



The Scottish Parliament
Pàrlamaid na h-Alba

ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE

AGENDA

11th Meeting, 2017 (Session 5)

Tuesday 28 March 2017

The Committee will meet at 9.45 am in the Robert Burns Room (CR1).

1. **Decision on taking business in private:** The Committee will decide whether to take items 5 and 6 in private.
2. **Review of the Protection of Wild Mammals (Scotland) Act 2002:** The Committee will take evidence from—

Right Hon Lord Bonomy.
3. **Subordinate legislation:** The Committee will consider the following negative instrument—

The Protection of Seals (Designation of Haul-Out Sites) (Scotland) Amendment Order 2017 (SSI 2017/63).
4. **Public petitions** The Committee will consider the following petition—

PE1615 by Logan Steele on behalf of the Scottish Raptor Group on a state regulated licensing system for gamebird hunting in Scotland
5. **Review of the Protection of Wild Mammals (Scotland) Act 2002:** The Committee will consider evidence heard earlier in the meeting.
6. **Work programme:** The Committee will review its work programme.
7. **Deer Management in Scotland (in private):** The Committee will consider a revised draft report.

ECCLR/S5/17/12/A

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

Review of Protection of Wild Mammals (Scotland) Act 2002
Cover Note ECCLR/S5/17/12/1

PRIVATE PAPER ECCLR/S5/17/12/2
(P)

Agenda item 3

Sub Leg Cover Note SSI 2017 63 ECCLR/S5/17/12/3

Agenda item 4

PE1615 Approach Paper ECCLR/S5/17/12/4

Agenda item 6

PRIVATE PAPER ECCLR/S5/17/12/5
(P)

PRIVATE PAPER ECCLR/S5/17/12/6
(P)

Agenda item 7

PRIVATE PAPER ECCLR/S5/17/12/7
(P)

Environment, Climate Change and Land Reform Committee

11th Meeting, 2017 (Session 5)

Tuesday 28 March 2017

Review of Protection of Wild Mammals (Scotland) Act 2002

Purpose of the session

1. Following consideration of its work programme on 20 December 2017, the Committee agreed to [invite](#) the Rt Hon Lord Bonomy to give evidence to the Committee on the findings of his review of the Protection of Wild Mammals (Scotland) Act 2002.

Background

2. The [Protection of Wild Mammals \(Scotland\) Act](#) was passed in 2002. Among the various effects, the legislation restricts the manner in which dogs may be used in the pursuit of foxes.

3. On 1 September 2015, the Scottish Government published its [Programme for Government](#) which included a commitment to:

“review the Protection of Wild Mammals (Scotland) Act 2002 to ensure that it is providing the necessary level of protection for foxes and other wild mammals, while at the same time allowing effective and humane control where necessary”.

4. The former Minister for Environment, Climate Change and Land Reform, Aileen McLeod MSP, [wrote](#) to Session 4’s Rural Affairs, Climate Change and Environment (RACCE) Committee highlighting this commitment and providing further details, including:

- Rationale for inclusion of the review in the Programme for Government;
- An undertaking to include a new section in the Scottish Government’s annual reports on wildlife crime on breaches of the Protection of Wild Mammals (Scotland) Act 2002;
- The Scottish Government’s intention to consult on the findings of the review.

5. It was [announced](#) in December 2015 that the Rt Hon Lord Bonomy would lead the review of the Act and the [remit for the review](#) was also published.

6. In March 2016, following its [consideration](#) of the Scottish Government’s [Wildlife Crime in Scotland - 2014 Annual Report](#), the RACCE Committee made a [formal submission](#) to Lord Bonomy’s review, highlighting [evidence received](#) on interpretation of the legislation and vicarious liability in particular.

7. In April 2016, the RACCE Committee proposed via its [Legacy Report](#) that the successor Committee (Environment, Climate Change and Land Reform Committee) may wish to “scrutinise in detail” the findings of the review.

8. On 17 November 2016, Cabinet Secretary for Environment, Climate Change and Land Reform Roseanna Cunningham [wrote](#) to the Environment, Climate Change and Land Reform Committee informing it of the publication of the [report on the review](#).

Findings of the Review

9. In his report on the review, Lord Bonomy:

- Proposed consideration of the clarity of the definitions and consistent use in the 2002 Act of:
 - Hunts and the action of hunting, searching, stalking;
 - Section 1(1) – “deliberately” before the word “hunts”;
 - Use of terms “wild mammals” and “fox or mink” in relation to flushing in s2(1) and s2(3);
 - The area in which flushing can take place within s2(3);
 - Timing in which a wild mammal should be shot or killed following flushing activity;
 - The definitions of who should hold a shotgun licence when taking part in hunting activities (s2(3) and s3);
 - “Lawful means” in s2(2);
 - Provisions around killing seriously injured or orphaned young mammals.

