1. **Decision on taking business in private**: The Committee will decide whether to take item 6 in private. The Committee will also decide whether its review of evidence heard in relation to its work on biodiversity should be taken in private at future meetings.

2. **Biodiversity funding and implementation**: The Committee will take evidence from—

   - Eleanor Kay, Agriculture Policy Adviser, Scottish Land & Estates;
   - Andrew Midgley, Environment and Land Use Manager, NFUS;
   - Calum Duncan, Scottish Conservation Manager, Marine Conservation Society;
   - Professor Christopher Spray, Park Authority Board Member, Loch Lomond and Trossachs National Park;
   - Jonny Hughes, Chief Executive, Scottish Wildlife Trust;
   - Dr Paul Walton, Head of Species and Habitats Policy, Scotland, RSPB;
   - Anna Lawrence, Vice Chair, Community Woodlands;
   - Dr Rob Brooker, SEFARI;
   - Sally Thomas, Director of People and Nature, Scottish Natural Heritage.

3. **European Union (Withdrawal) Act 2018**: The Committee will take evidence on the REACH (Amendment) (EU Exit) Regulations 2019 from—

   - Tom Shields, Acting Chair, Chemical Sciences Scotland;
Kate Young, Brexit and Chemicals Campaigner, ChemTrust (via teleconference);

Janice Milne, Head of Energy, SEPA;

Dave Bench, Director, EU Exit, Chemicals, Health and Safety Executive.

4. **European Union (Withdrawal) Act 2018**: The Committee will take evidence on the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2018 from—

   Mairi Gougeon, Minister for Rural Affairs and the Natural Environment;

   Katy Hindmarsh, Head of EU Operational Readiness within the EU Hub for Environment and Forestry, Don McGillivray, Deputy Director, Environmental Quality and Circular Economy, and Hugh Dignon, Head of Wildlife and Biodiversity Unit, Scottish Government.

5. **Biodiversity funding and implementation**: The Committee will review the evidence heard earlier in the meeting.

6. **European Union (Withdrawal) Act 2018 (in private)**: The Committee will review the evidence heard earlier in the meeting. The Committee will then consider a proposal by the Scottish Government to consent to the UK Government legislating using the powers under the Act in relation to the following UK statutory instrument proposal—

   The Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2018.

Lynn Tullis

Clerk to the Environment, Climate Change and Land Reform Committee
Room T3.40
The Scottish Parliament
Edinburgh
Tel: 0131 348 5240
Email: ecclr.committee@parliament.scot.
The papers for this meeting are as follows—

**Agenda item 2**

Biodiversity funding and implementation cover paper

**Agenda item 3**

EU (Withdrawal) Act 2018 cover paper

PRIVATE PAPER

**Agenda item 4**

EU (Withdrawal) Act 2018 cover paper

PRIVATE PAPER

ECCLR/S5/18/37/A

ECCLR/S5/18/37/1

ECCLR/S5/18/37/2

ECCLR/S5/18/37/3

ECCLR/S5/18/37/4

ECCLR/S5/18/37/5
Introduction

1. There are significant and current issues around the achievement of the biodiversity targets, particularly in relation to funding and implementation, and in the context of the UK exit from the EU.

2. As part of its work programme, the Committee agreed on November 20 to hold an evidence session on December 11 to explore the issues around funding for biodiversity and related issues in implementation.

3. This paper sets out the purpose of the meeting, provides background context, outlines the themes for discussion, and lists the stakeholders who will be participating in the roundtable.

Format of the evidence session

4. In a roundtable format, the Committee will be joined by a range of stakeholders engaged in delivering the biodiversity strategy. The Committee will hear from:

   - Andrew Midgley, Policy Manager – Environment and Land Use, National Farmers Union, Scotland (NFUS).
   - Calum Duncan, Head of Conservation Scotland, Marine Conservation Scotland.
   - Eleanor Kay, Agriculture Policy Adviser, Scottish Land and Estates.
   - Professor Chris Spray, Park Authority Board Member, Loch Lomond and Trossachs National Park.
   - Dr Paul Walton, Head of Species and Habitats Policy, The Royal Society for the Protection of Birds (RSPB), Scotland.
   - Jonny Hughes, Chief Executive, Scottish Wildlife Trust.
   - Anna Lawrence, Vice-Chair, Community Woodlands Association.
   - Dr Rob Brooker, Plant Ecologist, The James Hutton Institute, SEFARI.
   - Sally Thomas, Director of People & Nature, Scottish Natural Heritage (SNH).

5. A background briefing provided by SPICe is available at Annexe A. Additionally, written submissions from witnesses can be found at Annexe B, while those from other stakeholders contributing to the discussion can be found at Annexe C.
Themes to explore in the evidence session

The main themes for the Committee to explore with stakeholders are outlined below:

6. **The current funding context, outlook and impacts**: key funding pressures and challenges faced by stakeholders that deliver environmental outcomes (especially biodiversity targets), covering:

   - What those challenges mean in real terms for what can be delivered on the ground.
   - Impacts of EU exit (including impacts of uncertainty, planning ahead).
   - Consideration of issues for different types and levels of participant: SNH, local authorities, large NGOs and landowners, smaller groups, community/grassroots groups.

7. **Funding models and strategy**. What work the Government and stakeholders are doing in this area:

   - What new models for resourcing environmental policies are being discussed or trialled?
   - Are we using all of the ‘tools in the box’ in Scotland? (e.g. market and non-market based mechanisms, environmental taxes and charges, contribution from different industries and sections of Government e.g. planning).
   - How can funding be most effectively applied/prioritised? (potentially linking in to monitoring/data issues)
   - What should the role of Scottish Government and SNH be (e.g. strategy, partnerships, helping to leverage funds etc)?
   - Role of local authorities and models such as City Deals.
   - Are we looking to other countries for examples of good practice?

8. **Linkages to current policy environment and international context**:

   - Impacts of EU exit - do we have a good enough understanding of this – what analysis are stakeholders doing (including loss of research funding?)
   - Preparedness for exit and priorities (what can Scottish Government do in advance of a deal being finalised? What should the priorities be in the short and longer term?)
   - Where and how should funding feature in current debates on environmental governance, the Scottish Government-proposed environment strategy, NGO calls for a new Scottish Environment Act?
   - Implications of approaching 2020 – UN Convention on Biodiversity COP and potentially updated targets (Aichi targets).
   - Linkages to wider land reform agenda – do we need new approaches to resourcing environmental outcomes to complement land reform ambitions? Do current funding models include the full range of potential ‘providers’ of environmental outcomes? Are groups being excluded?
Background

Biodiversity targets

9. The United Nations Convention on Biological Diversity set targets to halt the decline in biodiversity by 2020, the Aichi Targets. Targets to 2020 were also set for the EU, and the European Biodiversity Strategy was published in 2011. These international targets call for a step change in efforts to halt the loss of biodiversity and restore essential services provided by a healthy natural environment.

10. In response, in 2013 Scotland launched the [2020 Challenge for Scotland’s Biodiversity](#). This complements the 2004 report - [Scotland’s Biodiversity: It’s In Your Hands](#). Together they form the Scottish Biodiversity Strategy. In 2015, the Scottish Government published [Scotland’s Biodiversity – A Route Map to 2020](#). In early 2017, the three-yearly [Scottish Biodiversity Strategy Progress Report](#) was laid before Parliament.

11. In 2017 SNH produced two interim reports on progress of the [Route Map 2020](#) and [2020 Aichi Targets](#).

Previous Environment, Climate Change and Land Reform (ECCLR) Committee consideration

12. At its meeting on [1 November 2016](#) the ECCLR Committee heard from a range of stakeholders on biodiversity and [Scotland’s progress to its 2020 targets](#). The Committee considered the findings of a number of publications: the [SNH Report](#) on the first full year reporting on the Route Map to 2020; [Scotland’s Biodiversity Progress to 2020 Aichi Targets](#), the [State of Nature Report 2016](#) and associated [State of Nature Scotland Report](#).

13. The Committee subsequently [wrote to the Cabinet Secretary for Environment, Climate Change and Land Reform](#). The Committee notes the publication of the Scottish Government’s [3 yearly Scottish Biodiversity Progress Report in 2017](#). The Committee [wrote to the Cabinet Secretary](#) to ask whether the Scottish Government plans to hold a parliamentary debate on the report. At that time the Cabinet Secretary indicated there were no plans to hold a parliamentary debate on the report.

14. The Committee heard from the Scottish Government and SNH on progress in meeting the biodiversity 2020 and Aichi targets on [19 June](#), having agreed to hold the evidence session at the meeting on May 1 as part of its work programme discussion. The Committee received a follow-up letter from the Scottish Government after the evidence session on [7 August](#).

Public Audit and Post-Legislative Scrutiny (PAPLS) Committee Consideration

15. Between 29 January 2018 and 23 March 2018, the Public Audit and Post Legislative Scrutiny (PAPLS) Committee held call for evidence on biodiversity and biodiversity reporting duties placed on public bodies under the [Nature Conservation (Scotland) Act 2004](#) and [Wildlife and Natural Environment](#)
The call for evidence and written submissions can be viewed here.

16. On 7 June 2018 the PAPLS Committee took evidence from the Cabinet Secretary for Environment, Climate Change and Land Reform, and SNH. The Cabinet Secretary provided an update on the second round of duty reporting, stating that responses were still being compiled and that the current response rate stands at 41%. The Committee also heard that despite improved guidance since the 2015 round of reporting, there are still problems with awareness over the reporting duty.

17. The PAPLS Committee published its report on 18 August. The Committee recognised that “the low level of compliance with the reporting duty [41% in the last reporting cycle] is closely linked to the lack of compliance with the biodiversity duty”. The report provided a number of recommended actions for the Scottish Government and SNH to improve compliance with biodiversity duty.

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Environment, Climate Change and Land Reform Committee
Environment, Climate Change and Land Reform Committee  
2018 (Session 5)  

Biodiversity funding

The current biodiversity funding context

**Sources of biodiversity funding in Scotland**

There are a number of funding sources for biodiversity projects in Scotland including:

- The Scottish Rural Development Programme (SRDP) - the main source of funding for farming and forestry
- EU competitive funding such as LIFE, Interreg and Horizon 2020 (research)
- Projects delivered by or funded by statutory agencies e.g. Peatland Action
- The Heritage Lottery Fund
- The Central Scotland Green Network Development Fund
- Scottish Government’s Strategic Research Programme
- Work funded by businesses, NGOs (e.g. from membership income), and research institutions or partnerships between them
- City Region Deals

The 2018/19 Programme for Government also announced a Biodiversity Challenge Fund (up to £2 million) which the Scottish Government states will fund “projects across Scotland focusing on creating and improving habitats for key species and, where appropriate, encourage increased access to nature”.

**SNH 2017 interim report on 2020 targets – Missed target on financial resources**

The Convention on Biological Diversity (CBD) set 20 global targets, known as the **Aichi Targets**, to be met by 2020. Target 20 relates to biodiversity funding:

> “By 2020, at the latest, the mobilization of financial resources for effectively implementing the Strategic Plan for Biodiversity 2011-2020 from all sources, and in accordance with the consolidated and agreed process in the Strategy for Resource Mobilization, should increase substantially from the current levels. This target will be subject to changes contingent to resource needs assessments to be developed and reported by Parties.”

The [Scottish Biodiversity Strategy: 2020 Challenge for Scotland’s Biodiversity](#) (and supporting **Route Map**) set strategic priorities for Scotland and identify the large-scale projects that are needed to contribute to these targets.

SNH produce interim reports on progress towards the 2020 Targets. The [2017 report](#) set out that of the 20 targets, 7 were on track, 12 were showing progress but
insufficient to meet the target and 1 target was getting worse. Target 20 on financial
resources is the only target currently getting worse.

The report uses monitoring information from the UK indicator for target 20, as there is
no agreed Scottish indicator, and states that “work is required to produce a Scotland
indicator.” UK public sector spending on biodiversity as a percentage of GDP has
fluctuated, with a gradual decline since 2008 to its current level of 0.024%. The RSPB
has estimated that at UK level, achieving biodiversity targets requires funding
equivalent to 0.2% of government spending, or 0.1% of UK GDP.

However, the report does include Scottish-specific information showing declines in
total funding for most of the Scottish organisations that have a biodiversity remit in the
last 5 years (further information below).

RSPB Scotland state in relation to the failure to meet this target that:

“This is due to a mix of declining public expenditure as well as a change in
priorities for some expenditure streams, uncertainty over post-Brexit land
management funding, declines/changes in priorities for lottery-based funding
mechanisms and the potential loss of other EU funding, such as LIFE and
Interreg.”

During a previous evidence session with the Committee the Scottish Government
highlighted the problem of tracking public spending on biodiversity:

“It is quite difficult to say exactly how much public funding is spent on
biodiversity; we have not disaggregated that. SNH is doing work at the moment
to try to get a better indicator, because that was an Aichi target that we were
going away from. We are not clear enough even about how much public money
is being spent on biodiversity, and the public sector ought to be able to account.”

Biodiversity reporting duty (and potential to link to a funding indicator)

SNH have suggested that public bodies could contribute to a Scotland biodiversity
funding indicator through their statutory biodiversity reporting.

In July 2018, the Public Audit and Post-legislative Scrutiny Committee published its
report on biodiversity and biodiversity reporting duties placed on public bodies by the
Nature Conservation (Scotland) Act 2004 and the Wildlife and Natural Environment
(Scotland) Act 2011. The Committee recognised that “the low level of compliance with
the reporting duty [41% in the last cycle] is closely linked to the lack of compliance with
the biodiversity duty”. Recommended actions to improve compliance included
providing more support (e.g. templates), writing to public bodies to remind them, and
improving accessibility and quality of biological data.

Statutory agency funding and impacts of declining budgets

Figure 1 below shows trends in Scottish Government budgets for six organisations
that have some biodiversity remit. Over the last five years, Government funding for
SNH will have declined by 20% (26% in real terms). SEPA and the National Parks
Authorities’ funding will have declined by over 5% (11% in real terms).
Marine Scotland’s funding was increased in the draft budget for 2017-2018, bringing it close to 2012/13 levels. FCS funding declined by 8% from 2013-14 to 2017/18 (the way their funding was reported changed in 2013).

![Graph showing budget comparisons](image)

*Figure 1: Scottish Government actual (solid line) and draft funding (dashed line) for organisations with a biodiversity remit. Source: SNH (NB/ Not all organisations’ functions are related to biodiversity)*

The SNH website states that a new funding framework for the Scottish Government is being put in place following the Smith and Calman Commission reports. Until this is established, SNH anticipates funding will be agreed in advance for one year.

RSPB Scotland said in evidence submitted for this session that statutory agencies’ declining budgets have had a number of impacts including on:

- **Protected Areas**: indications from SNH that Site Condition Monitoring will be discontinued in 2019 and replaced with a different model;
- **National Nature Reserves**: Low levels of funding and staffing;
- **Planning casework**: SNH now primarily engage only on casework where an impact of national significance is likely;
- **Project Co-funding**: declining agencies’ ability to co-finance or commit for more than 1 year e.g. SNH declining to co-fund phase 2 of the LIFE Machair project.
- **Priority Marine Features (PMFs)**: data on PMFs - needed to support achievement of Scotland’s obligations - is a key knowledge gap

They also said there have been cuts to the SNH Grants Programme and that SNH are ending the practice of entering into Area Framework Agreements with NGOs.

*Charitable and private funding*

Environmental charities have raised funding challenges for biodiversity relating to a range of areas including Brexit uncertainty, declining budgets for statutory bodies,
declining funding from lotteries, trusts and foundations, and potential impacts of new data protection regulations (GDPR) which restrict how charities can contact people.

Stakeholders including Scottish Environment LINK have highlighted that there is less grant-based funding available for environmental programmes in Scotland compared to the rest of the UK, indicated in the report "Where the Green Grants Went".

The report set out that:

- From 2012 to 2015, private foundation funding for environmental causes in England and Wales was 20 times as much as that available in Scotland: £768/km² in England and Wales versus £70/km² in Scotland.
- 41 foundations gave environmental grants in Scotland between 2012 and 2016 out of 141 foundations supported work in the UK. Of those 41, 6 are either based in Scotland or focus their giving there.

**Lottery Funding**

Scottish Environment LINK have raised the issue of declining Heritage Lottery funding as a problem for resourcing conservation. The Heritage Lottery Fund (HLF) distributes National Lottery funding and is the largest dedicated funder of heritage in the UK. Scottish Wildlife Trust state that between 1994 and 2016, HLF invested £7.1 billion in 40,000 projects and of this, £119 million was in Scotland.

This includes for example, £2.46 million for the Saving Scotland’s Red Squirrels partnership, and £2.9 million for the Coigach & Assynt Living Landscape Partnership, one of the largest landscape restoration projects in the UK.

The HLF consulted on the future of lottery heritage funding earlier in 2018. SNH responded to the consultation and said that with less money, HLF should prioritise strategic interventions rather than its open grant programme. A new nature based intervention linked to the Scottish Biodiversity Strategy was suggested to complement the existing landscape partnership programme. SNH raised further work with HLF in evidence to the Committee in June 2018 saying:

"The work with HLF has been extremely positive. It is about prioritising the bids to the fund that come forward year on year, so that people do not waste resources by bidding against each other, and it is about trying to increase environmental awareness within HLF."

**Forestry funding**

The Scottish Government’s Forestry Grant Scheme funding comes from the SRDP 2014-20. It aims to make available £267m from 2014-2020, with the intention of helping to achieve targets for new woodland creation as well as other goals of the Scottish Forestry Strategy including enhancement of biodiversity.

The total budget for the Forestry Grant Scheme is subject to the normal Scottish Government Budget process. The Government intends that it will remain open beyond 2020, continuing broadly in its current form until 2024.
regarding access to the Scheme include the length of time taken for applications to be processed, which can be up to two years, and uncertainty created by frequent changes to grant schemes.

Investment in woodland creation is also affected by grants available for other land uses. The key competing land use is farming, for which funding is available through the SRDP as well as through CAP direct payments.

**Implications of Brexit**

The Scottish Government have stressed the role of EU funding for the environment in addition to the central role the EU has had in shaping environmental law:

> “EU funding plays a crucial role in delivering Scotland’s environment and climate change ambitions, supporting the sustainable management of our land and seas, providing investment for renewable energy and other low-carbon industries and promoting innovation through research and development.”

The Scottish Government set out seven priorities for the environment and climate change in the EU-UK negotiations, one of which is “Maintaining funding for environmental outcomes at least at current EU levels” post EU-Exit.

More information on EU funding in Scotland can be found in this SPICe briefing. EU funding for activities with biodiversity aims in Scotland includes:

- **Common Agricultural Policy** (CAP) – in particular, Pillar 1 greening payments and Pillar 2 funds such as the Agri-Environment Climate Scheme. See this SPICe blog and EC factsheet for information on funding levels.
- **European Maritime Fisheries Fund** (EMFF) – parts of which support sustainable fishing and aquaculture. Approximately £96m in 2014-2020.
- **LIFE** – a competitive fund which supports environmental, nature conservation and climate projects, and includes a Natural Capital Financing Facility. Approximately £9 million in the 2014-2020 period.
- **Structural funds** – focused on economic development but can support sustainable development projects.
- **European Territorial Cooperation funding** – funding for wide range of cross-border projects which can include climate and environmental objectives.

