ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE

AGENDA

14th Meeting, 2018 (Session 5)

Tuesday 1 May 2018

The Committee will meet at 9.30 am in the Robert Burns Room (CR1).

1. **Decision on taking business in private:** The Committee will decide whether to take items 4, 5, 6 and 7 in private.

2. **Inquiry into EU environmental and animal welfare principles:** The Committee will take evidence from—
   
   Amy Hill, Lawyer (NZ qualified), ClientEarth;
   
   Richard Leslie, Co-convenor, Scottish Branch of the UK Environmental Law Association and Partner, Shepherd & Wedderburn;
   
   Professor Gavin MacLeod Little, Professor of Environmental and Public Law, Stirling Law School, University of Stirling.

3. **Subordinate legislation:** The Committee will consider the Loch Carron Urgent Marine Conservation (No. 2) Order 2017 (Urgent Continuation) Order 2018 (SSI 2018/100).

4. **Inquiry into EU environmental and animal welfare principles:** The Committee will consider evidence heard earlier in the meeting.

5. **National Performance Framework National Outcomes:** The Committee will consider a draft letter to the Local Government and Communities Committee.

6. **Work programme:** The Committee will consider its work programme.

7. **Witness diversity (gender):** The Committee will consider its approach to encouraging the diversity of witnesses.
The papers for this meeting are as follows—

**Agenda item 2**

EU Environmental and animal welfare principles inquiry cover note
ECCLR/S5/18/14/1

PRIVATE PAPER
ECCLR/S5/18/14/2 (P)

**Agenda item 3**

Subordinate legislation cover note
ECCLR/S5/18/14/3

**Agenda item 5**

PRIVATE PAPER
ECCLR/S5/18/14/4 (P)

**Agenda item 6**

PRIVATE PAPER
ECCLR/S5/18/14/5 (P)

**Agenda item 7**

PRIVATE PAPER
ECCLR/S5/18/14/6 (P)
Introduction

1. At its meeting of 24 April the Committee considered the written submissions received on its inquiry into EU environmental and animal welfare principles and agreed to explore the issues raised with stakeholders. On 1 May the Committee will hear from the UK Environmental Law Association, Client Earth and Professor Gavin MacLeod Little.

Background

2. The Committee issued a call for evidence on its inquiry on the EU environmental and animal welfare principles, which closed on 29 March 2018. The Committee agreed to hear from the Cabinet Secretary for Environment, Climate Change and Land Reform and the Minister for UK Negotiations on Scotland’s Place in Europe on 8 May. The Committee received 26 written submissions.

3. In a letter to the ECCLR Committee on 8th January the Cabinet Secretary referred to the establishment of a group to provide advice to the Scottish Government on environmental governance - “To inform our thinking, I have commissioned the Roundtable on the Environment and Climate Change to provide advice by March 2018 on future environmental governance arrangements in Scotland. This will involve identifying where gaps may emerge in existing powers to monitor and enforce environmental standards in Scotland, and setting out options for providing appropriate levels of scrutiny, reporting and accountability following the UK’s exit from the EU, using international comparisons where appropriate.” The report of the Roundtable is not yet in the public domain.

Clerks
Environment, Climate Change and Land Reform Committee.
Environment, Climate Change and Land Reform Committee

14th Meeting, 2018 (Session 5)

Tuesday 1 May

SSI cover note for Loch Carron Urgent Marine Conservation (No. 2) Order 2017 (Urgent Continuation) Order 2018 (SSI 2018/100)

SSI 2018/100

Title of Instrument: Loch Carron Urgent Marine Conservation (No. 2) Order 2017 (Urgent Continuation) Order 2018 (SSI 2018/100)

Type of Instrument: Negative

Laid Date: 22 March 2018

Circulated to Members: 22 March 2018

Meeting Date: 1 May 2018

Minister to attend meeting: No

Motion for annulment lodged: No

Drawn to the Parliament’s attention by the Delegated Powers and Law Reform Committee? No

Reporting deadline: 14 May 2018

Recommendation

1. The Committee is invited to consider any issues which it wishes to raise on this instrument.

Background

2. In April 2017, a scallop dredger (operating legally) caused damage to a rare flame shell reef in Loch Carron. The area was not a Marine Protected Area at the time, and the Scottish Government introduced an instrument in May 2017 (the Loch Carron Urgent Marine Conservation Order 2017 (SSI 2017/158)) to provide immediate enhanced protection of the area to aid recovery. The Cabinet Secretary for Environment, Climate Change and Land Reform wrote to the Committee on 18 May 2017 to inform it of this action.

3. The Environment, Climate Change and Land Reform Committee considered this instrument at its meeting on 6 June 2017, including hearing evidence from the Scottish Government official responsible for the legislation.
4. A second instrument (the Loch Carron Urgent Marine Conservation (No 2) Order 2017 (SSI 2017/205)) was subsequently laid in order to correct an error in the first. The Committee’s timetable did not allow for it to consider this instrument in advance of the summer recess in 2017 and, as the instrument came into force urgently, it wrote to the Cabinet Secretary for Environment, Climate Change and Land Reform to seek confirmation the slight amendments made by the corrections did not allow for ambiguity for fishermen as to which areas were included within the Marine Protected Area ahead of the Committee’s consideration. A response containing assurances as to the certainty of the ultimate boundary was received on 10 July 2017.

