



The Scottish Parliament
Pàrlamaid na h-Alba

ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE

AGENDA

9th Meeting, 2018 (Session 5)

Tuesday 13 March 2018

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

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

2. **Subordinate legislation:** The Committee will take evidence on the Conservation of Salmon (Scotland) Amendment Regulations 2018 (SSI 2018/37) from—

Simon Dryden, Policy Team Leader, Salmon and Recreational Fisheries, and Keith Main, Policy Manager, Salmon and Recreational Fisheries, Marine Scotland;

Stuart Middlemas, Ecologist, Marine Scotland Science, Freshwater Fisheries.

3. **Scottish Crown Estate Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Gemma Cooper, Policy Manager (Legal and Technical), National Farmers Union Scotland;

Tom Cattanach, tenant farmer representative, Fochabers Estate;

Hew Hunter, tenant farmer representative, Whitehills Estate;

Jim Inness, tenant farmer representative, Glenlivet Estate;

Brian Shaw, tenant farmer representative, Applegirth Estate.

4. **UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill:** The Committee will take evidence from—

Michael Russell, Minister for UK Negotiations on Scotland's Place in Europe, Kate Thomson-McDermott, Head of Post-EU Referendum Team, Luke McBratney, Bill Manager, Constitutional Policy Team, and Alison Coull, Divisional Solicitor, Constitutional and Civil Law Division, Scottish Government.

5. **Subordinate legislation:** The Committee will consider evidence heard earlier in the meeting.
6. **UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill:** The Committee will consider evidence heard earlier in the meeting.
7. **Scottish Crown Estate Bill (in private):** The Committee will consider evidence heard earlier in the meeting.

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

Agenda Item 2

Subordinate Legislation	ECCLR/S5/18/9/1
PRIVATE PAPER	ECCLR/S5/18/9/2 (P)

Agenda item 3

Scottish Crown Estate Bill Cover Note	ECCLR/S5/18/9/3
PRIVATE PAPER	ECCLR/S5/18/9/4 (P)

Agenda item 4

UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill Cover Note	ECCLR/S5/18/9/5
PRIVATE PAPER	ECCLR/S5/18/9/6 (P)

Environment, Climate Change and Land Reform Committee

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**Conservation of Salmon (Scotland) Amendment Regulations 2018
(SSI 2018/37)**

Background

1. The Conservation of Salmon (Scotland) Amendment Regulations 2018 (SSI 2018/37) were laid in the Scottish Parliament on 8 February 2018 and referred to the Environment, Climate Change and Land Reform Committee for consideration under the negative procedure.

Conservation of Salmon (Scotland) Amendment Regulations 2018 (SSI 2018/37)

2. The [Conservation of Salmon \(Scotland\) Regulations 2016](#) make provision to regulate the killing of salmon in specified areas. The purpose of this is to ensure the killing of Atlantic salmon is managed by assessing and categorising the areas of inland water with regard to the conservation status of the stocks. They specify, for each area, whether retention of caught salmon is prohibited. These regulations also required the Scottish Government to carry out assessments of stock levels and the purpose of the [Conservation of Salmon \(Scotland\) Amendment Regulations 2018 \(SSI 2018/37\)](#) is to amend the 2016 instrument to reflect the most recent assessment.

3. The [instrument](#) is accompanied by:

- [A policy note](#); and
- [Business and Regulatory Impact Assessment](#)

4. The Scottish Government has described the process of the development of the instrument on its [website](#), including details of a [public consultation](#). A table of the [grading of each river](#) is also available. This table is also included in [schedule 2](#) of the regulations.

Committee consideration

5. The Committee has received [correspondence](#) from Jackie Baillie MSP and others on the regulations and will today take evidence from Scottish Government officials in advance of formal consideration of the instrument.

6. Formal consideration of the instrument will take place on 20 March 2018.

Clerks

Environment, Climate Change and Land Reform Committee

Environment, Climate Change and Land Reform Committee

9th Meeting, 2017 (Session 5)

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Scottish Crown Estate Bill

Introduction

1. The Scottish Crown Estate Bill was introduced in the Scottish Parliament on 24 January 2018. The Bill was published the following documents:

- [Scottish Crown Estate Bill](#)
- [Policy Memorandum](#)
- [Explanatory Notes](#)
- [Financial Memorandum](#)
- [Statement on Legislative Competence](#)
- [Delegated Powers Memorandum](#)

2. The Parliamentary Bureau referred the Bill to the Environment, Climate Change and Land Reform Committee to consider and report on the general principles.