Funding for biodiversity may be affected by EU Exit in a number of ways, including:

- Decisions about the amount and distribution across the UK of funding mechanisms for environmental programmes that seek to replace lost EU funding
- Continued availability and distribution of existing public environment funding
- Impacts of EU Exit on other sources of funding e.g. availability of private funding due to wider economic changes, or impacts of uncertainties on the ability of NGOs to commit funding to long-term projects.
If the Withdrawal Agreement is ratified, access to all EU funds will be maintained until the end of 2020 (i.e. during the transition period). No commitment has yet been made to replace CAP or EMFF funding in the long term. The UK Government intends to replace structure funds with a UK-wide alternative and negotiate for UK participation in the successor Horizon programme.

In a ‘no-deal’ scenario, the UK Government has guaranteed funding for farm support until 2022 - although is precisely meant by “farm support” is unclear i.e. whether Pillar 2 schemes are included. EMFF and Structural funding has been guaranteed until 2020 as well as continued funding for successful bids into competitive funds.

The Scottish Government has called for an amendment to the UK Agriculture Bill to ensure that after exiting the EU, at least the current levels of EU-funded CAP support are maintained. They have stated that whilst the UK Government has given a number of assurances, “these do not go as far as guaranteeing the full replacement of all lost EU rural funding” and this should have a statutory underpinning.

The development of Common Frameworks is also relevant to what options are being considered to manage distribution of public funding for the environment under (legislative or non-legislative) frameworks across the four administrations. For example, there may be areas where Scotland currently access a disproportionally higher level of funding to the rest of the UK (e.g. Horizon 2020), and this will not necessarily be reflected in a common framework.

The UK Government has also committed to using resources repatriated during the Brexit process to create a new fund called the UK Shared Prosperity Fund. In evidence to the Committee on the 4th December 2018, the Scottish Government suggested that this could be a mechanism for the distribution of environment funding replacing lost EU funds, but that at the moment this was unclear:

“[T]he UK Government has flagged up a shared prosperity fund, and I think that a lot of this is meant to be brought under that umbrella. However, despite reassurances that devolved administrations would be involved in the development of that fund, that has not happened thus far. We really do not yet know what that all means, what the calculations will be and what the fund will cover, but, as I indicated at the start of my response, there needs to be a recognition that Scotland punches well above its weight when it comes to accessing funding. It is not just about getting a share of that fund; the question is whether we will continue to get the share that we have been managing to get up to now.”

A recent report by the Joseph Rowntree Foundation recommended that the Fund should be devolved to Scotland and other devolved administrations – although the report did not mention environment funding.

Could the UK continue to receive EU funding after Brexit?

Whilst the majority of EU funding (CAP and structural funds) is only available to Member States, some competitive funding programmes are open to participation by non-Member States. For example, Horizon 2020 includes 16 non-Member States which have “associate country” status and are able to participate. Participation in
future funding programmes would require the UK to observe all the regulations governing each programme.

The UK has stated that it may wish to continue to participate in some of the EU programmes that are open to non-Member States after 2020. The Political Declaration on the future relationship sets out a number of programmes where there is a joint desire for UK future participation including Horizon Europe (the proposed €100 billion research programme that will succeed Horizon 2020). The Declaration recognises that this will involve a “fair and appropriate financial contribution”.

Maximising benefits of biodiversity funding and innovative funding models

The next sections summarise some implementation and funding models that have been suggested as ways of increasing or more effectively using biodiversity funding.

Targeting agricultural support - including ‘public money for public goods’

The SRDP delivers Pillar 2 of the CAP and is one of the main sources of biodiversity funding in Scotland. The report by the Scottish Government’s ‘Agricultural Champions’ highlighted opportunities for agricultural support to deliver more benefits and to be better integrated with other land-use policy:

“There is the need for a multi objective set of land use and management policies. The present system is fragmented because of different policy imperatives acting in silo fashion, for example on forestry expansion and timber supply, on renewable energy installations, on biodiversity protection, on protecting wildland, on flood management and on agricultural support.”

“Ongoing support payments must be conditional over time upon recipients accepting and embracing schemes and initiatives designed to enhance production efficiency or education/skills training, or public value or natural capital benefits including biodiversity.”

NFUS considers that Brexit provides an opportunity to evaluate agricultural funding:

“[L]eaving the European Union presents the first opportunity in over 40 years to overhaul and rebalance Scottish agricultural policy and NFUS has recently published its proposals for a new, funded Scottish agricultural policy which it would wish to see implemented in Scotland through a transition away from the current CAP system and to a new Scottish agricultural policy which has a strong focus on support for productivity and environmental benefits, and a baseline of financial stability.”

The UK Government has consulted on transition to a system in England which pays farmers for public goods such as wildlife enhancement or flood risk management. A number of environmental NGOs have expressed support for the model of ‘public money for public goods’ as a component or the basis of agricultural funding.
Natural capital models and private investment

Natural Capital can be defined as the stocks of natural assets which include geology, soil, air, water and all living things. The Scottish Forum on Natural Capital was established to enable businesses and policy makers to make informed decisions about their impact on the environment, assess financial and other benefits they obtain from natural capital and take actions to protect it.

The Forum organised a 2017 high-level roundtable of public sector organisations to discuss opportunities to promote natural capital. Several opportunities identified have clear potential linkages to biodiversity funding such as:

- Describing what the Scottish Budget will do for natural capital;
- Designing post-CAP support for farming for public value;
- Incorporating natural capital in City Deals (see more below);
- Engaging local authorities with evidence on cost-effectiveness of natural capital in delivering services;
- Helping the Scottish Funding Council to identify contributions to natural capital.

Regarding opportunities for more private investment in biodiversity projects, the RSPB stated in their report ‘Bridging the Finance Gap’, that there is increasing demand from investors for “impact investing” opportunities i.e. investing for both financial returns and social and environmental impact. They highlight flood defence and the enhancement of natural capital e.g. peatlands, woodlands and wetlands as areas with opportunities to “crowd-in” private investment.

Key barriers to implementing this model however include difficulties in quantifying natural capital and converting it into monetary value. For example, it would not be straightforward to assess the financial benefits or beneficiaries of large-scale wetland restoration. The report notes however that “novel service delivery models and business models, which deal with systemic, complex goods and services, already exist in other sectors”.

Existing models for encouraging private investment in the environment in the UK include the Woodland Carbon Code (administered by the Forestry Commission) and the Peatland Code (administered by the IUCN UK Peatland Programme). They provide certification standards to encourage private funding for woodland creation and peatland restoration respectively. The dominant metric used to quantify performance is carbon, but standards aim to ensure biodiversity benefits.

City Region Deals – potential to incorporate sustainability goals?

City Region Deals have been suggested as ways of improving sustainable development in cities including biodiversity. City Deals are bespoke financial and strategic agreements between the UK Government, Scottish Government and local authorities designed to bring about long-term regional economic improvement. Each deal comprises a programme of interventions that can span housing, transport, green infrastructure, digital connectivity, innovation and culture.
Current deals include Glasgow City, Aberdeen City, Inverness and Highland City Region, Stirling and Clackmannanshire City Region, Edinburgh and South-East Scotland City Region and the Tay Cities Region. The Scottish Government is working with the three Ayrshire Councils and the Borderlands (Scottish Borders, Dumfries & Galloway, Carlisle City, Northumberland and Cumbria) on their deal.

As part of the development of the Stirling City Region Deal, Stirling City Council worked with the Scottish Forum on Natural Capital to commission an assessment of the potential financial returns of green infrastructure projects. These were the City Park proposal to create a major new outdoor space, and the River Project which plans to improve river access including a wildlife sanctuary.

This report was intended to contribute to the discussion relating to a planned £600 million Stirling City Deal, before the final decision of £90 million was awarded.

The authors of the report noted with regard to using natural capital approaches:

“Incorporating the costs and benefits of natural capital into economic appraisal is now feasible and may secure higher returns on investment… It is hoped that this will lead to more joined up and sustainable decision-making.”

The Scottish Forum for Natural Capital stated that City Deals are a major opportunity to look at investment through a new lens, bringing greater social, environmental and economic benefits.

RSPB Scotland has stated however that whilst City Region Deals present opportunities, opportunities are not being taken up:

“We have seen no evidence of City Deal grants being directed towards low carbon, climate resilient or green infrastructure projects or resulting in net gains for biodiversity, apart from in Stirling where we have had considerable involvement with one of the proposed projects.”

They recommended that the objectives of City Region Deals should be revised to encourage delivery of biodiversity and climate obligations, including green infrastructure, and better alignment of Deals with national and local policy.

Environmental taxes and levies

Environmental taxes and levies are designed to encourage businesses or consumers to use resources efficiently or discourage damaging practices. Revenue can also be ring-fenced to support positive environmental measures or ‘offset’ damage done by the activity being taxed, in keeping with the polluter pays principle.

There are a small number of examples in Scotland which include:

- The Scottish Landfill Tax (SLfT) replaced the UK Landfill Tax (LfT) in 2015 after it was devolved, and supports the Scottish Landfill Communities Fund for environmental, community and built heritage projects in the vicinity of the landfill. The Landfill Communities Fund (the predecessor to the Scottish fund) also funded environmental projects such as the Scottish Beaver Trial.
The Single Use Carrier Bags Charge (Scotland) Regulations 2014 introduced a minimum levy that suppliers must charge for single-use carrier bags. Zero Waste Scotland operate Scotland’s Carrier Bag Commitment, a voluntary agreement that asks retailers to report sales and donate levy income to good causes.

Whilst such models can generate significant revenue, one element to consider regarding using environmental taxes and levies as a funding mechanism is their sustainability – they are designed to change behaviour, therefore funding should, if the tax has the desired effect, decrease over time. For example, Scottish Landfill Communities funding is reducing as standards of recycling increase.

The National Ecological Network

The National Ecological Network (NEN) has been highlighted as a model that could help to target biodiversity funding effectively. Scotland’s 2020 Biodiversity Route Map sets out plans to “develop a national ecological network to enable characterisation of the nature of Scotland, and to help with the identification of priority areas for action...”

Scottish Environment LINK have recommended that the NEN should:

“...provide a spatial element that defines clear Regional Spatial Priorities for Ecological Restoration Action, which will help target funding and habitat creation action and inform decision making and planning.”

With regard to progress with establishing a NEN, SNH stated in evidence to the Committee on 19 June 2018:

“SNH has been asked by the Scottish Government to lead on that and...we have been working with the Government and a number of the NGOs to consider how that might be played out.

We are looking at an approach that seeks to enable opportunities to improve biodiversity and connectivity and which considers the role of the existing network of protected areas, such as our Natura sites...We plan to do some more work on testing and to come back to the Scottish Government soon with further proposals.

Other models or delivery mechanisms

Other funding models or delivery mechanisms that have been raised by stakeholders as potential ways of increasing or better targeting biodiversity funding include:

- **Improving targeting of funding through better biodiversity data**

Stakeholders have raised that a robust biodiversity evidence-base is required in order to effectively target biodiversity funding. For example, distribution and condition of Priority Marine Features was described by RSPB Scotland as a key knowledge gap, and it is argued that this information is needed to target action to support achievement of Scotland’s obligations on the marine environment.
- **Partnerships and collaborative working**

SNH state in their [2017 interim report on the Aichi targets](#) with regard to financial resources, efficiencies could be derived from more collaborative working.

- **Linkages to land reform**

NGOs have suggested linkages could be made between the land reform agenda and delivering more ‘public goods’ from land including biodiversity. For example, community and other new landowners could be encouraged, potentially as a condition of public funding, to include biodiversity aims in management plans.

- **Scottish National Investment Bank**

The Scottish Government are planning to establish a Scottish National Investment Bank. An [Implementation Plan](#) was published in February 2018, which identified possible ‘transformative missions’ for the Bank including transitioning to a low carbon economy, which will inform early development. [Scottish Environment LINK have suggested](#) that two further missions should be added: transitioning to a circular economy, and responding to declines in biodiversity.

**Linkages to current wider policy environment**

*Post-2020 biodiversity strategy*

The Scottish Government stated in its [2018/19 Programme for Government](#) that it is committed to helping shape the new post-2020 international biodiversity targets, and has asked SNH to help lead and co-ordinate this thinking. This includes a commitment to “ensuring that there is a sound evidence base on which to base future action and to help develop our strategic response to the new targets.”

*Environment strategy*

The Scottish Government has committed to developing an environment strategy, and published a [Discussion Paper](#) in June 2018. [Scottish Environment LINK responded](#) saying that the strategy should:

- Define future goals and aspirations, including measurable targets and indicators;
- Provide a science-based overview of the state of Scotland’s environment;
- Identify priority actions and provide timeframe for delivery of set actions;
- Set out a clear governance framework for the delivery of actions; and
- **Identify clear funding streams** for taking forward those actions.

It should be noted that the [Cabinet Secretary has informed](#) the Committee that the environment strategy may be delayed for a short period as in the run up to March 2019, the Scottish Government’s focus is moving to EU Exit readiness planning.
RSPB Scotland is grateful for this opportunity to submit evidence to the ECCLR Committee on the vital issue of Biodiversity Funding and Implementation.

We are also signatory to the Scottish Environment LINK written submission on this topic. Our evidence below expands on and compliments that LINK evidence, adding in some specific RSPB Scotland perspectives.

The current funding context, outlook and impacts: key funding pressures and challenges faced by stakeholders that deliver environmental outcomes (especially biodiversity targets), covering:

- What those challenges mean in real terms for what can be delivered on the ground?

The outcome of the last Interim Assessment of Scotland’s progress against Aichi targets – that we are on track to meet just 7 out of 20 of these, largely ‘means’-focused targets (as opposed to biological targets) - indicates that insufficient action and resource is devoted to biodiversity conservation currently in Scotland. We are not alone in this. Biodiversity continues to decline at global and national levels. However, the ‘moving away from target’ score for biodiversity funding in Scotland must be a cause for concern and a call to action for all involved.

Though understanding of biodiversity trends is not perfect, losses are evident in Scotland among a significant proportion of those taxa that are monitored sufficiently well to reveal trends in detail - for example our internationally important seabird populations1. Historical trends - though often necessarily derived from less systematic sources – point to huge wildlife losses from, and degradation of some key habitats such as native woodlands, farmland habitats and coastal grasslands.

Against this context of historic and, in some key aspects, ongoing losses of Scottish biodiversity, current and future pressures on that biodiversity are known to be intensifying2 – for example, climate change and invasive non-native species are key drivers of biodiversity loss and their impacts are expected to increase in future, both as independent drivers, and also operating synergistically to detriment of biodiversity3.

Though conservation is beginning to work at landscape scales - with backing from the Scottish Government and SNH in some key areas, for example for the peatlands conservation effort – there remains a step-change required to halt and reverse the

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overall trends in biodiversity, and secure the national heritage, ecosystem services and natural capital that future generations will need.

In RSPB Scotland’s view, achieving this step-change remains a principal challenge for Scottish society. In terms of immediate funding challenges, the adequate channelling of land management payments to benefit biodiversity; the size and trend in the SNH budget; the directions of support for gathering data and knowledge needed for an effective biodiversity evidence-base; and the broader environmental funding landscape, all need to be extended, re-focused and increased. The reality is however that all these sources of core environmental investment face intense challenges.

Current concerns include the lack of funding from trusts, foundations and lottery sources for environment projects in Scotland: over the four years from 2012-2016, these were 20 times less in Scotland than in England and Wales.

This lack of resource for environmental work would be heavily compounded by impacts of EU exit on biodiversity funding and land management support (below). Most significantly, however, it follows on from a series of significant reductions in the core SNH budget, and of other NDPB funding for biodiversity, over recent years. This falling budget has led to a series of associated impacts on what in our view should be considered basic minimum action for national biodiversity:

- **Protected Areas:** We have clear indications from SNH that Site Condition Monitoring will be discontinued in March 2019 and replaced with a different monitoring model – and that a key driver for that is the lack of resources to carry out current monitoring commitments. SNH have been unable to complete assessments for all the allocated features in the current cycle due to resource constraints.

- **National Nature Reserves:** Low levels of funding and staffing for the management of NNRs, particularly for management to benefit biodiversity: alternative funding options are being actively considered by SNH and FCS. This resource issue is beginning to translate into ecological problems. For example, invasive non-native species control and management on NNRs is being directly impacted by staff cuts at time of writing, risking potentially severe impacts on our most important wildlife sites.

- **Casework:** SNH now primarily engage on damaging casework where an impact of national significance is likely. Regionally or locally significant impacts now lack scrutiny, with local planning authorities determining outcomes themselves without SNH advice. In practice, no comment from SNH is often taken as an indication that a development is automatically benign for biodiversity. Falling staff resources are the driver of this trend.

- **Project Co-funding:** Despite some very welcome and significant progress on co-funding for some key individual projects – notably the Orkney Native Wildlife Project - there are instances where project planning and development work on shared priorities, often led by NGOs, has failed due to budget restrictions on agencies and NDPBs and lack of ability to co-finance against external funding.

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4 [https://www.greenfunders.org/where-the-green-grants-went-scotland/](https://www.greenfunders.org/where-the-green-grants-went-scotland/)
A key element of this trend has been restrictions on NDPBs' abilities to commit to co-finance for more than 1 year at a time – this impacted bid development for a LIFE/HLF Atlantic Woodland proposal in 2016. We have also seen the withdrawal of proposals for a Uist Hedgehog LIFE project, and an inability at SNH to co-fund a phase 2 of the successful LIFE Machair project. The latter has resulted in greylag goose schemes protecting HNV crop systems on the Ulsts being under-resourced, putting additional stresses on crofting systems that are critical for biodiversity.

- Priority Marine Features: distribution and condition within and beyond Scotland's MPA Network remains a key knowledge gap with little imminent prospect of resources to fill it. This information is essential for the achievement of Scotland's obligations on the protection and recovery of the marine environment and to realise public goods via Scotland's vision of 'clean, healthy, safe, productive and diverse seas; managed to meet the long-term needs of nature and people'.

**Impacts of EU exit?**

This remains at time of writing an area of considerable uncertainty: Brexit-related challenges regarding funding, resourcing and delivery for biodiversity are multiple and potentially severe.

In broad terms, RSPB Scotland and other NGOs see four principal risks inherent in an exit of Scotland from the EU:

- Loss of or weakening of existing EU legislation and environmental principles
- Loss of EU governance mechanisms
- Loss of key fora for best practice exchange and joint action
- Loss of and/or changes to EU funding and access to EU-wide projects

Regarding the latter of these (as the core topic of this evidence): one of the key potential impacts of Brexit on Scottish biodiversity in this regard would be changes to our system of land management support payments.

