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7 November 2025

Dear Edward,

The Biodiversity Beyond National Jurisdiction (BBNJ) UK Bill

Thank you for your letter of 29 October 2025 as Convenor of the Net Zero, Energy and Transport Committee in relation to legislative consent to the UK bill, the Biodiversity Beyond National Jurisdiction (BBNJ) Bill (“the Bill”).

It’s important to note that it is not the case that information relating to the Scottish Government’s final position to the Bill has been held back from the Committee on grounds of intergovernmental dialogue, but rather that the final position we take in relation to remaining provisions depends on the outcomes of that intergovernmental dialogue, which I cannot prejudge. I can however reassure you that as soon as the Scottish Government has reached a final position on the Bill, which is likely to include amendments to the Bill not yet tabled, I will provide full explanation of the reasoning underpinning that position.

Notwithstanding the above, I am keen to provide as much information as I can to the Committee at this stage. I will firstly provide some detail relating to the context within which the Scottish Government is working to ensure the Bill adequately reflects and respects devolution in order to finalise our position on recommending consent to remaining clauses. I will then set out an overview of current anticipated timescales for full Scottish Parliamentary scrutiny, before sharing as much as I can just now on the emerging positions on the remaining clauses in the Bill.

Context

The UK Government introduced the Bill with limited time for the Scottish Government to assess the implications for devolution in advance of introduction, and within an overarching challenging timetable to ratification, driven by the need to have legislation in place to be able to ratify the BBNJ Agreement in time for the UK to participate the first Conference of the Parties (CoP), expected in August next year. Given the Scottish Government’s support for the aims of the legislation, we have

been working to ensure devolved interests are appropriately reflected without causing delay to ratification.

Therefore, the Scottish Government's initial Legislative Consent Memorandum (LCM) recommended consent for some, but not all, clauses of the Bill, given the need for further analysis and engagement government-government with the UK Government to fully explore the impacts of provisions for devolved competence, and any protections that may be required, for example, through amendments to the face of the Bill. I should highlight that at the time of introduction, in a letter to my UK Government ministerial counterpart, Seema Malhotra MP, I put on record the Scottish Government's disappointment in relation to the time afforded for analysis and the initial consideration of devolution in the draft Bill.

Since then, rapid analysis has been ongoing across the Scottish Government, alongside ongoing engagement with the UK Government to understand the implications of the Bill for Scottish legislatively devolved, and executively devolved competences, and to explore a range of measures that ensure devolved aspects are fully respected and addressed appropriately in the Bill, including by amendment where necessary.

Timeline

The timeline has been challenging given the complexity and work involved in exploring impacts for devolved policy and competence. The BBNJ Agreement has reached the threshold of ratification and will enter into force on 17 January 2026. As the initial LCM sets out, only countries that have implemented the BBNJ Agreement will be able to participate in decision making for Areas Beyond National Jurisdiction (ABNJ) as part of the CoP when it meets (first meeting expected next summer). Missing the intended deadline for ratification risks the UK being unable to take its seat at the CoP, which would exclude the UK from decision making that may impact Scotland's interests.

Due to the speed at which this Bill is progressing through the UK Parliament, any amendments we wish to be introduced to protect devolution should be tabled by the UK Government during the House of Lords Committee stage, prior to the Lords Reporting stage. The Lords Committee stage is currently expected in mid-December, though of course, the timetable is subject to change and could fall later. Any amendment impacting on devolution will trigger a corresponding legislative consent process. Therefore, notwithstanding any amendments with an impact on devolved matters that could be tabled outwith those the UK Government may table as a result of agreement with the Scottish Government, we expect to lodge the planned supplementary LCM with the Scottish Parliament for the remaining clauses, including any amendments, by mid-December (noting that amendments are usually tabled around a week prior to the Lords Committee date). I recognise that this is a tight timescale for your scrutiny of the supplementary LCM. I would appreciate any efforts you can make to prioritise consideration and while of course, the Scottish Government does not control the parliamentary or ratification timelines, my officials stand ready to support in any way they can.

Remaining clauses

Appropriate protection of Scottish interests and compatibility with devolution may be sought, and achieved, through a range of mechanisms which may necessitate changes to the face of the Bill and/or government-government agreement, such as through a Memorandum of Understanding or concordat, depending on the nature of the intersection with devolved policy and legislative reach of the provision. In all cases, the Scottish Government will only recommend consent when it considers sufficient protections are in place, providing full explanation to the Scottish Parliament to enable effective scrutiny of that position and the Bill.

In more detail, and without prejudice to ongoing analysis and engagement:

For Part 2 of the Bill, relating to Marine Genetic Resources (MGR), we are seeking assurances from the UK Government in relation to the provisions to ensure due regard is given to Scottish interests.

For Part 3 of the Bill, relating to Area Based Management Tools, we will work with the UK Government to ensure Scottish Ministers are appropriately involved in the process of reaching and implementing decisions of the CoP, which impact on devolved matters in ABNJ. Work on these clauses is ongoing with the UK Government. Without prejudging this ongoing work, it is possible that securing appropriate protections for, and compatibility with, devolution in relation to ABMT could necessitate additional measures, such as specific intergovernmental agreement, or amendment to the face of the Bill.

For Part 4 of the Bill, relating to Environmental Impact Assessments (EIA) and marine licensing, we are seeking assurances from the UK Government on the appropriate split of responsibilities for the licencing of marine activities in ABNJ between the Marine Management Organisation (MMO) and the Scottish Ministers in secondary legislation. We are also exploring changes to Scottish EIA regulations to ensure we have EIA processes in place in relation to activities impacting and falling within Scottish competence in this area. This may result in amendment to the face of the Bill.

It should be noted that across all provisions, we anticipate that levels of relevant activity in ABNJ will be low in comparison to marine areas within national jurisdiction. A component of the engagement we are undertaking is to understand the scale, as well as nature, of potential impacts further.

Given the speed with which the Bill has been introduced and is progressing through the UK Parliament, the Scottish Government is keen to facilitate ongoing transparency, discussion and information flow with the Committee. My officials have reached out to Committee Clerks and hope to meet with clerks in the near future to discuss further.

I am copying this to the Convener of the DPLR Committee, who has also written to me regarding legislative consent for the BBNJ Bill.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Gillian Martin". The signature is fluid and cursive, with the first name "Gillian" written in a larger, more prominent script than the last name "Martin".

GILLIAN MARTIN