



The Scottish Parliament
Pàrlamaid na h-Alba

ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE

AGENDA

12th Meeting, 2020 (Session 5)

Wednesday 3 June 2020

The Committee will meet at 9.00 am in a virtual meeting and be broadcast on www.scottishparliament.tv.

1. **Decision on taking business in private:** The Committee will decide whether to take items 5, 6 and 7 in private.
2. **Impact of Covid-19:** The Committee will take evidence from—

Francesca Osowska, Chief Executive and Accountable Officer, Scottish Natural Heritage;

and then from—

Terry A'Hearn, Chief Executive Officer, SEPA.
3. **Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill:** The Committee will hear from—

Mike Palmer, Deputy Director for Marine Planning and Policy, Michael McLeod, Head of Marine Conservation, and Elaine Tait, Marine Evidence Manager, Scottish Government

on proposed amendments ahead of Stage 3 proceedings on the Bill.
4. **Annual report:** The Committee will consider a draft annual report for the parliamentary year from 12 May 2019 to 11 May 2020.
5. **Impact of Covid-19:** The Committee will consider the evidence heard earlier in the meeting.
6. **Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill:** The Committee will consider the evidence heard earlier in the meeting.

7. **Appointment of Committee adviser:** The Committee will consider a list of candidates for the post of adviser to support the Committee's climate change work.

Lynn Tullis
Clerk to the Environment, Climate Change and Land Reform Committee
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The Scottish Parliament
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The papers for this meeting are as follows—

Agenda item 2

Note by the Clerk ECCLR/S5/20/12/1

Agenda item 3

Note by the Clerk ECCLR/S5/20/12/2

Agenda item 4

Note by the Clerk ECCLR/S5/20/12/3

Agenda item 7

PRIVATE PAPER ECCLR/S5/20/12/4
(P)

Environment, Climate Change and Land Reform Committee

12th Meeting, Wednesday 3 June 2020

COVID-19 Impact on the Environment in Scotland

Introduction

1. The Committee agreed to hear from SNH and SEPA as part of its COVID-19 related scrutiny work, examining the short-term impact of the health crisis on the environment in Scotland and on both agencies as well as the medium-to-long term implications.
2. The Committee will hear from—
 - Francesca Osowska, Chief Executive and Accountable Officer at SNH; and then from
 - Terry A'Hearn, Chief Executive of SEPA.
3. The Committee will explore: the immediate and medium-to-longer-term impacts, priorities and opportunities for change, the engagement of the agencies with stakeholders and industry as part of their COVID-19 response, and their approach to green recovery planning. It will also examine the impact of suspension in regulatory monitoring regimes and concerns about issues arising as a consequence.
4. SPICe have prepared a briefing note that highlights some of the key issues and identifies possible areas to explore (**Annexe A**).

Clerks

Environment, Climate Change and Land Reform Committee

COVID-19 Impact on the Environment in Scotland

Session 1 – SNH

Key suggested themes for SNH:

- Impacts on SNH site-based activities e.g. protected area monitoring;
- Implications for outdoor access and access rights;
- Implications for wildlife crime;
- What key concerns are being raised by industries, NGOs and the public;
- The role of nature and nature-based organisations in green recovery including outdoor-based learning;
- Likely impacts on the organisation, short and longer term, in terms of focus, priorities, structure and delivery.

All SNH public sites, including offices, NNR visitor centres, toilets and overnight car parks are closed and staff are working from home.

Access rights and issues

Scottish Ministers [issued a statement on 09 April 2020](#) on exercising rights of access during the pandemic. The statement highlighted the importance of exercise but asks people to stay local, and “respect the health and safety of farmers and others working on the land” by following reasonable requests and signs to avoid farmyards, fields and other busy working areas. The statement said that “land managers should continue to respect access rights which are very important at this difficult time”.

Wildlife crime

Concerns [have been raised in the media](#) that lack of monitoring of upland sites combined with less public access has created conditions for a “surge” in wildlife crime.

Protected areas/site monitoring and other field work

The [SNH website states that](#) Area staff are currently unable to make site visits which means that field work (planning or otherwise), species survey work, deer counts, bird surveys and involvement of volunteers is currently suspended. Essential Health & Safety checks on National Nature Reserves are possible.

Wildfire risk (and muirburn ban)

On 06 May 2020 [SNH and the Scottish Fire and Rescue Service issued a warning](#) of increased wildfire risk across north Scotland. The warning states that although the muirburn season is closed, fires can start from other causes and land managers and the public should take extra care to avoid wildfires. The Coronavirus (Scotland) Act 2020 (which came into force on 6 April) banned muirburn while the Bill is in force.