This is the single most important mechanism for funding management of the terrestrial environment for biodiversity and wider benefits. Payments under initiatives such as current Forestry Grant and Agri-environment Schemes should, in our view, be a key manifestation of the public purse delivering public benefits in the form of environmental maintenance and enhancement. We feel the proportion of spend does not currently reflect the importance of this role and schemes are not in our view adequately funded and targeted in that regard - as evidenced by biodiversity losses. Agri-environment funding stands at around 14% of the overall budget for rural support. How, and to what timescale Brexit-related changes are likely to become manifest is not clear. We have concerns, given multiple uncertainties, imperatives and issues around EU exit, that biodiversity may fall further 'between stools'. We note with concern, for example, the lack of any explicit commitment in the recent draft Scottish Forestry Strategy to increase the extent of our unique, heavily reduced and fragmented native woodlands, in proportion with the overall woodland expansion target. That omission points to potential for more losses of key Scottish biodiversity in future.
In terms of direct EU payments for biodiversity conservation, the potential loss of LIFE funding for Scotland is a key concern. This fund was created to support EU Member States in implementing the Birds and Habitats Directives, which are acknowledged – particularly following the recent REFIT regulatory fitness check – as comprising among the most effective biodiversity conservation policies anywhere. A key focus is on maintaining and enhancing the condition of the Natura network of protected areas. The combination of national networks of sites, designated for their biodiversity importance as determined by objective scientific monitoring and analysis, with Member States under legal obligation to maintain those sites in favourable status for the designated wildlife features, coupled with a grant scheme designed to help and support delivery against those obligations, has delivered huge biodiversity benefits. Analysis and unprecedented scrutiny during the REFIT ‘Fitness Check’ process confirmed that, where properly implemented, this system works. Scotland has benefitted significantly: since the LIFE Nature fund’s inception, it has funded over 25 LIFE projects benefitting Scotland, bringing in well over £25 million for conservation delivery - 21% of the UK total. And this money, freed and augmented additional funds from elsewhere, notably from SNH. Among the beneficiaries are Atlantic salmon; the freshwater pearl mussel; the corncrake; the Flow Country peatlands; Caledonian pinewoods; upland invertebrates; the red squirrel; machair grasslands; seabirds on Canna and the Shiants; the Celtic rainforest; the harbour porpoise; and the hen harrier. The prospect that this funding source may be lost or reduced, especially when coupled with the potential impacts of EU exit on enforcement rigour and governance/scrutiny roles currently overseen by EU institutions, is a major concern among conservationists.

- Consideration of issues for different types and levels of participant?

RSPB Scotland, and other Scottish environmental NGOs, considers one of our most important roles to be a delivery partner for biodiversity outcomes that contribute and, in many instances, underpin national performance against shared and agreed targets. We do this as, for example, as owners and/or managers of key wildlife sites as nature reserves; constructing, participating in and delivering ground-breaking landscape-scale conservation partnerships; effectively targeting conservation action on priority species and as the source, via citizen science initiatives of much of our biodiversity data.

The recent and apparently ongoing cuts to NDPB budgets outlined above, and resultant impacts on the SNH Grants Programme and the abandoning of explicit Area Framework Agreements between NGOs and SNH, focused on delivery of shared priorities, threaten to undermine progress in this regard.

We are similarly concerned at the apparent side-lining of NGOs from key structures and strategic development of the biodiversity process in Scotland. Whereas, previously, the Scottish Biodiversity Committee was Chaired by the Cabinet Secretary and included representation from environmental NGOs, Scottish Environment LINK

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7. [https://www.innerforthlandscape.co.uk/](https://www.innerforthlandscape.co.uk/)
9. [https://www.bto.org/volunteer-surveys/bbs](https://www.bto.org/volunteer-surveys/bbs)
and other non-government representatives (including CoSLA, NFUS etc), the final arbiter of biodiversity strategy and delivery in Scotland is now the Economy and Environment Leaders Group of the Scottish Government. There is no direct representation or involvement from NGOs in this group, which comprises almost entirely unelected representatives from the ‘Government family’. This arrangement risks undermining the crucial ‘delivery partner’ NGO role outlined above. To agree shared outcomes and priorities in the very complex and diverse arena of environmental matters, a shared spirit of partnership should in our view pervade the relevant structures as far as is possible. This will become materially important in future as key external funders of biodiversity conservation, for example the Heritage Lottery Fund, explicitly seek shared and agreed priorities across the environment sector, with government and NGOs in clear partnership when bidding for major project funding.

The benefits of the former partnership approach are evident in Scotland’s Biodiversity Route Map to 2020. This series of shared cross-sectoral ‘big step’ projects, whilst unlikely to be delivered in its entirety before 2020, has served to secure both external funding and some real biological outcomes from a Biodiversity process that had, previously, been failing with regard to meaningful delivery for biodiversity. The Route Map was a significant step forward. We believe a key ambition now should be building on that step to develop a more ambitious, more widely shared, agreed, rational and evidence-based list of projects and programmes, to be developed leading up to, and delivered beyond 2020, in collaboration and discussion with the major external funders. The ‘arms-length’ biodiversity structure now in place does not, in our view, facilitate that ambition.

**Funding models and strategy.** What work the Government and stakeholders doing in this area:

- **What new models for resourcing environmental policies are being discussed or trialled? Are we using all of the ‘tools in the box’ in Scotland?**

Given the evident success - when properly implemented - of the combination and coordination of EU wildlife legislation and EU funding schemes (above), we see an imperative in replicating these effectively in future, in the context of potential changes in the legislation itself, governance, structures and information sharing.

Environmental policies need to be themselves strong and effective, and they need to be backed by financial resource. They must also, moreover, be resourced with data, knowledge and understanding, to provide the essential ‘evidence-base’ for effective action.

We see significant shortcomings and gaps in the aligning and resourcing of biodiversity science, monitoring and data-sharing emerging now and potentially into the future. The newly published Terrestrial Breeding Bird Indicator\(^\text{10}\) highlights both the importance of a strong evidence base, and the issues that might arise in future. Long-term biodiversity monitoring schemes contribute critical information to indicators such as this. These are under threat, however, from incremental budget cuts and lack of long-term support. We have joined NGO calls for the adoption of additional national

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biodiversity indicators, to better reflect trends in a representative array of key wildlife populations. Seabirds should in our view be a core part of this. The ongoing struggle to find sufficient funds to conduct the long overdue decadal national seabird census, alongside a lack of funding to bolster and maintain coverage and standards of the ongoing annual Seabird Monitoring Programme - and the inability of NDPBs to fill the resource gaps faced - demonstrates that we risk falling behind in our understanding of and evidence-base even for one of our most threatened and internationally significant wildlife groups.

Moreover, in addition to basic monitoring shortcomings, we have multiple indications that the capacity in Scotland for scientific research to underpin and solve problems in Scottish biodiversity conservation and is dwindling. A reduction in the number of biodiversity science posts at the Government research providers; no funding in sight for continuing the programme of Countryside Surveys; loss of biodiversity/ecologist posts in local authorities; cuts in funding to CEH; the progressive decline in statutory funding for the SCARABBS national bird survey programme all contribute to a prospect of inadequate biodiversity evidence specific to Scotland. We recommend that if possible the Committee scrutinises, and/or encourages careful government consideration of, the 24 recommendations in the recently published SBIF (Scottish Biodiversity Information Forum) Review (Sept 2016 – Nov 2018), as a key part of and framework for the solution to Scotland’s long-term biodiversity information requirements. Commitment from the Scottish Government to supporting delivery against these recommendations would in our view constitute a key logical next step, and a clear signal of intent regarding biodiversity conservation post 2020.

- How can funding be most effectively applied/prioritised?

To secure effective biodiversity conservation, a system of protected areas is both essential and, on its own, insufficient. The integration of approaches and practices that benefit biodiversity into wider land management is perhaps the key area where progress to date has been insufficient for our national biodiversity resource. If we are to be more effective and efficient at biodiversity conservation, this integration is a principal challenge that we must meet.

RSPB Scotland has been active alongside other members of Scottish Environment LINK and SNH colleagues, in developing a shared vision for the National Ecological Network (NEN), as mandated in Scotland’s third National Planning Framework and Scotland’s Biodiversity-a Route Map to 2020. The NEN is a strategy to protect and build ecological resilience throughout Scotland, and once in place it will provide habitat connectivity, species diversity and ecosystem services. The NEN would help protect and restore Scotland’s biodiversity, so that it continues to provide the life support systems we all depend on, particularly in terms of our health, wellbeing and economic prosperity. It could do this by providing an overriding, holistic policy approach that integrates the enhancement and protection of nature into policies,

12 https://nbn.org.uk/about-us/where-we-are/in-scotland/the-sbif-review/
Proposals, funding streams and land management practices across sectors, to deliver multiple public benefits. It is an approach that can ensure policy cohesion and a spatial expression to environmental outcomes. It is explicitly not a mechanism for designating land or protected areas. Rather, it would have a well-managed and robust network of protected areas at its core, but would then extend and integrate their positive influence across landscapes through better integration of policies and approaches. It would have cross-cutting themes and objectives, delivering key policy priorities in climate change, land use and national planning, by being embedded across Scotland’s Land Use Strategy, Marine Plan, Scotland’s Biodiversity Route Map, and the National Planning Framework. The introduction of the Scottish Environment Strategy will be an important opportunity to advance the NEN.

- **What should the role of Scottish Government and SNH be?**

Our view on Scottish Government and SNH roles is integral to the answers given above. In that context, we would value the leadership role of government and SNH in biodiversity becoming more focused on convening and supporting partnership, both formal and informal, mediating issues and debates, sharing views and best practice, and improving inclusivity. That inclusivity should, as said above, bring NGO voices into strategic planning for biodiversity in Scotland post-2020.

We have recently been part of helpful discussions between Scottish Environment LINK members and senior SNH staff in this regard. Statements earlier this year from SNH, that NGOs will not have that strategic engagement with biodiversity unless they ‘agree the evidence base’, have now been tempered with increasing mutual understanding of respective roles, the complexity of that evidence, and differing approaches to and interpretations of it. Following the recent COP of the Convention on Biological Diversity in Egypt, and resulting clarity on international directions and perspectives on biodiversity from 2020, we look forward to a closer partnership approach to strategy in Scotland. The recent ‘refreshing’ of the Biodiversity Coordination Group is a positive sign.

As we outline above, however, we would see value in a re-evaluation of the EEL Group’s current role as the ‘top table’ for biodiversity in Scotland, considering the potential for including more and stronger non-government representation at that level.

- **Role of local authorities and models such as City Deals?**

Local authorities have a statutory role under the **Biodiversity Duty** to advance biodiversity conservation when undertaking their wider activities and responsibilities. The potential public/environmental benefits that could derive from that duty are very considerable – in terms of planning and development, integration of biodiversity considerations into the management of public land, and on improving the contact people have with the natural environment. Though there are case studies of progressive biodiversity action from Scottish local authorities, including via local biodiversity officers, we believe more progress needs to be made in terms of embedding the duty across Local Authority activities. We welcomed the recent post-legislative review of the biodiversity duty, and await next steps from Scottish Government and SNH to enhance the duty’s impact.
We urge that City Deals should, in line with above points, direct investment towards building sustainable local economies that actively further biodiversity in cities and the community and health benefits derived from it. Environment, biodiversity and climate change ambitions should be better reflected City Deal plans. Our shared LINK vision for the National Ecological Network offers a potential framework to rationalise and realise that integration.

- Are we looking to other countries for examples of good practice?

Many organisations and individuals active in biodiversity-related matters in Scotland are looking to other countries for precedents, good practice, ideas and vision for Scotland’s future. For example, South-west Norway is much discussed as a climatically similar area where habitat, forestry, agriculture and wildlife management are all done very differently to here, with overall apparently very positive results for biodiversity.

However, this ‘outward look’ is currently ad hoc and piecemeal. There may be scope for a more structured gathering of best practice from overseas, including urban greening and local government engagement with environmental enhancement alongside wider land use and marine policy.

**Linkages to current policy environment and international context:**

- Impacts of EU exit and stakeholder analysis?

As outlined under ‘EU Exit’ above, the prospect of Brexit generates significant environmental risks, specifically regarding:

- Loss of or weakening of existing EU legislation and environmental principles
- Loss of EU governance mechanisms
- Loss of key fora for best practice exchange and joint action
- Loss of and/or changes to EU funding and access to EU-wide projects

**Loss of EU legislation and principles:** Much of Scots law on the environment derives from EU legislation. There is overwhelming evidence that those laws, when well implemented at the national level, have created multiple benefits. The examples of the Nature Directives (above) underscore the demonstrable effectiveness of that legislation, together with associated structures and funding, in conserving biodiversity. In addition to that benefit, the REFIT process estimated a financial equivalent benefit from the Directives of 200-300 billion euros per year, significantly exceeding identified costs\(^{16}\). A similar exercise at the UK level concluded the same\(^ {17}\). Scotland hosts a larger area of Natura sites than other UK countries. Other, more recent EU legislation remains necessarily untested but offers significant promise for biodiversity gains. For example, the EU Invasive Alien Species (IAS) Regulation, introduced in 2015, brings strong, new measures restricting the keeping, sale and movement of a list of high risk species, with pathway action planning for key routes of establishment and invasion, and puts in place structures to facilitate effective cross-border cooperation and

\( ^{16} \)http://ec.europa.eu/environment/nature/legislation/fitness_check/docs/study_evaluation_support_fittess_check_nature_directives.pdf

\( ^{17} \)http://www.parliament.scot/S4_ChamberDesk/WA20160126.pdf
information sharing, including a Scientific Forum accessing top expertise from across the European Union. Scotland has advanced INNS (=IAS) legislation compared to other UK countries, but the IAS Regulation significantly enhances domestic arrangements in the face of an intensifying environmental issue. EU legislation also formally reflects important EU Environmental Principles such as the principle of preventative action, and the polluter pays principle. How and whether these principles are brought to bear is likely to be significant regarding INNS and other environmental issues in Scotland. Some of these are rapidly intensifying at time of writing - such as non-native conifer trees seeding from commercial plantations onto important wildlife habitats.

The process of preparing the UK countries for EU exit is highly complex and currently active. RSPB Scotland shares concerns among LINK members about the future of EU laws and transposition gaps. The future status of retained EU law will be determined by the Statutory Instruments (SIs and SSIs) aiming to ensure they are incorporated in domestic law post-Brexit day, as well as in future governance mechanisms. In this highly active arena we have concerns that provisions may be weakened and, specifically, that application of EU environmental principles may be weakened.

**Loss of EU governance mechanisms and key fora for best practice exchange and joint action:** EU bodies perform multiple functions across current environmental policy, from scientific underpinning, monitoring and reporting, sharing of information and intelligence, ensuring equitable implementation of EU legislation and disseminating best practice and funding – as well as, when necessary enforcement. EU exit risks losing these key functions. RSPB Scotland is ready alongside LINK partners to engage in strategic discussions on how they might be effectively replaced, and look forward to the promised Scottish Government consultation on principles and governance. While noting that we will need to replicate EU governance mechanisms, we should note that that, even while still within the EU, there are some governance matters (e.g. full compliance with the Aarhus Convention) that require attention – these could be ‘fixed’ and part of the EU exit process.

**Loss of EU funds and access to EU-wide projects:**

See above

- Preparedness for exit and short and longer-term priorities?

See above

- Where and how should funding feature in current debates on environmental governance, the Scottish Government-proposed environment strategy, NGO calls for a new Scottish Environment Act?

See above

- Implications of approaching 2020 – UN Convention on Biodiversity COP and potentially updated targets (Aichi targets)?
See above

- Linkages to wider land reform agenda – do we need new approaches to resourcing environmental outcomes to complement land reform ambitions? Do current funding models include the full range of potential ‘providers’ of environmental outcomes? Are groups being excluded?

A key message from RSPB Scotland is that resourcing for biodiversity in Scotland is currently inadequate. We also accept that public finances are also highly extended, however, are we willing and prepared to engage in discussion and exploration of new mechanisms whereby the necessary resources can be accessed and secured.

We believe that key linkages to the land reform agenda should embody the notion of biodiversity as a ‘public good’, for this and future generations – its provision, conservation and enhancement being framed as a necessity rather than a luxury. In terms of resourcing, the delivery of that public good should be a natural aim and purpose of public spending. Community and other ‘new’ landowners should be encouraged, as a condition of the public money received to acquire and manage their land holdings, to include biodiversity conservation and enhancement as a key part of their sustainable management plans. Advice on this should be available from SNH and the environmental NGOs. Where such land falls within or adjacent to landscape-scale partnerships the ‘new’ land managers should be similarly encouraged to join in partnership with the public/NGO partnerships.

Regarding future funding models and providers, which we recognise are likely to be key in future, all individuals, organisations and industries that derive benefits, in the widest sense, from our land and water environments have roles to play as biodiversity providers and supporters. On resourcing, we believe the most appropriate and helpful manifestation of the Natural Capital agenda is in engaging industry and commercial organisations in biodiversity conservation, and would look forward to further development in that direction. We would also be extremely interested in further exploration of new direct funding mechanisms for biodiversity including local revenue from, for example, modest, novel tourism taxation.
ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE

BIODIVERSITY FUNDING AND IMPLEMENTATION

SUBMISSION FROM SCOTTISH LAND & ESTATES

SUMMARY


Supporting stakeholders to engage in activities that help realise Scotland’s Biodiversity targets is a worthwhile endeavour. Challenges exist in ensuring funding longevity and encouraging the uptake of schemes. Leaving the EU presents opportunities for better scheme design and increased local community and stakeholder engagement in the issue of increasing biodiversity. For targets to be realised a sense of ownership needs to be created in wider society, not just rural stakeholders. Whilst the goal of biodiversity targets must be fixed at a national level the routes to achieving them need flexibility at local levels.

INTRODUCTION

Scottish Land & Estates (SLE) is a member organisation that represents the interests of both land managers and land-based businesses in rural Scotland. SLE has members with interests in a variety of land uses and welcomes the opportunity to provide evidence on biodiversity funding and implementation. Farmers and Land managers play a vital role in improving biodiversity, securing natural resources and helping meet the challenges of climate change.

1. THE CURRENT FUNDING CONTEXT, OUTLOOK AND IMPACTS

Key pressures faced by stakeholders are; funding uncertainty, contradictory schemes, complex applications, and limited availability of data to show positive impact. Scottish Government’s Agriculture Champions recommended stewardship of the countryside be a key part of future policy. SLE supports this and believes a bottom up approach is most appropriate. Land managers need to be engaged with and supported to identify conservation goals. To ensure 'buy-in' to any scheme we need to ensure they understand the reasons behind any prescribed activity and identify simple result measures that indicate the target outcomes are achieved – encouraging stewardship. This is important for those actions contained within the Scottish Biodiversity Strategy which depend on the third sector.

Impacts of EU exit?

Brexit brings both challenges and opportunities. Opportunities for new thinking and developing innovative approaches and ideas which will lead Scotland forward in
sustainable rural growth. Scotland has the opportunity to design and set its own land use and agricultural policies that suit the domestic context in the UK and in Scotland. To date support has been funded under the Common Agricultural Policy, typically via Agri-environment schemes and Less Favoured Area Support. Following the transition period in 2024 when these payments disappear, consideration needs to be given to how these assets ‘public goods’ can be maintained. The majority of legislation will be retained under EU (Withdrawal) Act or Continuity Bill. Due to shared natural heritage concerns (e.g. migratory species) leaving existing legislation could cause conflict and the EU may demand that the UK retains regulatory alignment. Any updates to the EU laws will not automatically be taken into domestic law, so a mechanism will be needed to review the changes and implement them where appropriate. The lack of oversight from the EU may also result in compliance issues.

Monitoring and data quality will need to be maintained on leaving the EU to ensure direct comparison to previous information and international data. On leaving the EU, the current capacity to quality check and analyse data will be lost unless an agreement is made. There is concern that there will be a loss of expertise and access to comparative information should an agreement not be met, impacting reporting standards.

Issues for different types and levels of participant?

Funding eligibility varies by scheme, limiting which groups can apply for funding slows the realisation of biodiversity targets. Support is often for small, single party projects as large projects are overburdened with bureaucracy which reduces uptake. Schemes also often lack awareness of regional differences. Current funding models exclude several potential ‘providers’ like communities, crofters and tenants. Biodiversity targets would be best achieved by including all potential providers.

