Thank you for your letter of 26 November 2012, drawing the attention of the Rural Affairs, Climate Change and Environment (RACCE) Committee to your committee’s inquiry into post-legislative scrutiny.

The RACCE Committee first considered your letter and the attached call for views, at its meeting on 16 January 2013 and at that meeting agreed to respond to the call for views. The Committee subsequently agreed this response at its meeting on 23 January 2013.

This Committee, and its predecessor in Session 3, has had experience of conducting post-legislative scrutiny, with regard to the Land Reform (Scotland) Act 2003. From that process, we have clearly seen the value of such scrutiny and would agree with your starting point that more post-legislative scrutiny is needed.

The Committee notes that your call for views is therefore most interested in the practical ways in which the Parliament could carry out improved post-legislative scrutiny and we address each of the key questions you posed in turn below.

**Format**

The Committee firstly felt that it was important to note that post-legislative scrutiny could occur several forms. For example, as well as specific work looking back at an act, such as our work on land reform, an alternative format often occurs during the formal legislative process. Committees are often considering bills which are amending previous acts of the Scottish Parliament, as well as previous UK acts. Therefore, as part of the Parliamentary scrutiny process of a new bill, it is often necessary to look back at the legislation being amended to ask questions such as—

- why does the previous bill(s) require amendment?;
- was the previous bill(s) suitably fit for purpose?; and
- what are the reasons behind provisions in the previous bill(s) either not being enacted or not working as well as they should?

The Committee is currently engaged with such a Bill, the Aquaculture and Fisheries (Scotland) Bill, which amends the 2007 Act of the same, and the Committee has addressed those very questions as part of its Stage 1 scrutiny. This is therefore a form of post-legislative scrutiny.

**Barriers**

The Committee agreed that time-pressures often prevent committees conducting the amount of post-legislative scrutiny that they would like to do. The RACCE Committee
is a good example of this, since we began our work, we have had a very heavy work programme, often requiring lengthy weekly meetings to deliver a work programme heavy with new legislation, secondary legislation, petitions, budget scrutiny, consideration of European issues, and consideration of a large number of policy issues relevant to our remit. I am sure that other committees find themselves similarly engaged, so finding the time to do justice to conducting post-legislative scrutiny is a notable challenge.

Another barrier relates to a point we make below, regarding the commissioning of external research to assist the scrutiny. Such research obviously comes with budgetary impacts which, in the current financial climate, will be a competing demand on the SPCB budget.

Good practice

As mentioned elsewhere in this response, good practice should be formed around principles such as—

- Allowing a suitable period of time to have elapsed before scrutiny of any act is undertaken;
- focussed scrutiny on acts where there are significant identified issues; and
- scrutiny underpinned by robust research, evidence and data.

Support/information

The Committee agreed that it is vital that committees have access to robust data and analysis before undertaking post-legislative scrutiny. Our predecessor committee, the Rural Affairs and Environment Committee of Session 3, began the work on the Land Reform (Scotland) Act 2003 which this Committee has continued, and began this by commissioning external research on how aspects of the Act were working in practice. This research was invaluable to this Committee in its own work and highlighted the value of such research to the post-legislative process.

Extent of post-legislative scrutiny

The Committee’s view was that all acts should be able to be subject to post-legislative scrutiny, but that scrutiny should be focussed on those acts which, through evidence from external sources, had been identified as having issues which required further examination. Time would not be best used by going through every act passed it turn, but would be better spent focussing on those where stakeholders and the public are telling us – ‘there is a problem here’. Clearly there may be cases where legislation has resulted in unintended consequences and committees need to be alert to this possibility.

Timescales

The Committee felt that for post-legislative scrutiny to be effective, timescales were very important. With every act, it is important that an appropriate period of time has elapsed before scrutiny begins. This will vary from act-to-act, but it is important that the provisions in the act concerned have been enacted, and that they have been in
force for a long enough period of time to be able to build up a body of evidence and reflection to assess whether the legislation is achieving its aims. This is likely to be a period of between 3 and 5 years in most cases, but will vary depending on the specific act involved.

**Standing Order changes**

The Committee did not take a view on whether changes to Standing Orders would be required to facilitate improved post-legislative scrutiny, but would welcome the views of the SPPA on this, following consideration of the evidence to it as part of this inquiry.

We hope you find the views of the RACCE Committee helpful in your considerations, and we look forward to the reviewing the outcomes of your work.

**ROB GIBSON MSP**
**CONVENER**
**RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE**
**23 JANUARY 2013**