognition by the enforcement authority

Paragraph 4.1.5.1 of the Feed Law Code of Practice provides circumstances in which the removal of earned recognition would be appropriate and includes the authority becoming aware of a serious non-compliance or poor history of compliance associated with the business.

Enforcement authorities will become aware of non-compliances as a result of visiting businesses as part of delivering official controls or in response to complaints from the public or information from other agencies that have cause to visit the business.

From time to time, enforcement authorities may find minor non compliances when auditing a feed business that qualifies for earned recognition. Providing the matter is not subject to enforcement sanctions and can be rectified immediately or within a reasonable timescale of being identified, earned recognition should not be removed. The enforcement authority will need to revisit and check that the matter has been resolved.

Examples of minor non-compliance could include:

* failure to complete records in full on occasion;

• minor hygiene breaches such as unclean hopper etc. but evident that it is cleaned from time to time;

• minor pest control matters (in view of the environment, e.g. birds in shed), but there is a pest control system in place and action has been taken to minimise or eliminate contamination;

• chemicals stored in feed areas (but in sealed/closed containers).

Examples of a serious non-compliance which would lead to an increase in the establishment’s risk-rating score leading to loss of earned recognition include:

* non-compliances requiring the use of formal enforcement powers e.g. improvement notice;

• an imminent risk to public health through the consumption of food from animals which have received contaminated feed;

• the welfare of food producing animals is threatened through the use of contaminated feed;

• serious infestation of pests (one which affects the welfare of animals or the safety of feed/food stocks) with no pest control system in place;

• serious breaches of hygiene such as unclean equipment which indicates no cleaning for some considerable time;

• controls to prevent cross contamination (e.g. segregation of medicated and non-medicated feed) are inadequate;

• lack of feed traceability;

• a significant change of activity, e.g. which is outside of the scope of the assurance scheme standard.

While the above examples are not an exhaustive list, they provide a broad indication as to when earned recognition should be removed.

# 5.0 Alternative Enforcement Strategy (AES)

Paragraph 4.1.6 of the Feed Law Code of Practice describes what an Alternative Enforcement Strategy may be. AES may be used at establishments which have earned recognition because they are broadly compliant but are not a member of an assurance scheme. This will enable enforcement authorities to focus attention on those businesses which present the greatest risk to consumer safety and/or which are failing to meet their statutory obligations.

The use of AES can also assist in maintaining contact with feed businesses to enable advice and information to be provided as appropriate. It will also provide a mechanism for topic based coaching and education as businesses are able to request further feed safety information that may highlight a training need.

The enforcement authority should determine the exact nature of its AES, which should be documented. The use of AES at individual establishments must be alternated with an inspection visit (an official control), at the frequency required by the Code until such times the business loses earned recognition.

Earned recognition is available to businesses which are assessed as ‘broadly compliant’ but which are not members of a recognised industry assurance scheme. A premises must be at least broadly compliant to qualify for AES. If at any time an enforcement authority finds that the business is no longer broadly compliant, earned recognition must be removed until such time as the business is re assessed and can demonstrate a record of ‘broad compliance’.

A feed business may approach the enforcement authority on the basis that it believes it qualifies for earned recognition. The enforcement authority should consider the requirements of the Code, and as described in this Guidance document, and notify the business as to whether it qualifies for earned recognition or not. Earned recognition will then be awarded. Should a dispute arise, this will be dealt with under the enforcement authority’s complaints procedure.

# 6.0 Impact of Earned Recognition and Alternative Enforcement Strategies on Feed Establishments

Figure 2 is intended to assist enforcement authorities determine when earned recognition can apply.

Figure 3 provides the inspection frequency of businesses that can benefit form earned recognition and is based on the outcomes of the risk rating as detailed in the Feed Law Code of Practice.

Levels of compliance are defined in Part 3 of Annex 5 of the Feed Law Code of Practice.

Reduced inspection frequency or alternative enforcement strategy (see Figure 3)

**NO**

**YES**

**YES**

**NO**

**YES**

**NO**

Is the FeBO a member of an assurance scheme

Do they have at least ‘satisfactory compliance’? (CIM score ≤ 10)

Do they have at least ‘broad compliance’? (CIM score ≤ 5)

Qualifies for earned recognition

Qualifies for earned recognition

Does not qualify for earned recognition

Does not qualify for earned recognition

Use standard risk rating in Code of Practice

Use standard risk rating in Code of Practice

**Figure 2**

**Figure 3: Impact of Earned Recognition**

|  |  |
| --- | --- |
| **Standard Risk Rating (Annex 5 Feed Law Code of Practice)** | **Application of Earned Recognition** |
| **Category** | **Points range** | **Minimum inspection frequency** | **Member of Assurance Scheme with minimum satisfactory compliance** | **Non-member of assurance scheme with broad compliance** |
| **Manufacturers** | **Co-product producers & mobile mixers** | **Others** | **Manufacturers** | **Co-product producers & mobile mixers** | **Others** |
| A | 101 – 180 | 1 year | 2 years | 2 years | 2% | 2 years | 2 years | AES |
| B | 46 – 100 | 2 years | 4 years | 5 years | 2% | 3 years | 4 years | AES |
| C | 0 - 45 | 5 years or AES | N/A | N/A | 2% | N/A | N/A | AES |