Role of the outdoors for socially distanced schooling

Some Scottish Local Authorities have been exploring how outdoor education might provide one solution to new physical distancing requirements, [it has been reported](#).

This idea was also brought up a number of times (e.g. see [here](#)) as part of the Scottish Government's public engagement on the COVID-19 Framework for Decision Making.

Impacts on land management, conservation work and partnerships

Media reports have highlighted challenging times for membership-based conservation organisations (e.g. [National Trust for Scotland](#)), which manage large swathes of land, and often have a role in delivering statutory targets or in partnerships with other public and private actors. There is information about some [emergency funding available for the third sector on the SNH website](#) e.g. emergency National Heritage Lottery Funding.

Broader impacts on land management and nature policy

Significant issues on the nature policy agenda prior to the emergency included preparations for the biodiversity COP, Government responses to the Werritty and deer reviews, and role of nature-based solutions in climate action. NGOs such as the [Scottish Wildlife Trust](#) and [RSPB Scotland](#) have called for nature-based solutions to be key to the green recovery e.g. woodland and peatland investment, urban greening and nature networks.

Session 2 – SEPA

Key suggested themes for SEPA:

- Impacts of the health emergency on SEPA’s regulatory approach – strategically and in relation to key industries, including evidence of environmental impacts and whether remedial action will be needed;
- How long temporary arrangements may need to be in place and whether approaches may be subject to longer term change;
- How recovery packages or future regulatory approaches could support a green recovery and use any lessons learned e.g. on industry resilience;
- What key concerns are being raised by industries, NGOs and the public.
- Likely impacts on the organisation, short and longer term, in terms of focus, priorities, structure and delivery.

SEPA’s [high-level Coronavirus response](#) states that it is “helping regulated businesses adjust” and is prioritising efforts on “regulated sectors most crucial to the functioning of society during this public health emergency”. Field work is focused on issues of highest risk. It has set out [principles that it expects regulated business to follow](#), asking them to prioritise compliance with conditions that directly protect the environment, alert SEPA about non-compliance, and keep a record of choices made. More [detailed information on regulatory positions for different sectors can be found on its website](#).

Regulation of fish farms

SEPA have clarified that an inability to comply with certain regulatory requirements (e.g. on stock limits being held in pens, fallow periods, monitoring requirements, and on the measures for controlling sea lice) due to staff shortages or social distancing, will not be considered as non-compliance for a limited period. SEPA have set out temporary position statements on [aquaculture](#) and on the [use of sea lice medicines](#).

Regulation of milk disposal

[SEPA is temporarily allowing](#) milk uncollected as a result of COVID-19 to be applied to land as part of a slurry mixture. Farmers may not dispose of milk in surface water drainage systems or watercourses. Farmers in Nitrate Vulnerable Zones must apply the fertiliser according to the action programme or farm nutrient management plan. SEPA have set limitations on the rate of application, livestock access to land fertilised with milk, and how often it can be reapplied to the same land parcel.

Industrial sites

SEPA [has suspended its 2020 compliance assessment scheme](#), stating that it is not in a position to carry out the systematic work required. This [has led to concerns raised](#)

[in the media](#) about implications for practices at industrial sites including on activities such as flaring at the ExxonMobil and Shell petrochemical plants in Fife.

Management of radioactive substances

SEPA has published a [temporary regulatory position on management of radioactive substances at nuclear sites](#). It sets out that failure to comply with conditions of authorisations for the management of radioactive substances will not be treated as non-compliance if “unavoidable”, a “direct result” of the health emergency and “will not lead to significant environmental harm”. [The Scottish CND](#) called for the closure of nuclear plants in light of concerns about monitoring and staffing.

Waste management

Waste management and recycling services have been impacted by the health crisis. [Zero Waste Scotland has reported](#) that temporary closure of recycling centres and charity shops has led to an increase in flytipping. SEPA [has issued temporary regulatory guidance for the waste management sector](#) covering areas such as waste storage and transfers, recycling obligations and impacts of social distancing. SEPA has also [launched an information hub](#) with Zero Waste Scotland and COSLA.

SEPA and Scottish Wildlife Trust £1billion routemap

On 22 May 2020 [SEPA and SWT published a “routemap towards £1billion for nature conservation”](#). Terry A’Hearn said the pandemic has “drawn into sharp focus the connection between social, environmental and economic prosperity” and that there are opportunities for the recovery to be “more inclusive and more sustainable.”

Alexa Morrison, Anna Brand and Alasdair Reid
SPICe Research, 28 May 2020

Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest and are not intended to offer comprehensive coverage of a subject area.