5. The Committee considered the correcting instrument at its meeting on 12 September 2017.

6. It subsequently wrote to the Cabinet Secretary for Environment, Climate Change and Land Reform seeking details of the timescales for the development of permanent measures to protect the Loch Carron MPA, including when the Business and Regulatory Impact Assessment would be published.

7. In her response, the Cabinet Secretary for Environment, Climate Change and Land Reform outlined the timescales for this:

   **April 2018** – Begin public consultation on the case for designation of Loch Carron as a Marine Protected Area, and the associated Marine Conservation Order. A draft Business and Regulatory Impact Assessment will be part of this consultation. At the same time a Statutory Instrument to continue the urgent Marine Conservation Order will be made, and laid in Parliament.

   **December 2018** – I will determine the case of designating Loch Carron as a Marine Protected Area on a long-term basis.

   **Early 2019** – If the case for long-term designation is confirmed then the Statutory Instrument for the long-term Marine Conservation Order will be made and laid before Parliament. The will be accompanied by the final Business and Regulatory Impact Assessment.

   **May 2019** – Subject to completing the Parliamentary process, the long term Marine Conservation Order will take effect.

8. On 20 March 2018, the Committee received notice from the Cabinet Secretary for Environment, Climate Change and Land Reform that the continuation order highlighted in the previous correspondence would be laid imminently. The consultation on the proposal to designate Loch Carron as a nature conservation Marine Protected Area (which includes a proposed Business and Regulatory Impact Assessment) was launched on the same day and closes on 13 June 2018.

9. A copy of the Scottish Government’s Explanatory and Policy Notes are included in Annexe A.

**Purpose**
10. This Order is an “urgent continuation order” which provides that the Loch Carron Urgent Marine Conservation (No. 2) Order 2017 (“the 2017 Order”), an “urgent marine conservation order”, remains in force for the period of 364 days beyond the period which is specified in article 1(2) of the 2017 Order. The 2017 Order would otherwise remain in force until the end of 19th May 2018.

Delegated Powers and Law Reform Committee

11. At its meeting on 17 April 2018, the Committee considered the following instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Procedure for Negative Instruments

12. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

13. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

Clerks
Environment, Climate Change and Land Reform Committee
Scottish Government Explanatory Note

As per purpose above.

Scottish Government Policy Note

The Loch Carron Urgent Marine Conservation (No. 2) Order 2017 (Urgent Continuation) Order 2018 ("the Continuation Order") is made by the Scottish Ministers in exercise of the powers conferred by section 88(6) of the Marine (Scotland) Act 2010 ("the 2010 Act") and all other powers enabling them to do so.

Policy Objectives

The purpose of the Order is to extend the duration of the Loch Carron Urgent Marine Conservation (No. 2) Order 2017 ("the Urgent MCO"). The Urgent MCO was implemented to prohibit the deployment and use of certain fishing gears in the Loch Carron Marine Protected Area (MPA). The original Loch Carron MPA was designated to recover the flame shell beds to a favourable condition.

Policy Background

It was reported on 23 April 2017 that the Loch Carron flame shell beds had been damaged by a scallop dredger. Flame shell beds are a Priority Marine Feature and are, therefore, given general protection by Scotland’s National Marine Plan. At the time of the incident Loch Carron was not an MPA. However, in order to facilitate recovery of the damaged flame shell beds it was designated as such on 19 May 2017.

According to section 3 of the 2010 Act, Scottish Ministers must act in a way best calculated to further the achievement of sustainable development, including the improvement of the health of the Scottish Marine Area, when exercising any function that affects that Area under the 2010 Act. In 2017, having identified the damaged flame shell beds in Loch Carron, Scottish Ministers determined there was a need to act in a way that helped recovery, and therefore improve the health of our seas.

At the same time as Loch Carron was designated as an urgent MPA in May 2017, the Loch Carron Urgent Marine Conservation Order 2017 was implemented. That Order was later revoked and replaced by the Urgent MCO. This was done in order to correct an error in the boundary definition of the MPA.

Pursuant to section 88(2) of the 2010 Act, a marine conservation order made on an urgent basis can only last for one year. However, the Scottish Ministers may extend such an order for a further year by making a continuation order in accordance with section 88(6) and (7) of the 2010 Act. If making a continuation order, the Scottish Ministers must have published notice of their proposal to make a permanent marine conservation order.

Notice to designate permanent MPA and permanent Marine Conservation Order

In accordance with the requirements of the 2010 Act, the Scottish Ministers published notice of their proposal to implement a permanent marine conservation order in respect of Loch Carron and also to designate Loch Carron as a permanent
MPA. All of the relevant documents including a draft Business and Regulatory Impact Assessment can be found at: https://consult.gov.scot/marine-scotland/loch-carron-mpa/

Consultation

In determining the need for the Continuation Order the Scottish Ministers have taken account of advice from Scottish Natural Heritage. There has been no public consultation on this Continuation Order. However, as noted above, there is an ongoing consultation on the proposal to implement a permanent marine conservation order in respect of Loch Carron and also to designate Loch Carron as a permanent MPA.

Impact Assessments

A Business and Regulatory Impact Assessment (“BRIA”) has not been carried out for this Continuation Order, however a draft BRIA has been published for the consultation on designation of a permanent marine conservation order and a permanent MPA for Loch Carron. An equality assessment was not required.

Scottish Government
Marine Scotland Directorate
20 March 2018