Please see the link below for list of approval and registration activities:-

<http://food.gov.uk/business-industry/guidancenotes/hygguid/approvregfeedguidance>

**Appendix 1: Criteria for the Approval of Assurance Scheme for Earned Recognition**

To be approved, an industry scheme must meet the FSA/FSS key requirements and criteria in the following areas:

**1. Standard Setting**

 The industry scheme and its standards should cover applicable legislative requirements for the sector it covers, and include the following aspects of governance surrounding the establishment and setting of standards:

* Governance: The role and governance of the standard setting body should be clearly defined within the scheme and include representatives of all relevant stakeholders;
* Standards: There should be clearly defined processes for developing standards, with access to expertise and experience in relation to the sector to which the standards relate;
* Legislation: Processes should be in place to ensure standards are reviewed and developed in line with legislative changes; and,
* Risk based: A risk based approach to standard setting should be used, drawing upon HACCP or an equivalent risk assessment process that identifies safety hazards and controls.

**2. Compliance and Certification**

 The assurance schemes should clearly describe compliance as well as processes for assessment and review, in particularly:

* Compliance: The scheme should provide guidance on interpretation and assessment of compliance and how non conformities with standards are dealt with;
* Review: Systems should be in place to monitor and adjust scheme requirements to ensure they achieve acceptable standards of compliance; and,
* Assessment: The scheme should have appropriate mechanism for the development and review of inspection criteria, with the ability of relevant stakeholders, including central competent authorities, to contribute to this process.

 The assurance scheme must have the following processes / criteria in place for its certification bodies:

* UKAS accreditation or equivalent having EN45011 accreditation;
* a quality management system, including clearly defined management structure, processes for monitoring audits and the objective collection and recording of evidence as part of the certification process;
* a certification process that is reviewed at least annually to ensure it is operating effectively and in accordance with the requirements of the assurance scheme;
* a process to ensure non-conformances are tracked, closed off or otherwise addressed subject to the scheme’s requirements;
* a process to monitor the competence / performance of assessors;
* a process to ensure those responsible for certification are kept up to date with developments in standards and guidance for interpretation of standards; and
* a certification decision-making process that is clear, transparent, proportional, consistent and documented.

**3. Assessment Process**

 The industry scheme will need to demonstrate the following:

* the assessment process must be underpinned with guidance that deals with the assessment of standards and how non conformities are dealt with in relation to the risk posed by non-compliance. Guidance should include procedures for dealing with repeat non conformities, failure to rectify non conformities and situations when certification should be withheld or suspended and circumstances in which it might be re-instated. In addition the guidance must include verification of corrective action;
* the assessment must be carried out by assessors who are impartial, competent and maintain relevant sector knowledge;
* frequency of assessments must be no less than the minimum set by regulation or code of practice for the sector covered by the assurance scheme, risked based and take into account previous history;
* assessment must review all the standards set by the scheme applicable to the business and as a minimum must include a visual inspection of the site, observation of operations and examination of records;
* comprehensive records of assessment findings should be maintained. (date, name of assessor, scope of assessment, non-conformities, timescales for rectification etc); and
* where possible assessments should be unannounced or at short notice.

**4. Assessor Authorisation / Competence**

 The industry scheme should have defined the following and have systems in place to ensure the certification body has:

* criteria for appointing and authorising assessors including reference to professional qualifications, auditing skills, relevant experience and arrangements for ensuring on-going competency; and
* induction and continued learning to enable assessors to demonstrate a clear understanding of scheme requirements, procedures and guidance for interpretation of standards and how non conformities are handled.

**5. Standard Mapping**

 Scheme standards will need to encompass legislation applicable to the sector the scheme identifies with. The FSA/FSS will work with the scheme to ensure applicable feed legislation is identified.

 If the FSA/FSS identifies that the scheme fails to cover any of the relevant legislative measures, the assurance scheme will be notified and invited to amend the scheme.

* + - Directive 2002/32 on Undesirable Substances in Animal Feed;
		- Regulation (EC) No. 178/2002 on the Principles of Feed and Food Law.
		- Regulation (EC) No. 1829/2003 on Genetically Modified Food and Feed;
		- Regulation (EC) No. 1831/2003 on Feed Additives;
		- Regulation (EC) No. 767/2009 on the Marketing and Use of Feed; and
		- Regulation (EC) No. 183/2005 on Feed Hygiene (as amended by Commission Regulation 225/2012 on feed oils and fats).