2. FUNDING MODELS AND STRATEGY

A large amount of work has been done to appraise previous schemes both in Scotland and the rest of UK and Europe. It is important that the lessons learnt in these are considered when future schemes are designed. New models being discussed in Scotland include an updated version of LEADER programme more tailored to national and local priorities of Scotland. Expansion of capital support through sources such as publicly-funded loans. EU LIFE payments due to be made post March 2019 will possibly be made by Scottish Government.

How can funding be most effectively applied/prioritised?

Scotland should not only be thinking about how biodiversity actions can be funded but also how they can best be targeted and achieved. A robust evidence base is required to ensure that outcomes sought can be achieved through the changes being implemented. A gap in terms of research expertise is identified when it comes to biodiversity, ecosystem health and services. Appropriate levels of funding are essential to encourage uptake of schemes, but ahead of this we need to be clear on the focus and purpose of payment and how we intend to achieve the desired outcome.
What should the role of Scottish Government and SNH be?

As a general point, we urge that consideration to achieving biodiversity outcomes looks beyond working in silos. Collective actions and partnerships need to be encouraged and offer good governance mechanisms. To fully realise Scotland’s ambition to halting and reversing biodiversity loss it will be necessary to improve existing measures and/or introduce other ways of encouraging management which safeguards and promotes biodiversity. In addition to policy instruments such as regulation, evaluation, facilitation and subsidies, other mechanisms such as private and community initiatives which also influence biodiversity will need to be considered.

Scottish Government needs to ensure that regulators are able to take a more constructive and flexible approach to the implementation of environmental schemes. Flexibility within schemes ensures the right management actions are undertaken in the right area, recognising that different management might be required across different parts of land at different times. Wildlife knows no boundaries and it is essential that future schemes seek to encourage farmers and land managers to work together at a landscape approach. It is unlikely that biodiversity conservation goals will be met by solely protecting particular habitats or species or designating certain areas for management. A landscape scale approach is essential, many biodiversity concerns in Scotland such as declines in upland birds require action from multiple land managers to provide the range habitats needed. An approach demonstrated by the recently formed Working for Waders initiative.

Experience shows that biodiversity needs to be integrated and mainstreamed into policy across different sectors. Clear linkages need to be made with Scotland’s national strategies which are key delivery tools in achieving target outcomes. The Land Use Strategy (and regional land use partnerships) required by the Climate Change (Scotland) Act also provide an opportunity to pursue policy integration and to focus more explicitly on the complementarities and conflicts, the trade-offs and priorities and objectives, organisational capacities and assessment procedures.

There needs to be a policy which incentivises farmers and land managers to ensure they can continue to fulfil the important roles they play. It should be recognised that land managers need long-term support, advice and guidance. The wealth of historic knowledge on their land and the landscape in which they work should be utilised for a more common sense approach to scheme design. Giving stakeholders a voice early in the design and piloting of schemes would ensure they are accessible and achievable, this will increase final scheme uptake and subsequent impact.

In addition, there needs to be an advice service or services that give landowners and land managers help in developing and implementing new approaches to land management. Helping them understand the importance of biodiversity to their businesses and society is also necessary – there needs to be a clear link between payment and result which will help focus land managers on owning and understanding the results and management actions, rather than simply following a set of prescriptions.

Specialist knowledge and support for the duration of a scheme are essential for ensuring that the right management is being undertaken from application through to complete implementation. Organisations such as the Farming and Wildlife Advisory
Group (FWAG) have been instrumental in bridging the gap between different government organisations and land managers providing practical specialist advice on how to manage land with a view to improving biodiversity.

**Role of local authorities and models such as City Deals?**

The national ambition of biodiversity targets can only be realised with coordinated local action. Every area of Scotland will be able to deliver slightly different targets which on the whole would achieve a national target. Local authority must consult with their stakeholders to ensure a joined-up approach to target realisation. A flexible approach at local level will make national targets more achievable.

**Examples in other countries.**

Payments for ecosystem services and biodiversity are not new, both long standing projects and newer pilots exist and can offer a wealth of knowledge and data for designing a suitable scheme. Some examples include:

- Costa Rica - Payments for ecosystem services
- Republic of Ireland - Hen Harrier Project
- England - North Yorkshire Moors Project for Countryside Stewardship Scheme

Rural Development Programmes (RDPs) are in place in the 28 EU member states too. Further afield, the New Zealand Government offers various national funding options for different environmental initiatives, such as Nature Heritage Fund that provides incentive for ecosystem conservation on private land, helping meet the cost of protecting areas of high ecological value.

**3. LINKAGES TO CURRENT POLICY AND INTERNATIONAL CONTEXT**

Scottish Environment LINK, a coalition of Scotland’s leading environmental charities are spearheading the Fight for Scotland’s Nature campaign for a new Scottish Environment Act, stressing the need to continue to align Scotland’s environmental legislation with the internationally recognised EU principles. It presses the need for improved support and funding, with clear environmental targets to mitigate climate change and ensure robust ecosystems and sustainable use of natural resources.

As highlighted in the ‘Scotland’s Biodiversity A Route Map to 2020 Second Annual Progress Report - 2016/17’ good progress has been made towards 2020 has been made. While overall delivery progress of the Route Map is summarised as being good, it is also recognised that this on its own is not enough to meet the Scottish Government ambitions set out in the Scottish Biodiversity Strategy. In addition, the international Aichi targets highlight that Scotland needs to address the underlying causes of biodiversity loss by mainstreaming biodiversity across government and society.
The current funding context, outlook and impacts:

- The decline in SNH funding has a knock-on effect to Scottish Wildlife Trust activity with total unrestricted funding falling from £450k in 2004/5 to £200k in 2017/18 and is expected to fall further in coming years.

- The Scottish Wildlife Trust applies the principle of full cost recovery when fundraising – aiming to reflect the true cost of environmental projects in its budget projections. However, many funders are unwilling to fund core costs (even though they are vital to project delivery); as such, the Trust almost always has to apply unrestricted funding to lever in grant awards. Such unrestricted funding (as per the SNH-Scottish Trust Wildlife Framework Agreement) is vital to the charities’ operation.

- Notwithstanding full cost recovery, it is extremely rare for funders to be willing to fund 100% of the costs of delivering a project. Furthermore, major funders are becoming increasingly risk averse - often wishing to be the last brick of a funding package – a very difficult proposal for projects requiring multiple funders all applying the same approach. Grant funding from SNH therefore has the potential to lever in substantial external funding.

- As a direct impact, our Reserves Team are especially concerned with a loss of EU-funded long-term volunteers who do significant amounts of the practical conservation work on our land.

- The £2m for the Biodiversity Challenge Fund announced in the Programme for Government was not new money, it simply recycles funds taken from resource cuts made to some environmental NGOs through their framework agreement arrangements with Scottish Natural Heritage. This serves to highlight the lack of new funding for biodiversity in the current fiscal environment. Our wider response to the Programme for Government can be found here.

Funding models and strategy:

- Short-term funding models have not proven to be cost-effective. The Trust would strongly encourage the adoption of longer-term funding frameworks to allow better planning and outcome delivery.

- It’s worth noting that available funding would be higher had this been maintained as a share of government expenditure, rather than in absolute terms. Moreover, this amount has not been maintained in real terms.

- There is evidence that there is a shortage of conservation finance needed to meet biodiversity targets in the UK and globally. The Trust in partnership with

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SEPA are working on a project that has yet to be launched publicly. The Scottish Conservation Finance Project is an ambitious project which aims to create an innovative mix of investment and funding models for different conservation initiatives in order to drive what could ultimately be significant investment in Scottish conservation initiatives. However, it is vitally important that the Scottish Government also steps up investment to ensure we achieve the SDGs in Scotland and create lasting impact.

- It is vital that conservation finance projects bring money that is additional to public funding. There are some public benefits that are more difficult to supply via conservation finance models and public money must be used to provide for these.

- If we’re looking at the Scottish budget strategically, mainstreaming expenditure on maintaining healthy ecosystems and healthy stocks of natural capital should become a priority across the Scottish Government’s entire portfolio and not just within the ECCLR portfolio budget. The Scottish Government experience from mainstreaming climate change issues across government departments through the TIMES model could be applied to natural capital.

- The Trust believes it’s important that land use, environmental, forestry, and other related strategies are better integrated and grounded in the ecosystems approach identified in the Land Use Strategy.

- Public money should be spent on delivering public goods – no public money should be spent without environmental and social conditionalities, including subsidising food production.

- Current state of public finances leads to too much emphasis on fiscal sustainability and not enough of true sustainable development as defined by SDGs.

- Scottish Government should develop science-based policy-making for biodiversity with input from relevant bodies such as SNH and stakeholders, such as ENGOs, land managers etc. Scottish Government should ensure policies include clear targets, measurable actions and provide a clear long-term trajectory. Policies should be supported with adequate funding.

- SNH should support the delivery of biodiversity policies through partners and champion the environment. SNH should be ensuring there is independent advice on environmental policy across portfolios.

- We believe that one innovative way of streamlining and targeting funding for environmental outcomes is through the introduction of a National Ecological Network (NEN), mandated through the third National Planning Framework and Scotland’s Biodiversity-a Route Map to 2020. The NEN is a strategy to protect and build ecological resilience throughout Scotland, and once in place it will provide habitat connectivity, species diversity and ecosystem services. The NEN would help protect and restore Scotland’s nature, so that it continues to provide the life support systems we all depend on, particularly in terms of our health, wellbeing and economic prosperity.
In the Netherlands, the Government rolled out a policy which seeks to minimise fragmentation of habitats; this is similar to Scottish aspirations for an NEN. The multi-year defragmentation programme (Meerjarenprogramma Ontsnippering or MJPO) in the Netherlands was set up to address issues of ecological fragmentation and enhance ecological connectivity. Within the MJPO project, 215 areas of action were identified; the programme has a target of addressing these by 2018. Interventions include measures such as green bridges, wildlife underpasses, eco-culverts, wildlife overpasses at tree crown level and hop-overs.

There is an important role for local authorities, not least in terms of their obligations towards their legal biodiversity duty. However, much progress needs to be made in terms of local authorities embedding this duty across their work. This is why we, with other NGO partners, welcomed the PAPLS post-legislative review of the biodiversity duty and we are eagerly awaiting the next steps Scottish Government and SNH will propose to enhance the duty’s implementation.

In terms of City Deals, we’re concerned that the ambition of City Deals to generate inclusive growth has too narrow a focus and should be looking more to directing investment towards the transition to sustainable and equitable low-carbon economies. Environment, biodiversity and climate change ambitions are often not adequately considered in City Deal plans overall. The natural capital assessment of aspects of the Stirling City Deal is the type of analysis that should be undertaken more widely to ensure City Deals take proper account of the benefits of green infrastructure investment.

The Trust has outlined its approach to sustainable cities in our living Cities policy which stresses:

- Ecological urbanism is an approach to urban planning which puts nature at the centre of the design process in order to create better places and provide solutions to the multiple social, economic and environmental challenges facing the 21st Century city.
- Investment in quality green infrastructure in cities and their hinterlands is a cost effective way of delivering a wide range of social, psychological, economic and environmental outcomes.
- There is an urgent need to use ecological urbanism to build resilience within cities in response to a combination of rapid urbanisation and unpredictable climate change impacts.

Linkages to current policy environment and international context:

- A new Scottish Environment Act is essential to create an accountable legislative framework that embodies the EU environmental principles we already work with, and to help address the governance gap post-EU Exit. An adequately empowered environmental agency must be sufficiently resourced to address the scale and complexity of the multifaceted environmental crisis.

• Most Aichi targets will not be met globally; Scotland will not meet its national targets by 2020. Post-2020 targets, to meet the scale of the crisis, would need to be even more ambitious than the 2020 targets we failed to meet. Implication is clear: Scotland needs to seriously increase its efforts (this was confirmed in the most recent governmental Aichi review). Funding needs to match the level of ambition needed and the scale of the challenges faced to meet existing and future targets, such as any arising from the current COP14 on biodiversity.

• Regional Land Use Frameworks would help identify local priorities for biodiversity, land-use, and environmental public goods such as carbon sequestration. Whole-farm reviews would identify priorities at farm-system level and how these interact with RLUFs, and help ensure genuinely joined-up thinking, e.g. LUS, Environment Strategy, Forestry Strategy.

• Around 80% of environmental laws in Scotland today originate at the EU level. There is overwhelming evidence that those laws, when well implemented at the national level, have created multiple benefits. For example, two of the most fundamental EU Directives, the Birds and Habitats Directives, recently underwent a fitness review at the EU level which concluded that there are the multiple benefits to these Directives, estimated at 200-300 billion euros per year, significantly exceeding identified costs. A similar exercise at the UK level concluded the same.

• For example, the EU LIFE programme is the EU’s dedicated funding stream for the environmental and climate action. EU CAP funds can also be used to better support farmers to deliver environmental outcomes through farming. Pillar 2 funds, while significantly lower compared to Pillar 1, support Agri-Environment, Forestry and other schemes. It is important to note that Scottish Government has not provided any clarity on Pillar 2 payments during the transition period for which they consulted over the summer (Simplicity and Stability Consultation).

• Government has only provided clarification that Agri-Environment-Climate Scheme (AECS), which supports environmentally friendly farming methods, will be open for applications in 2019. AECS and other critical SRDP schemes including woodland grants and advisory services should continue to be funded and effectively rolled forward during any transition period. At the same time, Horizon 2020 funding will be impacted, affecting the evidence basis and knowledge dissemination essential for evidence-based policies and management.

20 http://ec.europa.eu/environment/nature/legislation/fitness_check/docs/study_evaluation_support_fitness_check_nature_directives.pdf
21 It is important to note that at the time of this fitness review, the Scottish Government indicated that it did not wish to see the Directives renegotiated, highlighting that “Scotland provides the largest component of the UK’s contribution to the European Union’s Natura 2000 network” - S4W-29255 - http://www.parliament.scot/S4_ChamberDesk/WA20160126.pdf
Biodiversity funding is important to Scotland’s farmers. With over 70 percent of Scotland’s land mass under agricultural management, farmers and crofters are responsible for the stewardship of many aspects of Scotland’s biodiversity. Biodiversity funding is important in different ways. There is direct funding for the management of protected sites, funding for SNH (which affects the way it can engage with and support farmers), funding for agri-environment schemes (through which farmers access funding to benefit biodiversity) and funding for the management of conflict situations.

The current funding context, outlook and impacts

The current funding allocated to biodiversity conservation is insufficient. This issue is most apparent to NFU Scotland at the moment in relation to managing wildlife conflicts. For example, the funding available to mitigate the impacts of geese on farming is not sufficient to cover the impact. In 2012 during the process of developing the 2014-24 Islay Sustainable Goose Management Strategy, the National Goose Management Review Group and local goose management groups reviewed all of the payment calculations that underpin the payments made under goose management schemes. Since geese can have a large impact on a farmer’s business, these payments are intended to offset the costs associated with supporting populations of protected wintering geese. The review included updated costs for the individual elements of the payment calculation and rationalising the elements paid for in each scheme. The increase in costs of fuel, fertiliser and fodder since the 2008 payment review, along with using a seven-year average (which included years with very high goose counts in 2006/07) to calculate individual farm payments meant the calculated cost of the scheme was approximately £1.5m. This means that the costs associated with accommodating protected geese on Islay alone was calculated at around £1.5m per year. However, the level of funding offered by the Scottish Government for the 2012/13 scheme was £843,000 (and is currently around £900,000).

Clearly, there is a disparity between what we think biodiversity conservation costs and what the government is prepared to pay. Further, the message from the Scottish Government and SNH is that over the longer-term there will be more downward pressure on this budget. NFU Scotland believes that it is important that wildlife conflicts are managed well and that the costs of our societal desire to protect biodiversity should not be borne disproportionately by one part of society.

An additional issue in the area of wildlife conflict is SNH’s budget. SNH have a key role to play in seeking to resolve conflict, such as around geese, sea eagles or beavers, yet its budget is declining, which effectively means that fewer people are trying to cover the same workload. Resolving these issues requires sustained dialogue and engagement with the people and groups involved in these sensitive issues. These processes can therefore be costly in terms of the staff commitment and potentially
additional funding. It would be highly unfortunate if wildlife conflicts were perpetuated rather than resolved because budgets limited SNH’s ability to operate effectively in these areas.

On funding provided to farmers to facilitate positive management for biodiversity, the main mechanism is the Agri-Environment and Climate Scheme within the SRDP. This funding varies annually. The amount committed in recent years is as follows: 2015-£39.3m (543 approved projects); 2016-£55.2m (879 approved projects); 2017-£41.9m (671 approved projects). This work is very welcome and will hopefully deliver a positive outcome for biodiversity. However, if we compare the number of approved projects with the number of applicants under the Basic Payment Scheme (approximately 17,800), it is possible to appreciate the limits in the reach of this activity. This funding stream is competitive with an annual funding round and necessarily involves complicated planning and application processes. This competitive element may be needed to ensure value for money from the public purse, but it also has the effect of limiting the scope and reach of the funding. It is also difficult to achieve a coordinated approach to delivery of biodiversity benefits.

The consequence of insufficient agri-environment funds is that the impact is limited. Some good will no doubt be done, but it is not enough to make a significant widespread difference.

**Funding models and strategy**

Looking to the future, NFU Scotland believes that it is important that the government and SNH recognise the importance of adequately funding wildlife management and the resolution of wildlife conflict.

More broadly, in the context of the UK’s decision to leave the EU, NFU Scotland believes that we have the first opportunity in over 40 years to overhaul and rebalance Scottish agricultural policy. NFU Scotland is seeking a bold Scottish agricultural policy which will make Scottish agriculture productive, innovative and, above all, profitable, whilst delivering a wide range of public benefits, including biodiversity, that are increasingly expected as the co-products of active farming and crofting.

A restructured agricultural support regime presents an opportunity to reward and incentivise positive action for biodiversity in a different way. We envisage a support regime structured around financial stability payments with additional environmental and productivity payments, where the latter can be both non-competitive and competitive. Over time we would envisage an increasing emphasis on the delivery of public goods like biodiversity.

For any new regime to actually deliver benefits, however, it is important that it is designed in such a way that it is attractive to farmers. The characteristics of successful environmental measures include clear, straightforward on-farm implementation and clarity on how actions contribute to objectives. They should be complementary to the agricultural business, voluntary and accessible to all farm types.

Any environmental measures will have to be cost-effective to gain the best value for money from public funds. Part of this will involve the practicality of measures, but it will also rely on adequate resources and realistic payment rates, as getting the best value
for money at the same time as delivering the best possible outcome for biodiversity will require appropriate incentives for farmers and crofters.

New mechanisms for paying for the delivery of public goods are also arguably needed. Current agri-environment payments are based on income foregone and do not always provide sufficient incentive compared to the risk of participation. Payments do not cover the long-term land use change often required to encourage participation. Interpretation and implementation of income foregone must be addressed for future environmental measures. It may be that there is an opportunity to move away from income foregone under some future Scottish agricultural support regime (as we understand the Welsh intend to) but a great deal of work is needed to explore what the future regime in Scotland will look like after 2024 and how it will fit with WTO agricultural agreements.

There is scope for innovation in this area. There may be some opportunities in private funding of the provision of ecosystem services in future, but this is still some way off widespread application. There may be opportunities relating to natural capital accounting tools and ecosystem health indicators for farmers and crofters, but these depend on having sophisticated datasets at the holding level, which tend not to exist at the moment.