The Scottish Parliament, Edinburgh, EH99 1SP www.parliament.scot

Environment, Climate Change and Land Reform Committee

12th Meeting, 2020 (Session 5), Wednesday 3 June 2020

**Animals and Wildlife (Penalties, Protections and Powers)(Scotland) Bill –
proposed amendments at Stage 3**

Introduction

1. The Minister for Rural Affairs and the Natural Environment wrote to the Committee on 18 May 2020 to inform Members of the Scottish Government’s intention to lodge amendments at Stage 3 of the Animals and Wildlife (Penalties, Protections and Powers)(Scotland) Bill in relation to seal licensing. In her letter (Annexe A), the Minister says—

“While I appreciate that it is not standard practice to bring forward such amendments at Stage 3, for a number of reasons this has become a necessity.”

2. At this meeting and in advance of parliamentary consideration of Stage 3 proceedings, the Committee will hear from—
 - Mike Palmer, Deputy Director for Marine Planning and Policy
 - Michael McLeod, Head of Marine Conservation
 - Elaine Tait, Marine Evidence Manager.

Amendments at Stage 3

3. The Committee considered the Animals and Wildlife (Penalties, Protections and Powers)(Scotland) Bill at Stage 2 on Tuesday 26 May 2020. Under *Standing Orders*, it is for the Parliamentary Bureau to recommend by motion a date for Stage 3 proceedings to take place. It is anticipated that this will be before the summer recess.
4. The required period under the Standing Orders between stage 2 and stage 3 is ten sitting days (the earliest date that Stage 3 proceedings could take place would therefore be 10 June 2020).

Admissibility of amendments

5. Consideration of amendments at Stage 3 is by a Committee of the Whole Parliament. Unlike at Stage 2, admissibility of amendments at this Stage is a matter for the Presiding Officer and not the Convener of the lead committee (in this case ECCLR Committee).
6. If the Scottish Government does lodge amendments in relation to seal licensing, any decision on the scope of the amendments and whether they are admissible remains in the hands of the Presiding Officer for Stage 3. It is not possible to take a view on admissibility until any amendment is lodged.

Purpose of the proposed amendments

7. The Minister advises that—

“The Committee may wish to note that the proposed amendments currently being drafted are to:

- Amend the Marine (Scotland) Act 2010 to remove specific grounds for which Scottish Ministers are able to grant licences to kill, injure or take seals.
- Increase the penalties associated with the offence of killing, injuring or taking a live seal (intentionally or recklessly) in line with the most serious wildlife offences as laid out in the Animals and Wildlife Bill.”

Previous consideration by the Committee of protection of seals

8. In 2018, the ECCLR Committee examined the environmental impacts of salmon farming. The issue of seals as predators was one aspect that the Committee considered and reported on.
9. The Committee considered evidence and reported its view on methods of deterrence such as netting and acoustic methods or by shooting of seals, noting that seals can be shot under Scottish government licence.
10. The Committee’s report can be found at—
https://www.parliament.scot/S5_Environment/Inquiries/20180305_GD_to_Rec_salm_on_farming.pdf
11. The relevant section of the report starts on page 46 and the views of the Committee are expressed in paragraphs 246–248—

246. The Committee is extremely concerned to ensure seal welfare is maintained and promoted and it has not been convinced that seals in the vicinity of fish farms are being shot only as a last resort. Seals are a European marine mammal protected species and there is a requirement to ensure their protection.

247. The Committee considers Scotland needs to act now to ensure it does not fall foul of the US Marine Mammal Protection Act, which prohibits the intentional killing or serious injury of marine mammals in all fisheries. The Committee considers all fish farms in Scotland should be required, via legislative or any other appropriate means, to follow the position of the Aquaculture Stewardship Council in relation to marine mammals. This ensures farms cannot kill marine mammals.

248. The Committee heard ADD’s are not effective as a seal deterrent and has seen little evidence of their efficacy. The Committee understands most ADDs are left to operate continuously and is particularly concerned about this as it heard impacts from ADDs are cumulative and unintended and widespread underwater noise pollution may be affecting cetaceans. The Committee is also concerned there appears to be no assessment by government and regulators of the scale of ADD related noise pollution and its impact on marine species since 2014 and no related action. The Committee has significant concerns

about the use and operation of ADDs and their cumulative impact and considers all fish farms in Scotland should be required, via legislative or any other appropriate means, to follow the position of the Aquaculture Stewardship Council in relation to ADDs. This ensures fish farms cannot use ADDs.