**6. Data Sharing and Communications**

 The assurance scheme must ensure that:

* information is made available to the FSA/FSS and enforcement authority to determine membership of the scheme (ie new members / members that leave or are suspended from the scheme) and such data is kept up to date;
* processes are in place to ensure the FSA/FSS and the enforcement authority are informed by the assurance scheme about members that are suspended from the scheme or where assessors have doubts that a member can manage or control risks as a result of repeat non conformities; and,
* processes are in place to ensure that the FSA/FSS and enforcement authority are informed immediately if an immediate threat to public health, animal health (including welfare) or the environment is identified.

 The industry scheme must be in a position to agree the following processes with the FSA/FSS:

* the review of planned and actual assessments;
* the review of high level non-conformity / compliance data and rectification timescales;
* the establishment of effective communications, between the assurance scheme, FSA/FSS and enforcement authorities;
* how the FSA/FSS is notified of changes to the scheme with particular reference to standards that reflect legislative requirements;
* the review of criteria that lead to earned recognition being approved for the scheme;
* key contact details; and
* regular meetings with the FSA/FSS to discuss the operation of the scheme.

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# APPENDIX 2: LIST OF FSA/ FSS APPROVED ASSURANCE SCHEMES

The MOU recognises the following **Agricultural Industries Confederation** schemes for earned recognition.

•             Universal Feed Assurance Scheme (UFAS)

•             Feed Materials Assurance Scheme (FEMAS)

•             Trade Assurance Scheme for Combinable Crops (TASCC)

**APPENDIX 3: DEFINITION OF LEVELS OF COMPLIANCE (FROM ANNEX 5, CONFIDENCE IN MANAGEMENT SCORE, FEED LAW CODE OF PRACTICE)**

|  |
| --- |
| **Guidance on the Scoring System** |
| **“Poor compliance”**: Poor track record of compliance. Little or no technical knowledge. Little or no appreciation of hazards or quality control. No feed management.system. |
| **“Varying compliance”**: Varying record of compliance. Poor appreciation of hazards and control measures. No feed management system. |
| **“Satisfactory compliance”**: Satisfactory record of compliance. Access to and use of technical advice either in-house, from trade associations and/or from Guides to Good Practice. Understanding of significant hazards and control measures in place. Making satisfactory progress towards a feed safety management system. |
| **“Broad compliance”**: Reasonable record of compliance. Technical advice available in-house or access to and use of technical advice from trade associations or feed assurance schemes and/or from Guides to Good Practice. Have satisfactory documented procedures and systems. Able to demonstrate effective control of hazards. Will have a satisfactory documented food safety management system. Audit by feed authority confirms general compliance with documented system. |
| **“Broad Compliance” (or better)**: Good record of compliance. Access to technical advice within organisation. Will have satisfactory documented HACCP based feed safety management system which may be subject to external audit process. Audit by feed authority confirms compliance with documented management system with few/minor non-conformities not identified in the system as critical control points. |
| **“Broad Compliance” (or better):** Excellent record of compliance. Very effective management. Total confidence in management to manage, maintain and adapt the feed management system as appropriate and to advise of any significant changes to the business. |

**APPENDIX 4: FEED EARNED RECOGNITION EXCEPTION REPORT FOR ENFORCEMENT AUTHORITIES**

|  |  |
| --- | --- |
| Name of Local Authority |  |
| Name of Reporting Officer |  |
| Contact telephone number/email |  |
| Date of Local Authority inspection |  |
| Local Authority reference number |  |
| Date report submitted to FSS |  |
| Name and address of business  |  |
| Assurance scheme to which the business is affiliated |  |
| Summary of the contraventions found (including legislative reference as appropriate) and what action the LA has taken or intends to take against the business |
| *Note: This box expands as you type* |
| Enforcement authority to confirm that earned recognition has been removed from the business, assigned a new risk rating and the business informed about the loss of earned recognition Y / N (*Add any further comments below*) |
| *Note: This box expands as you type* |
| Assurance Scheme update |
| *Note: This box expands as you type* **Date:** |
| Local Authority update *(if required)* | Name of Reporting Officer *(if different)*: |
| Contact telephone number/email: |
| *Note: This box expands as you type* **Date:** |
| Assurance Scheme update |
| *Note: This box expands as you type* **Date:** |

**Please email completed forms to:** **animal.feed.enforcement@fss.scot**

\***PLEASE NOTE**: The purpose of this form is for FSS monitoring purposes only between FSS and the Local Authority and complies with the Data Protection Act.

1. Rapid Alert System for Feed and Food [↑](#footnote-ref-1)
2. Definitions of levels of compliance are in Appendix 3 [↑](#footnote-ref-2)
3. Under development (February 2016) [↑](#footnote-ref-3)