This suggests that there is also an associated research and knowledge exchange spend that is vitally important to protecting biodiversity in the long run. Clearly the government funds the research institutes through its research programme and there is important work being undertaken in this area. However, important questions need to be asked about the degree to which that research is focused on providing tangible and rapid progress in delivering real world policy tools that can make a difference to how we protect and enhance biodiversity.

In summary, for the foreseeable future, the government will retain a fundamental role in seeking to support biodiversity conservation and this funding will be delivered through a variety of channels. NFU Scotland has concerns about the current funding levels, especially in relation to wildlife management issues, but sees a potential opportunity to reframe how we support farmers and crofters to deliver environmental outcomes in future.
ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE

BIODIVERSITY

SUBMISSION FROM SEFARI

CURRENT FUNDING CONTEXT, OUTLOOK AND IMPACTS

There is no doubt that Scottish Government funding has played a central role in delivering conservation success stories and action on the CBD Aichi 2020 Targets. In addition, Scottish Government funding for biodiversity research is delivering work of very high quality, with our research expertise being recognised both within Scotland and internationally.

However, funding for biodiversity clearly is declining. Interim reporting against Aichi Target 20 – Financial Resources from All Sources Increased indicates that “total funding figures for most of the Scottish organisations that have some biodiversity remit have also declined in the last 5 years”\(^{22}\) with a decline in spending between 2010/11 and 2015/16 of 24%. We appreciate that reductions in biodiversity funding are within the context of austerity measures and reductions across the board in government expenditure. However, there are important and substantive consequences of these funding reductions for the delivery of biodiversity conservation in Scotland.

Declines in funding, and the need to invest staff time in planning for Brexit, have led to many organisations with remits relevant to delivery of the Aichi Targets in Scotland reducing staff numbers and/or reducing staff capacity.

Direct consequences include:

- Losses of ecological knowledge and expertise from organisations.
- Difficulties in maintaining “good-will” activities such as the Scottish Biodiversity Strategy delivery structures, which are vital for the partnership working needed to deliver the SBS.
- Reduced opportunity for levering additional funding from, for example, the European Union.

We expect that reduced funding has led to a lower level of delivery against the other Aichi 2020 Targets, although this is harder to verify.

There are also indirect consequences: biodiversity conservation and research should not be viewed on their own, and biodiversity is often not an end in itself. Maintaining and restoring biodiversity is fundamental to delivering climate change targets, ensuring we have sustainable production systems (e.g. farming and forestry),

\(^{22}\) SNH Aichi Targets Interim Report 2017 - [https://www.nature.scot/aichi-targets-interim-reports-2016-2017-2018](https://www.nature.scot/aichi-targets-interim-reports-2016-2017-2018)
adding value to Scotland’s natural assets (e.g. tourism), and delivering benefits of human health and well-being to the Scottish people. The Scottish Government Economic Strategy\textsuperscript{23} states that “Protecting and enhancing this stock of natural capital is fundamental to a healthy and resilient economy” and the SBS 2020 Challenge for Scotland’s Biodiversity\textsuperscript{24} states Scotland’s natural assets are “…a massive financial asset to Scotland, valued at between £21.5 billion and £23 billion per year.”

Funding through the Scottish Government’s Strategic Research Programme is delivering knowledge and advice to help a wide range of stakeholders conserve Scotland’s natural assets, and to monitor the success of conservation actions at a range of scales and integrate them with the needs of other sectors. It is fundamental to the development of future sustainable land management systems. However, this source of funding has declined since the start of the current 5-year Programme in 2016, which follows reductions in funding during the preceding SRP in 2011-2016; biodiversity research has had to be reduced and reprioritised as a result, with greater emphasis on synthesis studies as opposed to primary data gathering and work on single species.

At the same time, the availability of alternative research funding streams for biodiversity research (e.g. Contract Research Funds from the Scottish Government and research funding from other sponsored bodies such as SNH) has also declined. Consequently, biodiversity research is not viewed as a reliable source of income by some research organisations and has been a focus of reductions in staff capacity. This has reduced our ability to do long term research, service long term monitoring observation platforms, and provide evidence to support policy and management decision-making.

Long term observation is an area of particular concern. While we are fortunate to have good baseline data and observations for some natural resources that are recognised as being essential to monitor as part of our National Capability (e.g. Met data, geology, soils, land), this is not the case for many key wildlife populations and endangered species at a national level. Often, these are not measured systematically. Frequently there is debate about the validity and usefulness of ad hoc datasets for making policy decision, as recently highlighted during policy discussions concerning deer and mountain hare management. Some of these topics are in the current or recent business of the ECCLR and other Committees of the Scottish Parliament.

Data on long term environmental trends are essential to underpin high level metrics such as the NPF indicator of the Natural Capital Asset Index. Data gathering is frequently based on voluntary and discretionary efforts, and several of the systematic long-term observation platforms at a UK level (for example Countryside Survey and the Environmental Change Network) have seen reductions in effort. Such schemes have been vital in providing high quality data. Their loss might not be readily replaced by the efforts of expert volunteers (i.e. via citizen science)\textsuperscript{25}.

\textsuperscript{23} https://www2.gov.scot/economicstrategy
\textsuperscript{24} https://www2.gov.scot/Resource/0042/00425276.pdf
\textsuperscript{25} Norton (2018) Long-term tracking of biodiversity is more important than ever. https://www.nature.com/articles/d41586-018-04626-y
Indeed, there are widespread concerns that the current monitoring support structures are inadequate and need substantial overhaul and investment. If this investment was made it is estimated that “the tangible economic value of the benefits underpinned by a fully transformed biological recording infrastructure is in the region of £7 billion per annum for Scotland”\(^{26}\). Not only is under-investment limiting our ability to capitalise on our existing resources, problems of inadequate investment in long term observation may become even more critical if we do not consider what is optimal under any potential alternative funding models (see below).

**FUNDING MODELS AND STRATEGIES**

Funding that has potential to deliver biodiversity benefits comes from multiple policy streams – for example, funding for peatland restoration or urban greenspace development, and provisions in the new Planning Bill for an infrastructure levy which expands current Section 75 support. However, it is not clear that these funding models will provide the most effective support for biodiversity; for example, urban greenspace which delivers cultural ecosystem services (as aided by some City Deals) may not be the best space for biodiversity\(^{27}\), although it is also the case that such support may not be available otherwise.

Coordination would bring benefits for biodiversity research. Such an approach was promoted by the Scottish Biodiversity Strategy Science Support Group through its development of an Evidence Delivery Plan\(^{28}\). This advocated identifying priority research areas which mapped onto the aims of the SBS 2020 Route Map, with the aim of helping to coordinate research action for biodiversity. Perhaps as a consequence of limitations of staff capacity this did not gain substantial traction. However, we argue that this type of approach, which coordinates research activity around an agreed list of priority evidence needs, would make the most effective use of available research spend. This could include better integration of research spend from agencies such as SNH and SEPA, with the biodiversity spend under the Scottish Government Strategic Research Programme.

More radical, alternative funding models for biodiversity conservation action have been evaluated by a few studies, for example delivery mechanisms initiated or led by private commercial companies that aim to reduce pressure on natural assets and invest in their protection. In addition, new private equity “Sustainability Trusts” are being created, and there are high profile examples of private investment in upland estates. However, there are challenges which are common across these mechanisms including that of aligning private sector expectations of commercial return on investment with longer-term objectives of restoring ecosystem health\(^{29}\).


\(^{27}\) Irvine & Herrett (2018) Does ecosystem quality matter for cultural ecosystem services? [https://doi.org/10.1016/j.jnc.2018.08.010](https://doi.org/10.1016/j.jnc.2018.08.010)

\(^{28}\) [https://www.nature.scot/scotlands-biodiversity-strategy-evidence-delivery-plan-10-annexe-1](https://www.nature.scot/scotlands-biodiversity-strategy-evidence-delivery-plan-10-annexe-1)

LINKAGES TO CURRENT POLICY ENVIRONMENT AND INTERNATIONAL CONTEXT

A major funding stream with the potential to deliver biodiversity benefits is the **EU Common Agricultural Policy (CAP)**. Following Brexit, there will be an important opportunity to revisit the aims of any equivalent funding post 2020. Some of the current spending is on measures which are aimed at having positive biodiversity benefits. The 2017 reviews of CAP Greening measures\(^{30}\) by the James Hutton Institute indicated:

1. Most CAP Greening measures affect a relatively small part of Scotland’s land area.

2. Despite the application of the majority of CAP Greening measures, lowland areas with intensive agriculture have shown substantial on-going declines in biodiversity.

3. Although having some benefits for biodiversity, CAP Greening measures do not always bring benefits, and may have fewer benefits than equivalent spend through more specific and targeted measures.

There is considerable discussion about **alternative funding models to those of the CAP** including, for example, payments for ecosystem services (PES)/public goods, and payments by results or outcomes (together the focus of the Environment and Land Use Conference, 28-29th November 2018\(^{31}\)). These options also have challenges, including the need for good quality monitoring and an agreed baseline, with the associated effort likely to be greater than for the current payments-based monitoring approach\(^{32}\). Consequently, current problems with support for biodiversity monitoring (as noted above) may be exacerbated by a switch to new funding models without innovation on how to monitor. In addition, benefit would be gained from investing in an **extension service** – underpinned by a sound research base and with a specific focus on conservation – to provide the necessary advice for farmers and land managers, and possibly utilising relatively new mechanisms such as the Rural Innovation Support Scheme.

MOVING FORWARD

In terms of **developing future funding schemes**, and in delivering against our biodiversity commitments overall, there is a need to progress towards a more integrated, cross-sectoral approach, and to move away from activity-based funding to payment for public goods. In the proposals for the next EU CAP this is referred to as a shift from compliance and rules towards results and performance. However, in so doing we should not ignore those species and habitats which might be overlooked.

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\(^{30}\) Matthews et al. (2017) CAP Greening Review  
https://www2.gov.scot/Topics/farmingrural/Agriculture/CAP/CAP2015/Greening/CAP-Greening-Review

\(^{31}\) https://www.sruc.ac.uk/info/120470/land_use_conference

through, for example, a focus on landscape scale schemes and management for public benefits and ecosystem services.

**Developing an integrated approach**, building upon activities such as the Land Use Strategy and Regional Land Use Pilots, offers considerable potential as these are world leading and progressive polices. Such an approach may be complex, and would require even more coordination, but it is a promising opportunity especially given the intention for a five-year transition period from the current CAP payments system. Other prospective opportunities arising from Scottish Government policy include the stated objectives of the draft Scottish Government Forestry Strategy of integrating woodlands with other land uses. This would enable a more coherent and cross-sectoral approach to the delivery of biodiversity.

In moving forward:

- We need appropriate, long term and reliable funding for biodiversity action, research, observation and support structures (such as that detailed, along with the potential economic benefits, in the recent SBIF report with respect to monitoring). This will be critical to delivering any post 2020 targets.
- We advocate an explicit consideration of innovation for Nature and Biodiversity observation and research (‘NatureTech’) equivalent to the support for the agri-tech sector; this could, for example, enable more frequent and wider area observation and monitoring.
- A Centre for Expertise (CoE) for Biodiversity has been mooted previously to ECCLR and by several parties, and we welcome the support of the ECCLR for this concept. Such a centre could help align research resources to guide actions that aid delivery of the Aichi Targets in Scotland.
- A CoE could play a critical role in helping to deliver a cross-sectoral, integrated approach to future land management and ensuring this is not at the expense of some elements of biodiversity.
- A CoE could be central in supporting the development and enhancement of national-level initiatives such as the state of the Natural Capital Asset Index, and development of a National Ecological network (building, for example, on work underway in the current Strategic Research Programme).

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A) The current funding context, outlook and impacts: key funding pressures and challenges faced by stakeholders that deliver environmental outcomes (especially biodiversity targets), covering:

Scottish Environment LINK members are often involved in the delivery of environmental and biodiversity targets particularly with respect to the Scottish Biodiversity Route Map and 2020 Challenge.

- What those challenges mean in real terms for what can be delivered on the ground?

LINK members have shared evidence regarding the challenges of funding decreases in previous calls for evidence and have indicated how this creates challenges\(^{34}\). A further example that illustrates concerns regarding funding mechanisms are Forestry Grant Schemes (FGS). These are not well suited for habitat restoration, or for allowing natural regeneration in the case of woodlands. For example, these grants do not deliver enough for Caledonian Pine Woodland restoration. FGS money need to be more supportive of native woodland creation, woodland restoration, and natural regeneration.

As also mentioned in previous evidence, LINK members have ongoing concerns regarding the requirements attached to SNH grants, particularly where those restrict activity to the Central Belt whereas environmental needs are located in more remote and rural areas. In addition, as also previously specified, grants are now allocated for a period of one year. LINK members consider that having longer funding cycles would be beneficial from an environmental point of view and would provide greater certainty about the available funding for the environment. We understand that this is common practice in other areas, e.g. the NHS. EU grants can also be multiannual depending on the project which has been very beneficial.

In the 2018/19 Programme for Government there is a welcome commitment to a Biodiversity Challenge Fund\(^{35}\), of up to £2 million, to support projects across Scotland focused on creating and improving habitats for key species and, where appropriate, encourage increased access to nature. It is unclear to LINK members how this fund will be run, over what timeframe and with what priorities. Recent Parliamentary


Questions have not been answered in a substantive way by Scottish Government indicating that more information will be provided soon\(^\text{36}\).

- **Impacts of EU exit?**

LINK is not in receipt of EU funds directly; there is however an expectation that the absence of EU funding will impact the ability of environmental charities to deliver biodiversity outcomes on the ground. EU funds have supported a variety of Scottish Government and NDPBs policies and actions that have benefitted the environment and have created opportunities for environmental projects involving a variety of stakeholders, including ENGOs. For example, one such project is EcoCo LIFE which provided funding of £2.3 million for improving ecological coherence within the Central Scotland Green Network. This research will provide useful insights for meeting Scotland’s Biodiversity Route Map “Priority project 10: improving ecological connection”. The project is led by SNH with the support of several civil society organisations, including several LINK members. Another project is the Pearls in Peril LIFE project – which ran from 2012 to 2017 – to save and restore populations in 19 rivers in Scotland, all Special Areas of Conservation. This project too, alongside other EU funded projects, is directly mentioned as delivering towards Scotland’s domestic biodiversity strategy. Through the LIFE programme, Scotland has received around €25.5M over 25 years, this is 21% of the total UK budget. It is important to note that the EU LIFE programme will receive a 60% increase according to European Commission proposals for the next EU budget\(^\text{37}\).

- **Consideration of issues for different types and levels of participant?**

LINK members have worked with SNH to deliver on Scottish biodiversity outcomes. Key issues that members have faced is a) the impact of decreasing budgets, b) requirements attached to SNH grants with respect to local/community engagement which cannot always be met when action is needed in remote areas, and c) lack of multi-annual certainty with respect to some funding arrangements.

**B) Funding models and strategy.** What work the Government and stakeholders doing in this area:

- What new models for resourcing environmental policies are being discussed or trialled? Are we using all of the ‘tools in the box’ in Scotland?

It is important to stress that in terms of the management of protected areas, there is clear evidence that when legislation is well-implemented alongside funding, there are positive environmental results. Tracking results and reporting on progress in an accurate way is critical, as has been previously highlighted in LINK submissions\(^\text{38}\). It

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\(^{38}\) For example, there are significant issues with how the data is reported under the national Site Condition Monitoring indicator for protected areas. Specifically, an increased proportion of ‘unfavourable’ features are re-categorised as ‘unfavourable recovering due to management’ and are therefore summarised as favourable under the indicator, without evidence of actual recovery or
is important to have a clear understanding of the baseline data for the purposes of a monitoring strategy particularly as it appears that site condition monitoring will be discontinued in its current form.

LINK members believe that one innovative way of streamlining and targeting funding for environmental outcomes is through the introduction of a National Ecological Network (NEN), mandated through the third National Planning Framework and Scotland’s Biodiversity-a Route Map to 2020. The NEN is a strategy to protect and build ecological resilience throughout Scotland, and once in place it will provide habitat connectivity, species diversity and ecosystem services. The NEN would help protect and restore Scotland’s nature, so that it continues to provide the life support systems we all depend on, particularly in terms of our health, wellbeing and economic prosperity. It could do this by providing an overriding, holistic policy approach that integrates the enhancement and protection of nature into policies, proposals and funding streams, so that they can deliver multiple public benefits more effectively. It is an approach that can ensure policy cohesion and a spatial expression to environmental outcomes. It is not a mechanism for designating land or protected areas. For the NEN to be a successful strategy it should have cross cutting themes and objectives, delivering key policy priorities in climate change, land use and national planning, by being embedded across Scotland’s Land Use Strategy, Marine Plan, Scotland’s Biodiversity Route Map, and the National Planning Framework. We believe that the introduction of the Scottish Environment Strategy is a good opportunity to take this forward (see responses below).

Another funding stream the outcomes of which can be optimised is agriculture and land use payments. LINK members have long supported that CAP support should be recalibrated to deliver on public goods, including environmental outcomes. Detailed views are presented here and in responses further below. While there is growing support for such an approach from a number of stakeholders, it is unclear whether this is the policy direction which the Scottish Government will support. This is an important issue as these funds have the potential to greatly enhance our environment and rural areas.

LINK recommends adequate investment in the health of Scotland’s seas to 2020 and beyond. Safeguarded, and where necessary increased funding is required to support the monitoring, enforcement and completion of Scotland’s MPA network, and development of Regional Marine Plans to meet national and international commitments to sustainably develop and enhance Scotland’s marine environment. To ensure the long-term benefits Scotland’s seas provide, and the health and stability of Scotland’s maritime industries, sustainable practices need to be underpinned and encouraged with sufficient resources. Governments should take advantage of European Maritime Fisheries Fund (EMFF) while it remains available and when this is no longer the case, should seek innovative ways of funding fisheries management, science and enforcement. Given budgetary constraints, any future funding must be directed strategically to support and incentivise a ‘race to the top’.

• How can funding be most effectively applied/prioritised?

In the first place, it is important that policies do not promote contradictory policy outcomes. This is very often the case, leading to difficulties in implementation as well as use of funding to remedy negative outcomes generated by other policies. For example, as indicated by SNH “there are incentives for activities which conflict with biodiversity leading to its deterioration and sometimes loss”\(^{39}\).

Funding for conservation must be safeguarded and allocated on the basis of environmental need rather than other considerations such as community engagement. We firmly agree that there is a case for engaging with local communities, particularly in terms of supporting less affluent communities. However, such projects are likely to deliver different outcomes in which case there might be a case for separate funding streams. It could also be that other Government departments support projects that are geared more towards community engagement.

The NEN would also provide a useful mechanism for prioritising funding but also ensuring policy consistency and the delivery of multiple benefits, beyond the environmental.

• What should the role of Scottish Government and SNH be?

Scottish Government should develop science-based policy-making for biodiversity with input from relevant bodies such as SNH and stakeholders, such as ENGOs, land managers etc. Scottish Government should ensure policies include clear targets, measurable actions and provide a clear long-term trajectory. Policies should be supported with adequate funding\(^{40}\).

SNH should support the delivery of biodiversity policies through partners and champion the environment. SNH should be ensuring there is independent advice on environmental policy across portfolios.

• Role of local authorities and models such as City Deals?