3. The Finance and Constitution Committee will consider the Financial Memorandum to the Bill while the Delegated Powers and Law Reform Committee will consider the delegated powers at Stage 1.

Background to the Bill

4. The Crown Estate in Scotland was originally part of the UK wide Crown Estate, which is one of the largest property owners in the UK. It is independently managed in the UK by the Crown Estate Commissioners (CEC) which belongs to the reigning monarch 'in right of The Crown'. However, it is not Her Majesty the Queen's private property as Crown Estate assets cannot be sold by the monarch nor do revenues from it belong to them.

5. In 2014 the [Smith Commission](#) agreed responsibility for the management of the CEC economic assets in Scotland, and the revenue generated from these assets, should be transferred to the Scottish Parliament. This would include the Crown Estate's seabed, urban assets, rural estates, mineral and fishing rights, and the Scottish foreshore for which it is responsible. It also agreed that following this transfer, responsibility for the management of those assets will be further devolved to local authority areas such as Orkney, Shetland, Comhairle nan Eilean Siar, or other areas who seek such responsibilities.

6. These recommendations were included in the [Scotland Act 2016](#) and powers over the revenue and management of the Crown Estate in Scotland were subsequently transferred to the Scottish Government. It then established an interim body to take on the management functions of the Scottish assets. This body, Crown Estate Scotland, became fully operational on 1 April 2017 and operates under a [framework document](#) drawn up by the Scottish Government.

7. Crown Estate Scotland is responsible for managing:

- 37,000 hectares of rural land with agricultural tenancies, residential and commercial properties and forestry on four rural estates (Glenlivet, Fochabers, Applegirth and Whitehill);
- Rights to fish wild salmon and sea trout in river and coastal areas;
- Rights to naturally-occurring gold and silver across most of Scotland;
- Just under half the foreshore around Scotland including 5,800 moorings and some ports and harbours;
- Leasing of virtually all seabed out to 12 nautical miles covering some 750 fish farming sites and agreements with cables & pipeline operators;
- The rights to offshore renewable energy and gas and carbon dioxide storage out to 200 nautical miles; and
- Retail and office units at 39-41 George Street Edinburgh.

Contents of the Bill

8. The [Scottish Crown Estate Bill](#) makes provision for the on-going devolution of the Crown Estate to Scottish Ministers following the Smith Commission's recommendations and makes provision for its future management.

- **Part 1** renames Crown Estate Scotland (Interim Management), established in the 2017 Order, to Crown Estate Scotland (CES).
- **Part 2** establishes the provision that Scottish Ministers may transfer management of Scottish Crown Estate assets to a 'transferee' (colloquially a manager) which could include CES, a local authority, another Scottish public authority or a community organisation.
- **Part 3** makes provision for a number of managerial provisions including: allowing managers to dispose and/or acquire assets on behalf of the Crown as if they were owners; to maintain the financial value of the assets; to maintain and enhance the wider socio-economic benefits of Scotland; and prepare management plans.
- **Part 4** covers a range of more general provisions, including the parliamentary procedure to be used for future regulations and the commencement of the Bill.

Environment, Climate Change and Land Reform Committee Scrutiny

9. The Committee's timetable¹ for consideration of the Bill at Stage 1 is:

Date	Event
9 February	Launch of call for views
20 February	Evidence session with Bill Team
12 March	Potential visit
13 March	Evidence session with stakeholders 1
23 March	Close of call for views
27 March	Evidence session with stakeholders 2
17 April	Evidence session with stakeholders 3
24 April	Evidence session with Cabinet Secretary
Late May	Publication of Stage 1 report (depending on when agreed)
June	Stage 1 debate

10. At its meeting on [Tuesday 20 February](#) the Committee heard from officials from the Scottish Government on the Bill.

Today's meeting

11. At its meeting on Tuesday 13 March the Committee will hear from those who have an interest in the management of Crown Estate Scotland's four rural estates. These are:

- Gemma Cooper, Policy Manager (Legal & Technical), NFU Scotland;
- Tom Cattanach, tenant farmer representative, Fochabers Estate;
- Hew Hunter, tenant farmer representative, Whitehills Estate;
- Jim Inness, tenant farmer representative, Glenlivet Estate; and
- Brian Shaw, tenant farmer representative, Applegirth Estate.

Call for views

12. Written evidence on the Bill can be read at:

<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/107740.aspx>

SPICe briefing

13. A detailed briefing on the Bill by SPICe will be [available here](#) from Monday 12 March.

Clerks

Environment, Climate Change and Land Reform Committee

¹ The Committee agreed changes to its overall work programme at its meeting on Tuesday 6 March 2018. The timetable for its consideration of the Scottish Crown Estate Bill has since been updated to reflect these changes.