Flushing to guns in practice

10. The review report highlights issues relating to the following which had been presented in submissions:

- The application of the exemption of flushing to guns in practice;
- The use of terriers and the number of terriers which can be entered into the ground at a time.

11. Proposals are suggested to:

- Establish provisions which would require the use of a purse net on any hole from which a fox may emerge which would allow the fox to be immediately shot;

- Prevent a chase by removing hounds from the area around such a hole;
- Restrict the number of terriers which can be entered into the ground to one.

Proposals for Change

12. In the report on the review, Lord Bonomy commented on several proposals for change:

- **Monitoring:** An independent official could be charged with attending a hunt and reporting on its activities. It was proposed this could be in line with a voluntary Code of Practice, drawn up with Police Scotland, and the resulting reports could not only be admissible evidence in court but could also, over time, produce a body of intelligence on the activities of hunts overall;
- **Fox Control Protocol:** The voluntary protocol should stipulate the information (as detailed in the report) required to be notified in advance of a hunt, and the detail to be recorded during the event for provision upon conclusion, to Police Scotland;
- **Legislative Change:** In carrying out the review, Lord Bonomy has been presented with and considered several proposals for change within the 2002 legislation:
 - S1(1) is not clear on the definition of the intent required and several proposals are made to clarify this;
 - Vicarious liability for landowners or those running a hunt;
 - Restrictions on the number of hounds permitted;
 - Burden of proof should fall upon the accused;
 - Licensing;
 - Penalties for offending;
 - Time limit for prosecution.

Outcome of the review

13. On 31 January 2017, Cabinet Secretary for Environment, Climate Change and Land Reform [responded](#) to the findings of the review [noting](#) the Scottish Government intend to:

- Work with stakeholders to develop a new Code of Practice for hunts and explore the potential for a new monitoring scheme
- Consult on:
 - “The introduction of vicarious liability and reverse burden of proof provisions

- An extension to the time limit for bringing prosecutions
- The removal of inconsistencies and the improvement of definitions.”

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

Environment, Climate Change and Land Reform Committee

11th Meeting, 2016 (Session 5)

Tuesday 28 March 2017

**SSI cover note for: The Protection of Seals (Designation of Haul-Out Sites)
(Scotland) Amendment Order 2017 (SSI 2017/63)**

Procedure

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

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

SSI 2017/63

Title of Instrument:	The Protection of Seals (Designation of Haul-Out Sites) (Scotland) Amendment Order 2017
Type of Instrument:	Negative
Laid Date:	9 March 2017
Circulated to Members:	23 March 2017
Meeting Date:	28 March 2017
Minister to attend meeting:	No
Motion for annulment lodged:	No
Drawn to the Parliament’s attention by the Delegated Powers and Law Reform Committee?	No
Reporting deadline:	1 May 2017

Purpose

3. The purpose of the Order is to designate a seal haul-out site adjacent to the mouth of the River Ythan (near Newburgh in the North-East of Scotland), where harassing a seal (intentionally or recklessly) will be an offence. The Natural Environment Research Council (NERC), which has a statutory duty to provide scientific advice on seal management, developed the scientific methodology used to identify this site.

4. To enable this the Order amends the Protection of Seals (Designation of Haul-Out Sites) (Scotland) Order 2014 (“the principal Order”) to designate this as an additional place for a seal haul-out site for the purposes of section 117 of the Marine (Scotland) Act 2010.

5. A copy of the Scottish Government’s Policy Note and Explanatory Note, which provide more detail on the instrument, are included in the Annexe.

For decision

6. The Committee is invited to consider any issues which it wishes to raise on this instrument and whether it wishes to make any recommendations in relation to the Order.

Clerks

Environment, Climate Change and Land Reform Committee

Annexe

Supporting documents provided by the Scottish Government

POLICY NOTE

The Protection of Seals (Designation of Haul-Out Sites) (Scotland) Amendment Order 2017 (SSI 2017/63)

The Protection of Seals (Designation of Haul-out Sites) (Scotland) Amendment Order 2017 (“the Order”) amends The Protection of Seals (Designation of Haul-Out Sites) (Scotland) Order 2014 and is made by the Scottish Ministers in exercise of the power conferred by section 117 of the Marine (Scotland) Act 2010 (“the Act”) and all other powers enabling them to do so.