There is an important role for local authorities, not least in terms of their obligations towards their legal biodiversity duty. However, much progress needs to be made in terms of local authorities embedding this duty across their work. This is why LINK welcomed the PAPLS post-legislative review of the biodiversity duty and we are eagerly awaiting the next steps Scottish Government and SNH will propose to enhance the duty’s implementation.

In terms of City Deals, LINK is concerned that the ambition of City Deals to generate inclusive growth has too narrow a focus and should be looking more to directing investment towards the transition to sustainable and equitable low-carbon economies. Environment, biodiversity and climate change ambitions are not adequately considered in City Deal plans overall. LINK members also note there is a lack of a transparent approach in terms of statutory environmental assessments that City Deals have to adhere to while early engagement in the formulation of those deals is not

\(^{39}\) [https://www.snhpresscentre.com/resources/3lfe0-0uagk-5qmqq-3b8t0-41k91](https://www.snhpresscentre.com/resources/3lfe0-0uagk-5qmqq-3b8t0-41k91)

always possible therefore limiting the opportunity to ‘green’ any plans put in place. LINK members believe that all City Deals should contribute to the implementation of the National Ecological Network.

- Are we looking to other countries for examples of good practice?

LINK members have looked at positive examples from other countries. For example, in the Netherlands, the Government rolled out a policy which seeks to minimise fragmentation of habitats; this is similar to Scottish aspirations for an NEN. The multi-year defragmentation programme (Meerjarenprogramma Ontsnippering or MJPO) in the Netherlands was set up to address issues of ecological fragmentation and enhance ecological connectivity. Within the MJPO project, 215 areas of action were identified; the programme has a target of addressing these by 2018. Interventions include measures such as green bridges, wildlife underpasses, eco-culverts, wildlife overpasses at tree crown level and hop-overs. Already in 2013, 32% of the 215 actions identified were addressed, while 26% had been partially addressed.

C) Linkages to current policy environment and international context:

- Impacts of EU exit and stakeholder analysis?

LINK members have long supported that the prospect of EU exit creates a number of risks from an environmental point of view. This view has been supported by a variety of reports commissioned by think tanks and academics across the UK. Overall, there are four ways in which our environment risks being impacted by EU exit:

1. Loss of existing EU legislation: around 80% of environmental laws in Scotland today originate at the EU level. There is overwhelming evidence that those laws, when well implemented at the national level, have created multiple benefits. For example, two of the most fundamental EU Directives, the Birds and Habitats Directives, recently underwent a fitness review at the EU level which concluded that there are the multiple benefits to these Directives, estimated at 200-300 billion euros per year, significantly exceeding identified costs. A similar exercise at the UK level concluded the same.

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41 Examples of studies:
- “The potential policy and environmental consequences for the UK of a departure from the European Union”, by the Institute for European Environmental Policy, which concluded that: “it is likely that a UK departure from the EU would leave the British environment in a more vulnerable and uncertain position than if the country were to remain as a member of the EU”;
- “UK environmental policy post-Brexit: A risk analysis”, by the academic network Brexit and the Environment, which concluded that while “in general, the Norwegian model poses the least risk to current levels of environmental protection, whereas the chaotic ‘no deal’ model poses the highest risk”, nature protection policies were judged to be especially vulnerable as they are at risk under all Brexit scenarios;


43 It is important to note that at the time of this fitness review, the Scottish Government indicated that it did not wish to see the Directives renegotiated, highlighting that “Scotland provides the largest component of the UK’s contribution to the European Union’s Natura 2000 network” - S4W-29255 - [http://www.parliament.scot/S4_ChamberDesk/WA20160126.pdf](http://www.parliament.scot/S4_ChamberDesk/WA20160126.pdf)
There is therefore a concern among LINK members about the future of EU laws, particularly as the provisions of the EU Withdrawal Act do not provide for the rectification of existing transposition gaps. For a number of EU Directives and other laws which need to be transposed to domestic statute to be operational, we have sometimes failed to bring over provisions in an appropriate way. This has led to transposition gaps which so far have been addressed by having recourse to the original EU Directive. This is unlikely to be the case in the future as our domestic statute book would be determined solely on the basis of retained EU law. What is more, the future status of retained EU law will be determined by the Statutory Instruments (SIs) that will be brought forward to ensure they are part of domestic law post-Brexit day as well as future governance mechanisms.

II. Loss of EU governance mechanisms: EU bodies perform a number of functions across the spectrum of environmental policy, from monitoring and reporting to ensuring implementation of EU law. These functions are at risk with the prospect of Brexit. The risks have been captured in previous LINK position papers as well as the Environment and Climate Change Roundtable report on environmental governance post-Brexit commissioned on behalf of the Cabinet Secretary for Environment, Climate Change and Land Reform.

III. Loss of EU funds and access to EU-wide projects: there are a number of EU funds that can be used to deliver on environmental outcomes. For example, the EU LIFE programme is the EU’s dedicated funding stream for the environmental and climate action. EU CAP funds can also be used to better support farmers to deliver environmental outcomes through farming. Pillar 2 funds, while significantly lower compared to Pillar 1, support Agri-Environment, Forestry and other schemes. It is important to note that Scottish Government has not provided any clarity on Pillar 2 payments during the transition period for which they consulted over the summer (Simplicity and Stability Consultation). Government has only provided clarification that Agri-Environment-Climate Scheme (AECS), which supports environmentally friendly farming methods, will be open for applications in 2019. AECS and other critical SRDP schemes including woodland grants and advisory services should continue to be funded and effectively rolled forward during any transition period.

In the marine environment loss of funding support from the European Maritime Fisheries Fund (EMFF) could have a detrimental effect on supporting the fishing industry toward a more sustainable future. Innovative approaches need to be looked at for supporting transition to a more sustainable future for fishing. Any UK-wide approach to replace the EMFF fund must also ensure that resource follows need and with two thirds of the UK fishing industry, Scotland must be effectively engaged in such an approach.

IV. Loss of key forum for the exchange of best practice, development of innovative regulatory mechanisms and joint action for the environment.

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44 We understand that the Scottish Continuity Bill provides for some different provisions, however, given the ongoing Supreme Court challenge our submission focuses on the provisions of the EU Withdrawal Act.

It is important to note that on many occasions it has been the combination of strong legislation, funding for implementation and clear governance mechanisms to ensure compliance that have led to successful EU environmental outcomes.

- Preparedness for exit and short and longer-term priorities?

Based on the above, LINK members believe that there is urgent need to ensure appropriate statutory instruments are brought forward to ensure that if and when Brexit happens our domestic statute book is in order. We understand that the Environment and Forestry Directorate of Scottish Government and Marine Scotland have been working constructively with DEFRA colleagues and collaborating on SIs as well as developing SSIs.

Work is focusing on priority instruments required under a ‘no deal scenario’ as well as others under the operating assumption of a transition period, in line with the proposed Withdrawal Agreement. Inevitably, given the amount of work that the civil service needs to complete, there will be gaps under a ‘no deal’ scenario, while even with a transition period there would be substantive amounts of secondary legislation to develop and adopt.

However, there are equally critical issues which require attention: with just four months till exit day, there is uncertainty about future environmental governance mechanisms. This pertains not only to the functions of monitoring and reporting, but also the more critical roles played by the European Commission and European Court of Justice. Even with a proposed transition period till end of 2020, should the proposed Withdrawal Agreement be ratified, LINK members believe that there will be a need for legislation to provide solutions to the environmental governance gap. As has been previously stated\(^\text{46}\), LINK members support the creation of an independent and well-resourced body or bodies to ensure the proper implementation of environmental legislation. We note that similar provisions will be required in the Withdrawal Agreement should the Irish backstop protocol be triggered\(^\text{47}\).

In addition, the prospect of EU exit poses a question as to how EU environmental principles will be reflected in Scottish policy and law. The Environment, Climate Change and Land Reform Cabinet Secretary has provided reassurance that it is the Scottish Government’s preferred policy approach to continue to abide by those principles\(^\text{48}\). However, currently EU environmental principles are referenced in EU Treaties which ensures that all EU environmental policy is based on those principles. This allows for addressing gaps in legislation and formulating approaches for future legislation as well as seeking legal action.

We also note that the Roundtable on Environment and Climate Change report on “Environmental Governance in Scotland” provided recommendations to addressing the governance gap. The Scottish Government have yet to react to its


recommendations and publish the much-anticipated public consultation on principles and governance.

- Where and how should funding feature in current debates on environmental governance, the Scottish Government-proposed environment strategy, NGO calls for a new Scottish Environment Act?

Funding is critical to the realisation of environmental ambitions. In terms of addressing the environmental governance gap it important to ensure that functions carried out by EU bodies and transferred to domestic bodies such as SNH and SEPA are accompanied by an increase in funding and resources so that those bodies are able to carry out these new functions. In terms of the roles of the EC and ECJ those would require the set-up of different bodies which would also require additional resources, so they are able to maintain expertise and independence. Similarly, a Scottish Environment Strategy in addition to being binding, set out goals, provide timelines for achieving them and indicators for tracking progress, needs to be adequately funded. As mentioned in LINK’s submission to the Scottish Government consultation, the NEN could be the mechanism enables the realisation of the Strategy as it would also be able to ensure coordination with more specific policy areas. In terms a Scottish Environment Act, this would not require any additional funding for its implementation. This is because LINK members support the introduction of an Act that puts EU environmental principles in domestic law, sets up an independent watchdog to address governance gaps and sets future policy goals in line with an Environment Strategy. Funding implications for these are already captured.

- Implications of approaching 2020 – UN Convention on Biodiversity COP and potentially updated targets (Aichi targets)?

LINK members have expressed concerns over the lack of progress on the 2020 Aichi Targets, where Scotland is on track with only 7 out of 20 targets, according to the SNH report on Scotland’s progress. As the SNH report highlights “unless we increase our efforts the target[s] will not be met by [the] deadline”. More particularly, the target tracking financial resources provided for biodiversity is moving away from targets49. Limiting funding creates additional challenges which will act as barriers towards achieving 2020 targets. More worryingly, the report does not provide any solutions or further actions that Scottish Government or SNH will undertake to ensure that Scotland’s progress improves ahead of 202050.Key to the success of protecting and enhancing biodiversity at sea is the emerging Marine Protected Area network, and wider requirement under the National Marine Plan to ensure anthropogenic activities do not significantly impact the national status of Priority Marine Features (PMFs), which requires sufficiently resourcing compliance capacity at sea, concerns over which have recently been raised with reported incursions of scallop dredgers into some existing protected sites, and effective monitoring of marine life within sites to gauge if protection is working, recovery happening and wider sea use is sustainable. More funding is also needed on gathering baseline data so that SNH can address

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49 SNH has noted a decline in funding over the last 5 years for most Scottish organisation, which have some biodiversity remit.

50 For more details see LINK’s previous submission to ECCLR on progress towards the Aichi targets: http://www.scotlink.org/wp/files/documents/SEL-evidence-to-ECCLR-on-Biodiversity-interim-report-and-Aichi-Targets.pdf
knowledge gaps on the location and status of Scotland's PMFs, such as fan mussel aggregations, spiny lobsters and sea trout, which are often at the pressure 'pinch points' for anthropogenic activities at sea, to further inform marine conservation policy and action.

Looking beyond 2020, LINK members consider that Scottish biodiversity policy should be based on a) well-managed protected areas b) completion of Scotland’s emerging MPA network, and c) the development and roll out of an NEN. There is ongoing work within SNH regarding the role and function of protected areas while there is an agreed joint SNH/LINK statement on a vision for the NEN. LINK members feel that real progress can be made in those areas ahead of 2020 to set Scotland in a positive trajectory in terms of nature recovery. We are hoping that the Scottish Government will commit to the roll-out of an NEN. In terms of developing policies for nature, it will also be important to acknowledge and build upon the interactions with climate change.

- Linkages to wider land reform agenda – do we need new approaches to resourcing environmental outcomes to complement land reform ambitions? Do current funding models include the full range of potential ‘providers’ of environmental outcomes? Are groups being excluded?

It has been a longstanding position from ENGOs across the EU that better environmental outcomes could be achieved by ensuring that support to farming and the land use sector is better provided and targeted. From a domestic point of view, Scotland’s land reform agenda would be better supported by a recalibration of how we support our land use and farming sectors. It is critical to engage all farmers and land managers in this effort. As mentioned above, LINK members support an approach whereby public money is used to deliver public goods. Under such a system, farmers and land managers would be supported by enhanced advisory services, could opt in to different programmes rewarding them for the delivery of public goods, such as environmental goods (e.g. actions to enhance biodiversity, support climate action) and benefit from opportunities to modernise their business as well as work collectively. According to a study jointly commissioned by the RSPB, the National Trust for Scotland and the Wildlife Trusts, the current levels of CAP funding could be effectively recalibrated to deliver towards environmental land management 51.

This submission is supported by the following Scottish Environment LINK Wildlife subgroup members:

- Buglife Scotland
- Bumblebee Conservation Trust
- Froglife Scotland
- Marine Conservation Society Scotland
- RSPB Scotland
- Scottish Wildlife Trust
- Scottish Wild Land Group
- Woodland Trust Scotland

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51 Assessing the costs of Environmental Land Management in the UK,
ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE

BIODIVERSITY

SUBMISSION FROM  Forestry Commission Scotland

Funding for woodland creation and biodiversity post EU exit

Forestry Grants, which are currently provided through the Scotland Rural Development Programme, benefit from 45% EU funding to support woodland creation and work on delivering biodiversity targets. In relation to EU exit the main risk to the delivery of this work is the loss of EU funding. For commitments made by December 2020 this risk has been mitigated by the UK Treasury Guarantee, which has committed to replacing any lost EU funding, including for payments made after 2020.

The proposed approach for the Forestry Grant Scheme (FGS) (as set out in the June 2018 SG consultation on the future of rural funding), which covers most forestry biodiversity projects, is to continue with the existing FGS in its current form until 2024, by which time Scottish Government aims to introduce a new approach to rural funding. This proposal will ensure that there is an established funding mechanism to continue to support forestry and biodiversity projects in the post EU exit period, however future funding levels will be dependent upon Scottish Government’s overall budget settlement.
Introduction

1. This paper details a consent notification sent by the Scottish Government and related correspondence on the REACH (Amendment) (EU Exit) Regulations 2019.

2. The Committee has agreed it will take evidence on the consent notification before it considers the Scottish Government’s request to consent to the UK Government laying the proposed SI. The Committee will take evidence from a panel of stakeholders at this meeting and from the Minister for Rural Affairs and the Natural Environment and Scottish Government officials at its meeting on 18 December. The Committee will then formally consider the notification on 18 December.

Background

3. In anticipation of the UK leaving the EU, changes are required to devolved legislation by way of statutory instruments. Under the European Union (Withdrawal) Act 2018, and where the Scottish Government considers a UK-wide approach to the legislative changes would be appropriate (for example, to avoid duplication of effort, or where only technical or minor amendments are required), the UK Parliament can legislate on behalf of the Scottish Parliament.

4. For each UK statutory instrument which relates to a devolved matter, Scottish Ministers have undertaken to write to the Scottish Parliament setting out its proposed consent in a consent notification.

5. A protocol has been agreed which sets out the shared understanding between the Scottish Government and the Scottish Parliament on the process for obtaining the approval of the Scottish Parliament to the Scottish Ministers’ consent to the UK Parliament legislating on these devolved matters. The protocol states that the Scottish Parliament will normally have 28 days to consider a consent notification.

6. The protocol also categorises UK statutory instruments as category A (minor or technical amendments), category B (more significant policy decisions) or category C (matters which should be subject to the existing joint procedure (an SI laid in both the UK and Scottish Parliaments)).

7. Under the protocol, following its consideration of a consent notification, a committee can—

   • Write to the Scottish Government confirming its agreement with the consent notification; or

   • Report to Parliament and recommend that—

       o it is content for consent to be given for a UK SI to be made in the UK Parliament only.
It is not content with the Scottish Government granting its consent and that the proposals should be made by an SSI; or

It is not content with the Scottish Government granting its consent and that the proposals should be included as a UK SI made under the joint procedure.

Where a different way of dealing with EU withdrawal, or a different policy outcome, is required in Scotland, the Scottish Government will pursue Scottish statutory instruments in the Scottish Parliament.

The REACH (Amendment) (EU Exit) Regulations 2019

The Cabinet Secretary wrote to the Committee on 27 November 2018. The 28-day deadline is 9 January 2019. The Scottish Government has determined this is a category B notification and information about the legislative changes the SI seeks to make are set out in the consent notification. Members will note the notification states the proposed SI is “one of the most substantial pieces of legislation needed to address the consequences of EU exit”. The consent notification is attached in Annexe A for members’ information. This is subject to the affirmative procedure at Westminster.

The EU REACH Regulation creates a single market mechanism to promote the safe production, transport and use of chemicals to manage potential impacts on human health and the environment. The proposed SI aims to build a ‘UK REACH system’ which mirrors as closely as possible the current arrangements under EU REACH.

The Convener wrote to the Cabinet Secretary seeking further information on a number of points in advance of this meeting. The Cabinet Secretary’s response is attached in Annexe B.

Committee consideration

The Committee will hold two evidence sessions to inform its consideration of this consent notification.

At this meeting, the Committee will hear evidence from a panel of stakeholders and, on 18 December, the Committee will hear evidence from the Minister for Rural Affairs and the Natural Environment and Scottish Government officials. The Committee will consider the consent notification after this second evidence session.

Clerks/SPICe/OSSP
Environment, Climate Change and Land Reform Committee
NOTIFICATION TO THE SCOTTISH PARLIAMENT

The REACH (Amendment) (EU Exit) Regulations 2019

1. Name of instrument and summary of proposal:

The REACH (Amendment) (EU Exit) Regulations 2019 will amend existing EU and domestic legislation enabling the UK to continue to regulate substances placed on the market above 1 tonne per annum. The purpose of this regime is to provide a high level of protection for human health and the environment, to facilitate the greatest possible information sharing at all levels within the supply chain and to reduce animal testing. REACH stands for the Registration Evaluation Authorisation and restriction of Chemicals. This instrument aims to build a ‘UK REACH system’ which mirrors as closely as possible the current arrangements under EU REACH.

2. Explanation of law that the proposals amend and summary of the proposals

Controls on the use of chemicals are set out in Council Regulation (EC) 1907/2006, which provides for the registration, evaluation, authorisation and restriction of chemicals (the EU REACH Regulation). The EU REACH Regulation was introduced in 2007 and at the time was described as the most complex piece of legislation in the EU's history. This regulation established the European Chemicals Agency (ECHA) which occupies a central role in the regulation of chemicals across all 28 Member States.

The EU REACH Regulation creates a single market mechanism to promote the safe production, transport and use of chemicals to manage potential impacts on human health and the environment. There is a “no data, no market” rule, with industry responsible for providing the ECHA with data relating to the chemicals they use. Industry is also responsible for managing the risks from their use of chemicals. Decisions made under the EU REACH Regulation include the authorisation of chemicals for particular purposes and limiting or banning the placing on the market or use of specific substances. The REACH (Amendment) (EU Exit) Regulations 2019 are necessary to ensure the UK has an effective system of chemicals regulation after leaving the EU.