Environment, Climate Change and Land Reform Committee

9th Meeting, 2017 (Session 5)

Tuesday 13 March 2018

UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill

Introduction

1. As part of its work programme discussion on 6 March the Committee agreed to invite the Minister for UK Negotiations on Scotland's Place in Europe to give evidence to the Committee on the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill (SB) and EU environmental and animal welfare principles on 13 March. The Committee also agreed to write to the Minister in advance of the evidence session. The correspondence is included as **Annexe A**.

Background

2. The Committee understands neither the European Union (Withdrawal) Bill (UKB), or the SB makes provision for future environmental policy, with the exception of the "keep pace" power in the SB. Neither Bill makes provision for embedding current EU general principles relating to environmental protection or animal welfare as general principles of Scots law for the future.

3. The Committee has a [current inquiry](#) on the EU environmental and animal welfare principles. The call for evidence on this closes on 29 March. The Committee has also heard from stakeholders and experts who have raised concerns in relation to the failure of the (UKB) to roll over environmental principles of EU law into UK law and some stakeholders have called for the Bill to convert all EU environmental law, including environmental principles, into UK law. Many stakeholders consider the absence of provisions in the SB to incorporate those principles into domestic law following the UK's exit from the EU to be a critical gap. The Committee is also aware of evidence from Scottish Environment LINK to the Finance and Constitution Committee on its inquiry into the Continuity Bill.

Consideration of the Bill

4. Parliament agreed to refer the Continuity Bill to the Finance and Constitution Committee for stage 2 consideration of amendments. There will be a debate in the Chamber about the amendments on Tuesday afternoon (with no votes) followed by formal proceedings on amendments in committee that evening. Various committees are planning to take evidence on the bill.

Information on the Bill and timing

5. The link to the Bill and related documents can be found [here](#). SPICe published a detailed briefing on the Bill (the procedural information has been superseded- [link to the web version](#)). The material for discussion for the Stage 1 debate was published w/c 26 February ([Material for Debates for the Stage 1 debate](#)).

6. The deadline for stage 2 amendments is 2 pm Friday 9 March. Daily lists of amendments will be published on Thursday and Friday. The marshalled list will be published on 9 March and the groupings documents will follow on Monday 12 March.

7. The Delegated Powers and Law Reform Committee have reported on the Bill and SPICe has produced a summary of that [report](#).

Clerks

Environment, Climate Change and Land Reform Committee

Annexe A



The Scottish Parliament
Pàrlamaid na h-Alba

Michael Russell MSP
Minister for UK Negotiations on
Scotland's Place in Europe

c/o Clerk to the Committee
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By email only

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08 March 2018

Dear Michael,

Environment, Climate Change and Land Reform (ECCLR) Committee consideration of the European Union (Legal Continuity) (Scotland) Bill

I am writing on behalf of the ECCLR Committee to invite you to give evidence to the Committee on the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill (SB) on Tuesday 13 March. In advance of this session the Committee agreed to highlight a number of issues and questions to be addressed by the Scottish Government. With the Committee meeting and Stage Two consideration of the SB both scheduled for this coming Tuesday, it would very much appreciated if you could provide as detailed a written response as possible to the Committee, in advance of your appearance before us.

The Committee understands neither the European Union (Withdrawal) Bill (UKB), or the SB makes provision for future environmental policy, with the exception of the "keep pace" power in the SB. Neither Bill makes provision for embedding current EU general principles relating to environmental protection or animal welfare as general principles of Scots law for the future.

As you will be aware the Committee has a [current inquiry](#) on the EU environmental and animal welfare principles. The call for evidence on this closes on 29 March. The Committee has also heard from stakeholders and experts who have raised concerns in relation to the failure of the UKB to roll over environmental principles of EU law

into UK law and some stakeholders have called for the Bill to convert all EU environmental law, including environmental principles, into UK law. Many stakeholders consider the absence of provisions in the SB to incorporate those principles into domestic law following the UK's exit from the EU to be a critical gap. The Committee is also aware of evidence from Scottish Environment LINK to the Finance and Constitution Committee on its inquiry into the SB.

EU environmental principles are enshrined in Article 191(2) of the Treaty of the Functioning of the EU (TFEU) and provisions about animal sentience were introduced in 2009 by the Lisbon Treaty and are now included in Article 13 of the TFEU.

The Committee understands the SB makes provision for retention of the EU Charter of Fundamental Rights (which references environmental protection as a core human right under Article 37). However, it does not explicitly retain EU and environmental welfare principles and it does not address the environmental governance gap arising from the UK's exit from Europe or the loss of functions performed by EU bodies.