Policy Objectives

The purpose of the Order is to designate a seal haul-out site adjacent to the mouth of the River Ythan, where harassing a seal (intentionally or recklessly) will be an offence. The Natural Environment Research Council (NERC), which has a statutory duty to provide scientific advice on seal management, developed the scientific methodology used to identify this site.

Section 117 of the Act provides for Scottish Ministers, after consulting NERC, to designate by order haul-out sites, where harassing a seal (intentionally or recklessly) will be an offence. A haul-out site is a location on land where seals come ashore at times to rest, breed, have pups or moult.

Section 117 is designed to offer protection to seals whilst they are on land, when they are at their most vulnerable. This is considered a suitable and proportionate measure. Section 117 is not designed to protect all seals at all times because this would entail risks of preventing the use of non-lethal deterrent measures as an alternative to shooting and of potentially unintended restrictions on wildlife tourism, public access and leisure activities.

Policy Background

Scotland has more seals than the rest of the European Union combined – 100,000 grey seals and a minimum of 21,300 common seals. The story of seal management in Scotland therefore represents a significant example of conservation success and provides the basis for much wildlife tourism around our coasts.

Consultation

As required by section 117 of the Act, the NERC was consulted about this proposed site and its advice formed the basis for identification of the site.

In addition, a public consultation with a wide range of stakeholders took place between 7 September and 4 December 2015. This included representatives from a range of marine industries, conservation and welfare NGOs and scientists. In these discussions and the responses received, there were concerns that the originally proposed site would restrict public access for leisure to, or fishing from, the opposite banks of the river.

The site was therefore revised to focus on the area of the north bank actually used by the seals. This revised site has received considerable support from NGOs and scientists and acceptance from public access interests and most fisheries. There remains one direct objection from a fishery owner to the designation of the Ythan Estuary seal haul-out site by this Order.

Impact Assessments

An equality assessment was not required.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has not been carried out for this Order which should have no financial effects on the Scottish Government or the public purse and the instrument is not expected to have any financial impact upon existing businesses. No BRIA was undertaken for the principal Order made in 2014, which designated 194 sites around Scotland.

Scottish Government

Marine Scotland Directorate
March 2017

EXPLANATORY NOTE

As per purpose above and including:

An illustrative map for the designated places may be viewed at www.scotland.gov.uk/sealhaulouts.

This is also provided in the appendix to this paper.

Annexe B

An illustrative map for the designated places may be viewed at:
www.scotland.gov.uk/sealhaulouts



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Environment, Climate Change and Land Reform Committee**11th Meeting, 2017 (Session 5)****Tuesday 28 March 2017****PE1615: State regulated licensing system for gamebird hunting in Scotland****Background**

1. Petition [PE1615](#), from Logan Steele on behalf of the Scottish Raptor Study Group, was lodged on 22 August 2016. It calls on the Scottish Parliament to urge the Scottish Government to implement urgent action to introduce a state regulated system of licensing of gamebird hunting, that addresses the potentially adverse environmental impact of gamebird hunting, provides for the revocation or amendment of licences where a licence-holder fails to comply with their terms and conditions, and to implement the recommendations of the Review of Wildlife Crime Penalties in Scotland.

Public Petitions Committee consideration

2. At its meeting on [8 December 2016](#), the Public Petitions Committee (PPC) agreed to refer the petition to the Environment, Climate Change and Land Reform Committee.

3. The PPC Committee had previously [taken evidence on 27 October 2017](#) from the petitioner Logan Steele and representatives from RSPB Scotland and the Tayside Raptor Study Group, who are also both members of the Scottish Raptor Study Group. To help “ensure fairness and balance”¹, the PCC Committee also [took evidence on 8 December 2016](#) from two groups who did not support the petition: the Scottish Moorland Group and the British Association for Shooting and Conservation.

Written evidence received by the PPC Committee

The PPC Committee also received written evidence from:

- [The Game and Wildlife Conservation Trust](#)
- [RSPB Scotland](#)
- [Scottish Countryside Alliance](#)
- [Scottish Land and Estates](#)
- [A joint submission from the Scottish Moorland Group and the British Association for Shooting and Conservation](#)

SPICe briefing

4. The Scottish Parliament Information Centre’s (SPICe) [briefing to the PCC Committee on the petition](#) provided: a background to gamebird hunting in Scotland; some views on the potential negative effects of such hunting on raptor species in

¹ Public Petitions Committee. *Official Report*, 10 November 2016, Col 26.

Scotland as well as wider environmental impacts; and a summary of previous work in this area by both the Scottish Government and the Scottish Parliament.