Under the new UK REACH regime, the functions of ECHA will be carried out by the Health and Safety Executive (HSE) (which already exercises some functions under the EU REACH Regulation), making use of their existing capacity and experience of carrying out this technical work. The HSE must take advice from the Environment Agency, who in turn must collaborate with and pass on any advice received from the Scottish Environment Protection Agency, when exercising functions involving the consideration of environmental issues. The HSE are also under an obligation to take into account relevant scientific knowledge and advice when forming opinions and recommendations. The devolved administrations may initiate the preparation of a dossier by the HSE for the inclusion of a substance on the lists of substances subject to authorisation or restrictions.
The EU REACH Regulation established a Board of Appeal within ECHA to hear appeals against Agency decisions. The decisions, which may be subject to appeal, include specifying conditions on the manufacturer, importer or producer of a substance for the protection of workers and the environment and other issues. Since 2009, the Board of Appeal within ECHA has issued decisions in 148 appeals emanating from 28 Member States. The instrument does not continue with an appeal body within the UK Agency. Instead, it transfers the role of hearing appeals against the Agency’s decisions to the First Tier Tribunal. The Tribunal has the power to dismiss an appeal, remit the decision back to the Agency for reconsideration, or to substitute its own decision.

Decisions currently taken by the European Commission will be transferred to institutions within the UK. Ministerial powers will transfer to the UK Secretary of State, who will need the consent of the Devolved Administrations to take decisions in areas of devolved competence. These powers include decisions on the restriction of chemicals, adding substances to the authorisation list and granting authorisations, as well as the powers to amend the Annexes of REACH. Devolved Administrations will be able to take urgent provisional action in relation to a substance of concern in their own nation. The urgent action must be followed up through the REACH restriction procedure to assess whether it is appropriate to apply a UK-wide control. Such UK measures will be taken by the Secretary of State acting with the consent of the Devolved Administrations. Within the new UK regime, the Health and Safety Executive will take on a role equivalent to that currently performed by the European Chemicals Agency in the EU regime.

The instrument amends the definition of dutyholders such as manufacturers, importers and downstream users. They are now defined as being established in the United Kingdom rather than established in the Community.

The instrument provides for the automatic transfer of existing REACH registrations held by UK based companies, including UK-based “Only Representatives”, into the REACH regime with no break in their validity. An Only Representative in the EU REACH Regulation is a natural or legal person established within the EU, who is appointed by mutual agreement with a natural legal person established outside of the EU, to fulfil obligations under EU REACH of the non-EU based entity. The effect is that UK registrants and their access to the UK market is legally secure. The automatic transfer of UK registrations is extended to any registration held by UK companies in the two years up to exit. Companies will require to submit basic data to the HSE within 60 days to support the transfer, with the full data package, appropriate to the registrant’s tonnage band, being submitted to the HSE within two years.

UK companies who sourced substances from suppliers in the rest of the EU (known as downstream users) are not under an obligation to register the substance they use under the EU REACH Regulations. However, these UK companies will become importers into the UK market after exit and will be required to register the substance(s) they import. Transitional support is available to these companies through an interim notification system instead of requiring a full registration in the first instance. The interim notification must be converted into a full registration after two years. The EU REACH regime depends on a IT system known as REACH IT. A similar UK IT system is being
built to facilitate the operation of the UK REACH regime, allowing UK companies to upload the data required of them.

The instrument also makes minor and technical changes to ensure the effective operation of the new UK REACH regime post-exit. The EU REACH Regulation cross-refers to a number of other pieces of EU legislation. The instrument amends cross references, which would be deficient post exit. Amounts specified in Euros are to be converted into pound sterling and references to the single market are amended so that the legislation operates by reference to the UK.

The instrument also amends domestic legislation, which implemented the EU REACH Regulations in the UK. The REACH (Appointment of Competent Authorities) Regulations 2007, which are UK-wide regulations that appoint the Competent Authorities for the purposes of the EU REACH regulation for England, Wales and Northern Ireland. The Competent Authority for Scotland is not designated in these domestic regulations as a decision was taken to do so administratively. The proposal is to revoke The REACH (Appointment of Competent Authorities) Regulations 2007. The effect of this, together with the removal of references to the Competent Authority within the new UK REACH regime, is to remove the role of Competent Authority in UK REACH. This is being done on the basis that is not appropriate in a UK-only REACH regime. Retaining the role of the Competent Authority, would create a situation whereby the HSE is asking for advice from itself. In Scotland, the Competent Authority for devolved matters is the Scottish Ministers and the Secretary of State for the Department for the Environment Food and Rural Affairs for reserved matters. HSE are also the UK Member State Competent Authority, a role which will become defunct when the UK is no longer an EU Member State. Those functions of the Competent Authority, which continue to be relevant under new UK REACH regime, have been transferred to the HSE, in their capacity as the UK Chemicals Agency, from the Secretary of State and the Devolved Administrations. Ministers in all of the administrations have always delegated their functions as a Competent Authority to the Health and Safety Executive (HSE) by Agency Agreement. Officials in all administrations have agreed that there should be no reduction in the capability of any devolved administration to act as a result of the Competent Authority role being removed in UK REACH.

The instrument provides levers by which Devolved Administrations can request and access the same information or initiate processes by HSE, as the UK Chemicals Agency, as they could use their Competent Authority title under EU REACH. These levers are likely to be supplemented by a common framework for the regulation of Chemicals and Pesticides in the UK once the UK withdraws from the EU.

The REACH Enforcement Regulations 2008 are UK-wide regulations which created a UK enforcement regime as required by Article 126 of the EU REACH regulation. These regulations set out who is responsible for enforcing EU REACH, their powers of enforcement, and a list of offences along with the penalties for non-compliance. In Scotland, enforcement duties sit with either local authorities, the Scottish Environment Protection Agency (SEPA) or the Health and Safety Executive. The existing enforcing authorities throughout the UK will continue their roles after exit. The instrument establishes new
enforcement duties with regard to the data requirements in the transitional provisions, which are enforceable by the HSE.

3. Why are these changes necessary?

The instruments in question are necessary to correct deficiencies arising from the UK’s withdrawal from the EU and allow the continued and effective function of both domestic and retained EU law.

In the EU, the overall regulation of chemicals is provided for by a range of legislative instruments. The REACH regulation is central to the overall chemicals regulatory regime, and establishes ECHA who provide scientific and technical advice on decisions, such as whether a substance should be subject to specific control measures. It is necessary to ensure that a body is identified within the UK, equipped with the necessary resources and expertise to provide such advice when the UK is no longer an EU Member State.

The legislation is important in order to protect human health and the environment, and to facilitate trade. The majority of chemicals legislation is directly applicable EU law. The domestic legislation, which implements the EU legislation, is UK-wide. After exit the directly applicable EU chemicals regulations will become retained EU law. The current approach to the regulation of chemicals has been a consistent and coherent EU-wide approach. The Scottish Government considers there is a continuing value in maintaining a consistent and coherent approach within the UK following EU Exit. Devolution is respected in the new UK REACH regime. The devolved administrations will be able to initiate processes leading to the authorisation or restriction of chemicals under the new UK REACH regime and will be able to take urgent safeguarding measures in their own territories. The Secretary of State will only be able to exercise functions in devolved areas with the consent of the Devolved Administrations.

4. Scottish Government categorisation of significance of proposals

Category B. We consider that the overall intention of the approach taken by the UK Government in drafting this instrument is to replicate the existing EU regime within the UK and to avoid introducing any substantive policy changes. Instead there has been a clear and consistent desire to ensure that existing mechanisms are adapted in the simplest and most practical form in order to ensure as smooth as possible a continuation of the current chemicals regulatory regime.

Nevertheless, this is one of the most substantial pieces of legislation needed to address the consequences of EU exit.

Impact on devolved area

Chemicals policy engages a complex mixture of reserved and devolved competence. Environmental protection, waste management and public health are devolved while product standards, consumer protection, animal testing and health and safety at work are reserved. Reserved and devolved interests are heavily intertwined in REACH.
Taking the current EU REACH regime as a starting point, there are no significant impacts on devolved competence envisaged as a result of this instrument given its intention in maintaining current arrangements as much as possible. Scottish Ministers are likely to be given greater influence over and sight of decisions taken by HSE on a UK-wide basis.

5. Stakeholder engagement/consultation

We have written to our stakeholders setting out the general approach we are taking to correcting deficiencies in environmental legislation. However, these measures are aimed solely at translating the existing UK regime into a domestic UK context and we have not undertaken any focussed engagement on this basis.

The UK Government are of the view that as this legislation does not produce any significant practical change, formal stakeholder or public consultation is not necessary. However, they have had a consistent programme of informal consultation with stakeholders through existing fora alongside engagements stemming from the decision to exit from the EU. Part of Defra’s ‘operational readiness’ planning has been to build a UK REACH IT system to replace the current EU version used by organisations established in EU Member States, this has included demonstrations and invitations to participate in stress testing of the system as it develops.

A number of the stakeholders in this area are UK- or EU-wide, such as trade bodies, and they have been clear and consistent that they wish to see the regulatory systems of the EU-27 and the UK remain highly aligned post-Brexit.

6. Any other impact assessments

On the basis that this aims to translate existing policy into a domestic context, there is not a requirement to undertake any impact assessment.

7. Summary of reasons for Scottish Ministers proposing to consent to UK Ministers legislating

The existing provisions operate at EU level and the supporting domestic provisions were made at the UK level to reflect overlapping reserved and devolved responsibilities. In light of this, and the UK-wide nature of the proposed regime, it is most effective to make the changes to address deficiencies at UK level. Officials have worked with Defra to ensure the drafting delivers for our interests and respects devolved competence in Scotland, and so Scottish Ministers propose to agree to a UK approach for these deficiencies.

8. Have Scottish Ministers had regard to the guiding principles on animal welfare and the environment?

Yes. The guiding principles on the environment as set out in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union are relevant to these proposals. The existing EU REACH regulation and the domestic legislation relating to it are already in line with these
principles, and it is considered that these amendments are in adherence with these principles.

9. Are there governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

Later this year, Scottish Ministers will consult on the governance gaps that will be created once the UK leaves the EU, with a view to bringing proposals back to the Scottish Parliament on medium and long-term governance arrangements once the future relationship is clear.

We have been engaged in framework discussions with all the administrations of the UK and the relevant regulators specifically looking at the regulation of Chemicals and Pesticides in the UK outside of the EU and its existing regime. These framework discussions are progressing. The Scottish Government’s position is that these arrangements should be based on staying closely aligned with the EU Chemicals regulatory regime and maintaining existing standards of protection for human health and the environment.

10. Intended UK laying date

These instruments are subject to the affirmative procedure and will be laid in Westminster on 9 January. Defra have agreed that no EU Exit SIs will proceed to be made (for negative procedure SIs), or laid in draft (for affirmative SIs), until after they have been through the consent process agreed with the Scottish Parliament.

11. Does the Scottish Parliament have 28 days to scrutinise?

Yes

12. Information about any time dependency associated with the proposal?

It is essential that the Regulations are in force on the day we exit the EU in the event of a no deal scenario to ensure that legislation is operable to allow continued high levels of protection for human health and the environment, continued facilitation of trade and continued supply of chemicals between the UK and the EU.

13. Any significant financial implication?

There are no significant financial implications for the Scottish Government associated with these proposals.

While the regulations provide for the greatest possible continuity of the current regulatory landscape, the new IT UK REACH IT system has estimated building cost of £5.6 million which has been met by the UK Government, and will have ongoing running costs. There is also likely to be increased costs for stakeholders who have to re-register a substance in the UK REACH regime having already met the associated costs in EU REACH.
14. Additional Information to Note

Similar notifications have already been passed to the committee on the intention to consent to Statutory Instruments on Persistent Organic Pollutants (POPs) and Mercury with a further notification being prepared to deal with deficiencies in the Biocidal Products, Classification, Labelling & Packaging and the Prior Informed Consent regulations. All of these regulations exist as a package which form the current EU Chemicals regulatory regime.
LETTER FROM THE CABINET SECRETARY TO THE CONVENER

I am writing in response to your correspondence of 3rd December concerning the REACH (Amendment) (EU Exit) Regulations 2019. Your letter posed a number of questions on a variety of themes. In the time available I have provided high level answers for each theme and I understand that the Minister for Rural Affairs and the Natural Environment, Mairi Guideon MSP will attend the committee on the 18th December which will allow these matters to be explored in more detail if required.

Please see below an annex which provides responses to the questions raised by the Committee.

**Parliamentary procedure and reasons for not using joint procedure—**

1. What parliamentary procedure will the UK SI be subject to?

2. Why did the Scottish Government rule out using the joint procedure for these Regulations given the complex nature of chemicals regulation and intertwining of reserved and devolved interests?

This instrument is subject to the affirmative procedure and the decision was taken to lay a single instrument in the Westminster parliament as this is consistent with previous practice in this area.

**Common framework—**

3. What stage are discussions at on the “common framework” referred to?

Discussions at official level to date have been very constructive and we plan to explore a number of areas in greater detail early in the new year when the relevant legislation has been laid. The work is focused on how the future regulation of Chemicals and Pesticides will be governed and on the practicalities of giving effect to the proposed new framework for Ministerial decision-making.

The Scottish Government hosted the latest discussion in Edinburgh on 21st November and we have agreed that these discussions should alternate around all of the nations of the UK, which reflects the view that there is a ‘marbled’ mixture of devolved and reserved competence at play in the wider Chemicals regulatory regime and no one organisation should lead or dominate these discussions or the regulatory regime.

HSE currently carry out a number of functions in the regulation of Chemicals as a result of agency agreements between them and the various administrations. We anticipate that the framework discussions will lead to updated agency agreements which allow for a greater role for all of the governments, particularly the Devolved Administrations, in the oversight of the UK’s Chemicals regulatory regime. These agency agreements are likely to supplemented by Memoranda of Understanding where Ministers agree on the overall aim and approach to Chemicals regulation.
Timing and readiness—

4. The notification states that there are three further notifications being prepared that will “exist as a package”. Will the committee be able to consider all notifications together ahead of the laying date?

The committee have already received a notification on both Persistent Organic Pollutants and Mercury, as well as this notification on REACH. There is one other SI which we intend to notify the committee of as soon as possible.

Scope of devolved competence—

5. What areas of the proposed SI does the Scottish Government consider to be within devolved competence?

6. Are the devolved competences in the area of chemicals regulation greater than, the same as, or less than the functions held by Scottish Ministers as a Competent Authority? If greater, please describe how.

There is a complex mixture of reserved and devolved competence engaged under both the existing EU REACH and the proposed UK REACH regimes which is impossible to separate without changing the structure of the regime, as the functions can be used in different contexts. The overall ambition is to protect human health and the environment, which is devolved, however the REACH model also engages regulation for the purposes of consumer protection, trading standards and health and safety at work, all of which are reserved.

The Scottish Ministers’ functions under the proposed SI are greater than those held by them as Competent Authority, and we have secured a requirement for the consent of the Scottish Ministers should there be a need for UK wide decisions which interact with devolved competence.

How will ‘consent of the Devolved Administrations’ work?—

The notification states that Ministerial powers will transfer to the UK Secretary of State, who will require the consent of the Devolved Administrations to take decisions in areas of devolved competence.

7. What decisions by the UK Secretary of State/HSE will require the consent of Scottish Ministers? For example, will these include all decisions to evaluate, authorise and restrict chemical substances.

8. Will that consent be a statutory requirement, and if not, how will the Scottish Parliament have the opportunity to scrutinise such decisions? What is the Scottish Government’s position on the role of the Scottish Parliament in decisions to authorise or restrict chemical substances under this SI?

9. Similarly, the notification states that the devolved administrations will be able to take urgent provisional action in relation to a substance of concern in their own nation. How will such decisions be effected? Will the Scottish Parliament have the opportunity to scrutinise the exercise of such powers?
10. Will the Scottish Government or SEPA be a voting member of any management or oversight board for HSE’s chemical regulation functions?

11. Will the Scottish Government or SEPA be a voting member of any technical or regulatory board for HSE’s chemical regulation functions?

The requirement for consent is written into the draft instrument. Decisions currently taken by the European Commission under EU REACH will transfer to the Secretary of State for the Department for the Environment, Food and Rural Affairs (Defra) who will require the consent of the Devolved Administrations before taking any decision which interacts with devolved competence. These include decisions on restrictions, additions to the list of substances subject to authorisation, granting of authorisations, fees structures, and other implementing measures. With the exception of decisions to grant authorisations to individual company applicants, the decisions will be given effect through Statutory Instruments. We intend to be as transparent as possible and recognise that the Scottish Government will be accountable to parliament for any decisions that it makes.

More technical decisions, such as decisions on dossier and substance evaluations, which are currently taken by the European Chemicals Agency will pass to HSE as the UK Agency. As these decisions are not currently subject to the Commission’s consent they will not be subject to consent of Ministers from any administration.

In Scotland, the Scottish Ministers may take urgent action by regulations to restrict a chemical substance using their powers under section 140 of the Environmental Protection Act 1990, as was recently done to ban microbeads in the Environmental Protection (Microbeads) (Scotland) Regulation 2018. Such regulations would be subject to the usual process of scrutiny by the Scottish Parliament.

The specific makeup of the various governance structures that will play a role in the operation of the UK REACH system is the subject of ongoing work as part of the development of a framework agreement.

**Engagement**

12. Which stakeholders has Scottish Government consulted on post EU Exit proposals for the REACH regime?

13. What are the key concerns that have been raised by stakeholders?

The Scottish Government has focused its efforts on understanding and addressing the deficiencies arising from the UK’s withdrawal from the EU, which has prevented any formal stakeholder engagement.

The UK Government has undertaken informal engagement with UK-wide industry bodies as well as regulators and Non-Government Organisations. Our understanding of the key areas of concern include;
1. access to data currently held elsewhere within EU REACH and the timeframes for doing so;
2. duplication and complication for industry having to comply with both UK and EU regulatory regimes simultaneously and;
3. potential lowering of standards of environmental protection caused by falling behind EU REACH.

These are similar to the issues that the Scottish Government has identified in moving from an EU system to a separate UK system and our aim is for the new UK REACH system to mirror the EU regime as closely as possible.

**Appeals—**

14. The notification states that the SI will transfer the role of hearing appeals against HSE decisions to the First Tier Tribunal. Can the Scottish Government confirm:

(a) which Chamber of the First Tier Tribunal will hear these appeals; and

(b) whether the SI extends the jurisdiction of the First Tier Tribunal?

15. Is the Scottish Government satisfied with the proposal that the Regulations will not establish an appeal body?

Appeals against HSE decisions will be heard under the First Tier Tribunal in the General Regulatory Chamber which already has some appeal responsibilities with regard to environmental decisions.

The EU REACH regime contains a Board of Appeal within the ECHA structure. Although the Board of Appeal acts independently in practice, the aim under UK REACH is to reinforce the independence of the appeal process by use of the First Tier Tribunal.

**Regulatory autonomy and capacity of HSE and Scottish agencies—**

16. How will SEPA’s functions change as a result of this SI?

17. How will functions of local authorities change as a result of this SI?

18. Under this proposed SI, will it be possible to make different authorisation or restriction decisions in Scotland compared with other parts of the UK (other than “urgent provisional action”)?

19. Has the Scottish Government considered what additional resources may be required by bodies taking on additional duties (e.g. SEPA, local authorities)?

No practical change is anticipated to the autonomy, capacity or resource requirements of Scottish public bodies under the UK REACH regime.

The position with regards to making different restriction or authorisation decisions is as set out in the notification.
Devolved Administrations can take separate action on a provisional basis to restrict a chemical if they have justifiable grounds for believing that urgent action is essential to protect human health and the environment, this is known as safeguarding. Such action culminates in a decision to be made on whether UK wide action is required. When a decision has been made on a UK wide basis the taker of the provisional measure must revoke the measure.