The Committee wishes to understand if the Scottish Government considers there is a need for domestic law to be underpinned by the overarching EU environmental principles and recognition of animals as sentient beings. The Committee also wishes to understand:

- **Why the Scottish Government has not explicitly referenced EU environmental and animal welfare principles in the provisions of the SB?**
- **How this does or does not ensure the continuity of law? and,**
- **What the implications of not including these provisions may be?**

The Committee is unclear how this gap in the provisions of the SB sits alongside the statement of the Cabinet Secretary for the Environment, Climate Change and Land Reform, that Scottish Government would do everything in its power “to maintain, protect and enhance our environment” and that “these (environmental) principles sit at the heart of Scotland’s approach to environmental policy in the future”; “without them, we risk lagging behind and diverging from the ambitions of our European allies as well as missing key tools that can help us to meet international ambitions such as the UN Sustainable Development Goals”.

The Committee is also concerned to understand the view of the Scottish Government with regard to environmental governance and the need to maintain, as a minimum, the same level of environmental standards in Scotland, following the UK's exit from the EU and the need to ensure effective enforcement mechanisms and sanctions for non-compliance are in place. The Committee understands the SB does not address this and does not include a commitment to address it.

In addition to the questions above the Committee would welcome a view from the Scottish Government on the following points:

“Keep Pace” power to follow EU law developments post exit

The Committee understands Section 13 of the SB delegates power to the Scottish Ministers to make provision: corresponding to provision in an EU regulation; EU tertiary legislation or an EU decision; for the enforcement of these EU laws or to make them effective; to implement EU Directives. This would allow Scottish Ministers to follow the direction of EU environmental law post exit if it chooses to do so, on a case by case basis. However, the Committee also understands this power is not a means by which the general principles of EU law set out in Articles 11 or 191 – 193 TFEU or Article 37 of the Charter of Fundamental Rights can be embedded as general principles in Scots law. **The Committee would welcome confirmation of the Scottish Government’s understanding of this. The Committee would also welcome an explanation from the Scottish Government as to how it anticipates this working in relation to the policy areas covered by the Committee.**

Protection of the current position regarding EU general principles inherent in retained EU law

Both the SB and the UKB provide that retained EU law will carry with it EU general principles that had effect in EU law on exit and have been recognised by the European Court of Justice in a case decided before exit day, but the Bills express this in different ways. **The Committee wishes to understand why there is a difference in approach and whether it has any practical effect. The Committee would welcome a view from the Scottish Government on this.**

There is a difference between the two Bills in how individuals will be able to vindicate their rights under general EU principles inherent in retained EU law. Section 7 of the SB suggests that it would not be possible to raise a challenge once Directives have been converted into retained devolved EU law. This issue does not arise in the UKB because it cuts off all existing rights of challenge based on incompatibility with the general principles of EU law. It is not clear to the Committee how the removal of the ability to challenge validity of EU law from which devolved retained EU law derives (section 7(1)) sits with the general preservation of rights of action with regard to the general principles of EU law (section 5(2)). **The Committee would welcome the Scottish Government’s view on this.**

The Charter of Fundamental Rights

Article 37 of the Charter of Fundamental Rights provides: “A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.” The Committee understands Section 5(4) provides that the retained Charter can be modified by the subordinate legislation powers under the Bill, or by future provision, therefore the retained Charter is not permanently embedded in Scots law post exit. **The Committee would welcome the Scottish Government’s view on this.**

Interpretation of retained EU law and retained general principles of EU Law

Section 10 of the SB and clause 6 of the UKB set out rules on interpretation of retained EU law and retained general principles. Both appear to make substantially the same provision, although there is a presentational difference in the drafting. It appears to the Committee in the SB courts may have regard to decisions of the

European Court of Justice (ECJ) post exit and in the UKB the courts need not have regard to decisions of the ECJ post exit , but can do so if they consider it appropriate. **The Committee would welcome the Scottish Government's view on the difference in drafting of these provisions and the practical effect on retained EU general principles. The Committee would also welcome a view on how the incorporation of these general principles will impact the policy areas covered by the Committee.**

I look forward to receiving your response before we meet with you next week.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Graeme Dey', with a stylized flourish at the end.

Graeme Dey MSP
Convener
Environment, Climate Change and Land Reform Committee

C.C: Bruce Crawford, Convener, Finance and Constitution Committee
Roseanna Cunningham, Cabinet Secretary for Environment, Climate
Change and Land Reform