Possible issues to consider

12. The Committee may wish to explore a number of issues in the evidence session, including—
- Why the Committee hearing about this for the first time now as the Scottish Government has been aware of the US requirement for some years?
 - Consultation with the view of stakeholders?
 - Why this Bill is considered to be the right legislative vehicle to deliver enhanced protection to seals?
 - How the proposed amendments fit in relation to the the scope of the Bill?
 - The wider implications, for example, the possible increased use of ADDs (Acoustic Deterrent Devices) and their impact on marine mammals and how the Scottish Government plan to manage this?

Conclusion

13. **The Committee is invited to—**
- **hear evidence from Scottish Government officials; and**
 - **consider in private the evidence given in the meeting from the Scottish Government officials and decide if any further action is required.**

Clerks

Environment, Climate Change and Land Reform Committee

LETTER FROM THE MINISTER FOR RURAL AFFAIRS AND THE NATURAL ENVIRONMENT

18 May 2020

ANIMALS AND WILDLIFE BILL: INCLUSION OF NEW AMENDMENTS IN RELATION TO SEAL LICENSING

I am writing to you ahead of Stage 2 of the Animals and Wildlife Bill to inform you of my intention to lay Government amendments at Stage 3 of the Bill in relation to seal licensing. While I appreciate that it is not standard practice to bring forward such amendments at Stage 3, for a number of reasons this has become a necessity. I therefore want to ensure that the Committee is given prior notice that amendments will be proposed by the Government, in order to allow appropriate consideration to be given.

By way of background, Scottish Government officials are in discussions with the UK and US Governments regarding new provisions in the US Marine Mammal Protection Act (“MMPA”). Complying with the MMPA demands changes to our primary legislation – the detail of these amendments are explained below. While the UK and other exporting nations have sought to fully comply with the MMPA, there has been a lack of clarity from the US on the interpretation of these rules and what specific action needs to be taken by nations in order to comply. Officials have been actively pressing to expedite this process but this clarity has not been provided in a timely manner, notwithstanding the stage now reached by the Animals and Wildlife Bill.

Furthermore, the spread of Covid-19 presents an unprecedented public health crisis and responding to it is a priority for governments across the world. While the Scottish Government continues to prepare measures to ensure compliance with the MMPA, the response to Covid-19 has required considerable re-deployment of resources which has made meeting these obligations significantly more challenging. However, I am confident that we will reach a conclusion that will allow amendments to be brought forward at Stage 3 of the Bill.

The Committee may wish to note that the proposed amendments currently being drafted are to:

- Amend the Marine (Scotland) Act 2010 to remove specific grounds for which Scottish Ministers are able to grant licences to kill, injure or take seals.
- Increase the penalties associated with the offence of killing, injuring or taking a live seal (intentionally or recklessly) in line with the most serious wildlife offences as laid out in the Animals and Wildlife Bill.

The amendments aim to improve the conservation prospects of seals in Scotland by prohibiting their intentional mortality in specific circumstances and increasing the penalties associated with such offences. The amendments are consistent with Scotland’s desire to be a globally competitive and sustainable economy, which has

high environmental and welfare standards, thereby ensuring continued access to a globally competitive food and drink market where such standards are expected.

One of the consequences of these amendments is that they will ensure compliance with the MMPA, which requires that nations exporting commercial fish and fish products to the US are held to the same standards as US commercial fisheries, where the taking of marine mammals is prohibited. This means that any fishery whose operations result in the killing or serious injury of marine mammals, occurring in a manner not permitted under US rules, will not be allowed to export to the US. On that basis, if we do not implement the proposed amendments to the seal licensing system by 1 March 2021 when nations have to demonstrate equivalency with the MMPA, Scotland will not be able to export farmed Atlantic salmon to the US from 1 January 2022. The US export market for farmed salmon in 2019 was worth £179 million to the Scottish economy, therefore it is vital that this market is kept open through the implementation of these amendments.

We will keep the Committee apprised of the developing situation and I will outline my intention with respect to these proposals at Stage 2 later this month. Furthermore, if helpful, officials can have a conference call with Committee members to brief them on the situation.

I hope that this is of use to the Committee.

MAIRI GOUGEON

Environment, Climate Change and Land Reform Committee

12th Meeting, Wednesday 3 June 2020

Annual Report 2019–20

Background

1. Under Rule 12.9 of Standing Orders committees are required to report on their activities during the previous Parliamentary year. The report must include an array of statistics, “details of its meetings” and must also explain how the committee has taken account of equal opportunities in its work.

2. This paper invites the Committee to consider its draft Annual Report 2019-20.

The Committee is invited to agree:

- **The text of the Annual Report 2019-20 for the Environment, Climate Change and Land Reform Committee.**
- **To delegate authority to the Convener for the final sign-off of the annual report.**
- **To delegate authority to the Convener to agree media engagement.**

Clerks

Environment, Climate Change and Land Reform Committee