**Costs for affected companies—**

20. What are the estimated costs to Scottish companies of complying with the additional requirements to provide data to populate a UK database?

We are not aware of UKG having made an estimate of the compliance costs for business of the separate UK regime.

**Impacts on non-UK based companies—**

The notification sets out the proposed process for UK based companies with existing REACH registrations transferring their registrations into a UK system.

21. What are the implications for non-UK based companies (that operate within the REACH system) that have registrations that are relevant to the UK?

22. Will non-UK based companies that currently operate within the REACH system and export chemicals into the UK be able to continue to access the UK market?

23. Is there a process to enable the transfer of existing REACH registrations held by non-UK based companies?

In the event of a no deal scenario requiring a UK REACH regime in place of the existing EU REACH, non-UK based companies wishing to comply with UK REACH will have to register their substance(s) or appoint a UK based Only Representative to fulfill their obligations and there may be a cost attached but this is not possible to estimate with any certainty at this stage. It is not possible for non-UK based companies to transfer existing EU REACH registrations to UK REACH.

**Information-sharing and consumer information—**

24. What will replace the EU arrangements for sharing information about the properties and safe use of chemicals with users and manufacturers in the UK?

25. What will replace RAPEX, the EU rapid alert system for dangerous non-food products?

26. Will the same information be available to Scottish consumers about chemicals in products as under the current system (including in the 2-year transitional period)?
The primary duty on economic operators to understand the hazards and risks of chemicals, and to identify, recommend and apply appropriate risk management measures will remain unchanged and unbroken at exit. The ability to meet this duty, or its enforcement, is not dependent on the submission of registration information to the UK Agency.

The duties to pass information down the supply chain will remain unchanged. The consumer right to request information about the presence of Substances of Very Concern in the products they buy will also remain unchanged from Day one.
Introduction

1. This paper provides detail of a recent consent notification sent by the Scottish Government on the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2018.

2. Information about the process for consideration of consent notifications is set out in paper ECCLR/S5/18/37/2.

The Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2018

3. The Cabinet Secretary wrote to the Committee on 27 November 2018. The 28-day deadline is 9 January 2019. The Scottish Government has determined this is a category B notification and information about the legislative changes the SI seeks to make are set out in the consent notification. The consent notification is attached in Annexe A for members’ information.

4. The proposed regulations deal with retained, directly applicable EU legislation relating to persistent organic pollutants; timber; the European Pollutant Release and Transfer Register; transfrontier shipments of waste; the Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits; mercury; the Convention on the International Trade in Endangered Species; and leghold traps. These are subject to the affirmative procedure at Westminster.

Background

5. In anticipation of the UK leaving the EU, changes are required to devolved legislation by way of statutory instruments. Under the European Union (Withdrawal) Act 2018, and where the Scottish Government considers a UK-wide approach to the legislative changes would be appropriate (for example, to avoid duplication of effort, or where only technical or minor amendments are required), the UK Parliament can legislate on behalf of the Scottish Parliament.

6. For each UK statutory instrument which relates to a devolved matter, Scottish Ministers have undertaken to write to the Scottish Parliament setting out its proposed consent in a consent notification.

7. A protocol has been agreed which sets out the shared understanding between the Scottish Government and the Scottish Parliament on the process for obtaining the approval of the Scottish Parliament to the Scottish Ministers’ consent to the UK Parliament legislating on these devolved matters. The protocol states that the Scottish Parliament will normally have 28 days to consider a consent notification.
8. The protocol also categorises UK statutory instruments as category A (minor or technical amendments), category B (more significant policy decisions) or category C (matters which should be subject to the existing joint procedure (an SI laid in both the UK and Scottish Parliaments)).

9. Under the protocol, following its consideration of a consent notification, a committee can—

- Write to the Scottish Government confirming its agreement with the consent notification; or

- Report to Parliament and recommend that—
  - it is content for consent to be given for a UK SI to be made in the UK Parliament only.
  - It is not content with the Scottish Government granting its consent and that the proposals should be made by an SSI; or
  - It is not content with the Scottish Government granting its consent and that the proposals should be included as a UK SI made under the joint procedure.

10. Where a different way of dealing with EU withdrawal, or a different policy outcome, is required in Scotland, the Scottish Government will pursue Scottish statutory instruments in the Scottish Parliament.

**Committee consideration**

11. The Committee will hear evidence from the Minister for Rural Affairs and the Natural Environment to inform its consideration of this consent notification. The Committee will consider the consent notification following the evidence session.

_Clerks/SPICE/OSSP_  
Environment, Climate Change and Land Reform Committee
NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2018

1. Name of the instrument and summary of proposal

The Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2018 transfers a series of legislative functions that are currently conferred by EU legislation upon the European Commission to various UK administrations. This will ensure those functions can continue to be exercised at national level after the UK leaves the EU.

This instrument brings together a number of provisions relating to various policy areas, which need to be considered under the affirmative procedure at Westminster. The proposals in this notification should be read alongside the notifications already sent to the Scottish Parliament which relate to:

- The Persistent Organic Pollutants (EU EXIT) Regulations 2018
- The Control of Mercury (EU EXIT) Regulations 2018
- The Air Quality (Amendment etc.) (EU Exit) (No. 1) Regulations 2018.
- The Air Quality (Amendments) (EU Exit) (No. 2) Regulations 2018.
- The Nagoya Protocol (Compliance) (EU Exit) Regulations 2018
- The Leghold Traps (Amendment) (EU Exit) Regulations 2018

It should also be considered alongside the correspondence sent in relation to The Trade in Endangered Species of Wild Flora and Fauna (Amendment) (EU Exit) Regulations 2018.

2. Explanation of law that the proposals amend and summary of proposals

The proposed regulations deal with retained, directly applicable EU legislation relating to persistent organic pollutants; timber; the European Pollutant Release and Transfer Register; transfrontier shipments of waste; the Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits; mercury; the Convention on the International Trade in Endangered Species; and leghold traps. The proposed regulations also transfer one legislative function from a Directive, the Industrial Emissions Directive.

Reserved areas

In relation to transfrontier shipment of waste, the proposed regulations in EU Regulation 1013/06 transfer functions from the Commission to the Secretary of State. The transfrontier shipment of waste is wholly reserved as it is concerned with the regulation of the import and export of goods and the regulation of international trade, and it is therefore appropriate that these functions are transferred to the Secretary of State.

The EU Forest Law Enforcement, Governance and Trade regime (FLEGT) is an internationally focused initiative aimed at tackling illegal logging and associated
trade. It involves a series of measures including Regulation (EC) No 2173/2005, which establishes a licensing regime and supports bilateral trade agreements with timber-producing countries (primarily tropical timber producers) like Indonesia, known as Voluntary Partnership Agreements (VPAs). The regime also encompasses, among other measures, Regulation (EU) No 995/2010, which aims to ensure that no illegal timber or timber products can be traded in the EU. These measures are implemented in the UK by the Secretary of State through the Forest Law Enforcement, Governance and Trade Regulations 2012 and the Timber and Timber Products (Placing on the Market) Regulations 2013.

Devolved areas

A summary of the law with identified devolved elements or potential devolved impacts in each area, and the proposed corrections, is provided below.

a. Persistent Organic Pollutants (POPs)

Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants (the POPs Regulation) aims to phase out as soon as possible, or restrict the production, placing on the market and use of POPs; to minimise releases of POPs; and to establish provisions regarding POPs waste. This is the mechanism by which the EU and its Member states have implemented the provisions of the Stockholm Convention on Persistent Organic Pollutants.

The Commission has the power, for the purpose of adapting to scientific and technical progress, to amend POPs waste concentration limits in the Annexes to the POPs Regulation and to amend Annexes to the POPs Regulation to ban/restrict/modify the use of POPs in accordance with international agreements.

The functions which relate to amending waste concentration limits and to amending the Annexes in the POPs Regulation to ban/restrict/modify the use of POPs are transferred to Scottish Ministers. The effect is that retained EU law can be amended to keep pace with international standards as agreed at the Stockholm convention.

b. Mercury

Regulation EU 2017/852 of the European Parliament and of the Council on mercury (the Mercury Regulation) governs the use, storage, trade, manufacture and waste management of Mercury, in various forms, in order to ensure a high level of protection of human health and the environment from anthropogenic emissions and releases of Mercury and its compounds. The Mercury Regulation also enables the EU and its Member States, including the UK, to ratify the Minamata Convention on Mercury.

The Commission has the power to specify forms to be used for export and import restrictions; set out technical requirements for environmentally-sound interim storage of mercury, mercury compounds and mixtures of mercury; authorise new mercury-added products or manufacturing processes; extend the period allowed for temporary storage of mercury waste; and amend Annexes I, II, III and IV to the Mercury Regulation in line with international agreements.
The power in the Mercury Regulation to specify forms to be used for export and import restrictions is transferred to the Secretary of State on the basis that it is reserved. Due to the mix of reserved and devolved responsibilities, the function to amend Annexes 1 and 2 of the Mercury Regulation is transferred to the Secretary of State but can only be exercised with the consent of the Devolved Administrations. The remaining functions (to set out technical requirements for environmentally-sound interim storage of mercury, mercury compounds and mixtures of mercury; authorise new mercury-added products or manufacturing processes; extend the period allowed for temporary storage of mercury waste; and amend Annexes III and IV to the EU Mercury Regulation in line with international agreements) are transferred to Scottish Ministers. In this way, retained EU law can be amended to keep pace with international standards as agreed at the Minimata convention.

c. European Pollutant Release and Transfer Register

Regulation (EC) No 166/2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC (the EPRT Regulation) establishes an integrated pollutant release and transfer register in the form of a publicly accessible electronic database and lays down rules for its functioning, in order to implement a UNECE Protocol, and to facilitate public participation in environmental decision-making.

The Commission has the power to: take measures to initiate reporting on releases of relevant pollutants from diffuse sources, where no data exists; adopt guidelines for the monitoring and reporting of emissions; submit a proposal for a questionnaire for reporting by Member States; and amend technical Annexes to the EPRT Regulation in light of scientific and technical progress or international agreements.

The functions in the EPRT Regulation are transferred to the Secretary of State. However, these functions can only be exercised with the consent of the Devolved Administrations. The consent provision maintains the current system whereby the UK reports information that is provided by SEPA. This avoids the need for an extra administrative exercise by the Scottish Government or SEPA.

SEPA is also responsible for the compilation of the Scottish Pollutant Release Inventory, which Scottish Ministers consider is a more comprehensive dataset than is provided in the EPRTR. A such, the EPRTR information is a subset of that which is already separately available in Scotland and this will continue.

d. Industrial Emissions Directive

The instrument transfers one legislative function from Directive 2010/75/EU on industrial emissions. This relates to setting Best Available Techniques for the sectors covered by the EU integrated pollution prevention and control regime, which form the basis for setting permit conditions for, and limits on emissions from installations.

The legislative function establishes pollution prevention and control requirements for activities listed in Annex I to the Industrial Emissions Directive. Article 13 of
Chapter II of the Directive gives the Commission the power to determine Best Available Techniques (BAT) for these activities, and BAT is then required to be used as the basis for the conditions subject to which these activities are permitted.

The BAT determination function for Scotland is transferred to the Scottish Ministers and, to the extent that the devolved administrations consent, to the Secretary of State for the whole of the UK. The consent provision allows for a simplified process whereby one single UK wide BAT can be produced where there is agreement to do so. However, should Scottish Ministers reach a different decision on what should be used as BAT in Scotland, then they are able to set separate Scottish-only BAT which would be the basis of the permit conditions enforced by SEPA.

e. Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits

Regulation (EU) No 511/2014 establishes rules governing compliance with access and benefit-sharing for genetic resources and traditional knowledge associated with genetic resources, in accordance with the provisions of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (the Nagoya Regulation). The Commission has the power and a duty to establish a register of collections; establish procedures for monitoring user compliance; and establish procedures for recognising best practice.

The functions in the Nagoya Regulation are transferred to the Secretary of State. The Secretary of State is the agreed single competent authority for Nagoya Protocol compliance within the UK and transfer of these functions ensure effective continued operation of the law. In practical terms, the number of transactions falling within the scope of the Protocol is very small (one transaction only in the UK thus far). The legislation is enforced in the UK by the Office for Product Safety and Standards (Safety & Standards).

Should the Protocol become more significant for trade or research in Scotland, Defra and the Scottish Ministers recognise that increased involvement of the Scottish Ministers and the Scottish Parliament in this area of regulation could be called for.

f. Convention on International Trade in Endangered Species (CITES)

Council Regulation (EC) No 338/1997 on the protection of species of wild fauna and flora by regulating trade therein, aims to protect species of wild fauna and flora and to guarantee their conservation by regulating their trade (the CITES Regulation). The following functions are transferred from the Commission to the Secretary of State -

- establish general restrictions, or restrictions relating to certain countries of origin, on the introduction into the EU of species listed in Annex A;
- grant derogations from completion of the checks and presentations of import documents at the border customs office at the point of introduction;
- recommend restrictions on exports of certain species;
set criteria for authorising imports and exports through non-designated customs offices;

establish derogations from certain provisions of the Regulation;

establish restrictions on the holding or movement of live specimens; and

establish time limits for the issuance of permits and certificates.

As the CITES regime is currently governed and implemented on a UK-wide basis, the proposed corrections do not alter policy or the way CITES legislation currently operates in the UK, outside of limiting the scope of the territorial application of the legislation to the United Kingdom.

g. Leghold Traps

Council Regulation (EEC) No 3254/91 prohibits the use of leghold traps in the Community, and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards. The Commission has the power to grant derogations from the ban on the import of pelts and other products listed in Annexes I and II to the Regulation; and to determine the appropriate forms for certification of imported goods incorporating pelts of listed species. These functions in Council Regulation (EEC) No 3254/91 are transferred to the Secretary of State.

EU Commission Regulation (EC) No 35/97 lays down provisions on the certification of pelts and goods covered by Council Regulation (EEC) No 3254/91 on leghold traps. Article 2 provides that the form set out in the Annex to the Regulation must be used. The proposed Regulations also amend Article 2 in EU Commission Regulation (EC) No 35/97 to give the Secretary of State the power to prescribe a different form from that set out in the Annex from time to time.

Scottish Ministers have agreed for the above functions to be transferred to the Secretary of State on the basis that the control of importation of pelts is essentially implemented at UK level.

3. Why are these changes necessary?

These changes are necessary to allow the continuation of the effective functioning of this legislation. In each policy area, legislative functions are transferred to the authority who will exercise that function after EU exit. This is to ensure that the regimes continue to function smoothly, without the need for amendments to the legislation by Parliament every time a change in the technical details is required.

4. Scottish Government categorisation of significance of proposals

Category B. These Regulations are wholly concerned with the transfer of functions which previously rested with EU entities to the relevant authority within the UK.
5. Impact on devolved areas

The policy areas impacted by these Regulations engage a complex mixture of reserved and devolved competence. Our primary objective in working with UKG on these has amendments has been to ensure that, Scottish Ministers can continue to effectively manage these policy areas and that the devolution settlement is respected.

In particular:

- Chemicals policy engages a complex mixture of reserved and devolved competence. Environmental protection, waste management and public health are devolved while product standards, trade and Health and Safety at Work are reserved. Reserved and devolved interests are therefore intertwined in the above provisions, although the Scottish Government takes the view that POPs and Mercury are predominantly concerned with areas of devolved competence.

- As regards leghold traps, the functions being transferred to the Secretary of State relate to the importation of pelts. The Scottish Ministers are content with the proposal to transfer the functions to the Secretary of State. However, it should be noted that the extent of the import/export reservation in section C5 of schedule 5 of the Scotland Act 1998 (including the exceptions to it, which include an animal health and welfare element) has not been precisely ascertained in practice, and is the matter of ongoing discussion between the Scottish Government and the UK Government.

There are a number of areas where the approach to date has been based on a consistent and coherent UK-wide approach and where we see a continuing value in such an approach following EU Exit. In these areas we have agreed a mechanism based on the Secretary of State being able to act for the UK as a whole, but only with the consent of Scottish Ministers.

In relation to the proposed amendments to CITES, as previously advised to the Committee, the import and export of endangered species is reserved by the Scotland Act 1998 (Schedule 5, Part II, section C5). The Scottish Ministers consider that there are devolved elements within the CITES regime, which the proposed Regulations may touch upon.

In the view of Scottish Ministers, the domestic implementation of CITES is a reserved matter only so far as it concerns the prohibition and regulation of the import and export of endangered species. The prohibition and regulation of transactions which do not involve export or import measures are not, in the Scottish Ministers’ view, reserved matters.

The UK Government does not agree with that analysis and considers the whole of CITES to be a reserved matter. However, Scottish Ministers are content with the proposed Regulations on the basis that they properly reflect how responsibility for CITES presently operates in practice as regards Scotland.
6. Stakeholder engagement/consultation

We have written to our stakeholders setting out the general approach we are taking to correcting deficiencies in environmental legislation and we are in regular contact with all our stakeholders regarding the move towards leaving the EU. However, these measures are aimed solely at preserving the functioning of the law as it stands at present and, therefore, we have not undertaken any engagement, or any formal consultation, about these specific amendments.

7. Any other impact assessments?

On the basis that these amendments do not result in any policy changes, no impact assessment has been prepared.

8. Summary of reasons for Scottish Ministers’ proposing to consent to UK Ministers legislation

The provisions were made at the UK level to reflect the mix of reserved and devolved responsibilities and the UK wide approach taken in the subject matter dealt with in the Regulations. Scottish Ministers consider that consenting to the Regulations is the most effective and transparent way to make changes to address deficiencies at the same level. Officials have worked with UKG to ensure the drafting delivers for our interests and respects devolved competence in Scotland, noting that there are some areas where the extent of reserved and devolved competence remains a matter of debate.

9. Do the proposed changes adhere to the environment and animal principles?

Yes. The guiding principles on the environment as set out in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union are relevant to these proposals. The legislation modified by the Regulations is already in line with these principles, and as no policy changes are being introduced, it is considered that these amendments are in adherence with these principles.

10. Are there governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

Later this year, Scottish Ministers will consult on the governance gaps that will be created once the UK leaves the EU, with a view to bringing proposals back to the Scottish Parliament on environmental governance arrangements once the future relationship is clear.

We have been engaged in framework discussions in many of the policy areas covered by this SI with all the administrations of the UK and the relevant regulators. These framework discussions are progressing. The Scottish Government’s position is that these arrangements should be based on staying closely aligned with the existing EU regimes and maintaining existing standards of protection for human health and the environment.
Any particular governance requirements needed in the context of the specific policy areas in this submission have been set out in the notifications for policy specific SIs already sent to the Scottish Parliament and as detailed in section one.

11. Intended UK laying date

8 January 2019

12. Does the Scottish Parliament have 28 days to scrutinise Scottish Ministers’ proposal to consent?

Yes

13. Information about any time dependency associated with the proposal

Industry across the UK are likely to be considering significant investment and improvement decisions on a rolling basis in line with the EU BAT process. These decisions are centred around the extent to which they need to comply with Best Available Techniques determined at the European level. It is therefore vital that decisions are reached and processes put in place in advance of exit day to ensure that industry can continue to forecast and invest and that we have confidence existing environmental standards are met.

14. Any significant financial implications

There are no financial implications associated with the proposals.