Environment, Climate Change and Land Reform Committee consideration

5. The Committee first considered the petition at its [meeting on 31 January 2017](#) where it agreed to:

- write to the Cabinet Secretary for Environment, Climate Change and Land Reform seeking information on the operation of current legislation in this area; and
- request more details on when the SNH commissioned research on gamebird licensing systems in selected other countries might be published.

6. Since then, [the SNH report was published on 25 February 2017](#) and the Committee has received [a response from the Cabinet Secretary for the Environment, Climate Change and Land Reform](#) on the Scottish Government's work in this area (for ease of reference this is also attached in the **Annexe**).

For decision

7. The Committee is invited to consider what action it wishes to take in relation to the petition. Options include:

- to invite the petitioner to give evidence to the Committee;
- to invite oral evidence from a range of interested stakeholders; or
- to combine the above options into a single meeting so that the Committee firstly takes evidence from the petitioner before hearing from a panel of interested stakeholders e.g. RSPB Scotland, the Scottish Gamekeepers Association and Scottish Land and Estates. The Committee could then agree any subsequent action.

Clerks

Environment, Climate Change and Land Reform Committee

Annexe

Letter from the Cabinet Secretary for Environment, Climate Change and Land Reform to the Convener of the Environment, Climate Change and Land Reform Committee

Thank you for your letter of 7 February 2017 in relation to petition “PE1615: State regulated licensing system for gamebird hunting in Scotland” and other points.

You asked for further information on:

- when the SNH commissioned research on gamebird licensing systems in selected other countries will be published; and
- the operation of current related legislation in this area and whether the Scottish Government has any plans to review the current licensing regime.

On the first point, as previously advised in my letter of 27 February, the SNH commissioned research on gamebird licensing systems in selected other countries was published on 25 February.

Turning to the second part of your query, I think it is fair to say that the law in Scotland relating to the hunting of gamebirds, in terms of the species that may be taken, the closed seasons, the methods that may be used etc, is generally working well. We have no reason to doubt that there is a high level of compliance among individual game bird hunters. The problem we have in Scotland, as you will be aware, is with the illegal killing of protected raptor species by some managers and owners of shooting businesses (and to a lesser extent by people seeking to protect livestock from protected raptors).

The Scottish Government has made a number of changes to the law in recent years to tackle illegal raptor killing, including the introduction of vicarious liability for certain offences in the Wildlife and Countryside Act. There have now been two convictions under the vicarious liability provisions. It is believed that the provisions have also had a deterrent effect in that they prompted a number of landowners and managers to review the training and instructions for employees and contractors to ensure that their operations are compliant with the law. The complexity and obscurity of land ownership arrangements has, I understand, been a factor in frustrating some potential vicarious liability prosecutions.

As regards licensing, it is worth recalling that we repealed the requirement for individual hunters to purchase an annual licence in 2011 as it was not thought to serve any useful purpose. I think it is unlikely that there is any case for this sort of licensing to be reintroduced.

We have made changes to the terms of the General Licences that allow pest species to be controlled, so that these Licences cannot be used by anyone who has been convicted of a wildlife crime, or on land where we have good reason to believe that wildlife crime has taken place. The first restrictions imposed based on the latter aspect are currently subject to judicial review.

On firearms licences, implementation and casework is a matter for Police Scotland, while the policy in this area is reserved to Westminster. I do agree, however, with the recommendations in Professor Poustie's report on wildlife crime penalties in which he suggested ways that firearms licensing could work to prevent wildlife crime. I am exploring ways in which we can take these forward with colleagues in Justice and with the Westminster Government.

I am aware of proposals for a system where all or particular types of shooting businesses are licensed. The idea being that if a licensed business did not comply with specified conditions or was found to be involved in illegal activity, their licence to operate would be withdrawn. I can see the attraction of this proposal in that it could be a powerful tool for deterring and responding to wildlife crime. It could also provide a means for ensuring that shooting businesses, which are at present lightly regulated, operate sustainably and in accordance with best practice. For these reasons we have stated in the past that this remains an option that we may pursue if and when we think it is required. However I should also be clear that it would require primary legislation to bring into force which could well be difficult and contentious. It would also require additional resources to implement and enforce.

In conclusion, I would emphasise that our experience in this area is that there is no short cut to securing hard evidence of criminal behaviour. Changes to the law can only go so far, and always will need to be accompanied by effective, professional law enforcement. A licensing scheme may be a useful addition to the toolbox, but it will still depend on someone gathering evidence of wrong-doing in order to justify removal of a licence to operate a business.

Roseanna Cunningham MSP

Cabinet Secretary for Environment, Climate Change and Land Reform

7 March 2017