



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Environment, Climate Change and Land Reform Committee

**Tuesday 16 May 2017**

**Session 5**



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**ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE**  
**14<sup>th</sup> Meeting 2017, Session 5**

**CONVENER**

\*Graeme Dey (Angus South) (SNP)

**DEPUTY CONVENER**

Maurice Golden (West Scotland) (Con)

**COMMITTEE MEMBERS**

\*Claudia Beamish (South Scotland) (Lab)  
\*Alexander Burnett (Aberdeenshire West) (Con)  
\*Finlay Carson (Galloway and West Dumfries) (Con)  
\*Kate Forbes (Skye, Lochaber and Badenoch) (SNP)  
\*Emma Harper (South Scotland) (SNP)  
\*Richard Lyle (Uddingston and Bellshill) (SNP)  
\*Angus MacDonald (Falkirk East) (SNP)  
\*Mark Ruskell (Mid Scotland and Fife) (Green)  
David Stewart (Highlands and Islands) (Lab)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Bill Brash (Scottish Government)  
Brendan Callaghan (Forestry Commission Scotland)  
Peter Chapman (North East Scotland) (Con) (Committee Substitute)  
Claire Dodd (Scottish Government)  
Fergus Ewing (Cabinet Secretary for Rural Economy and Connectivity)  
Barry McCaffrey (Scottish Government)

**CLERK TO THE COMMITTEE**

Lynn Tullis

**LOCATION**

The Robert Burns Room (CR1)



## Scottish Parliament

### Environment, Climate Change and Land Reform Committee

Tuesday 16 May 2017

[The Convener opened the meeting at 11:02]

### Decision on Taking Business in Private

**The Convener (Graeme Dey):** Good morning. Welcome to the 14th meeting in 2017 of the Environment, Climate Change and Land Reform Committee. We have apologies from David Stewart and Maurice Golden. We have been joined by Peter Chapman MSP, a substitute for the latter.

I remind everyone present to switch off mobile phones and electronic devices, as they might affect the broadcasting system.

Item 1 is consideration of whether to take in private items 6 and 7. Do we all agree to take those items in private?

**Members** *indicated agreement.*

## Subordinate Legislation

### Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/113)

11:03

**The Convener:** Item 2 is an evidence session on the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017. Mark Ruskell MSP has lodged a motion to annul the regulations. As is the usual practice in such circumstances, we will first have an evidence session during which we can ask questions of or seek clarification from the Cabinet Secretary for Rural Economy and Connectivity.

I welcome the cabinet secretary and his officials, Bill Brash, Claire Dodd, and Brendan Callaghan, to the meeting this morning. Cabinet secretary, do you want to make any opening remarks?

**The Cabinet Secretary for Rural Economy and Connectivity (Fergus Ewing):** Yes, please, convener. Good morning, everyone. I very much welcome the opportunity to present and explain this Scottish statutory instrument to the committee. Its amendments form part of European law and they must be incorporated into member states' domestic legislation by 16 May. Failure to transpose would expose Scotland and the United Kingdom to the risk of infraction.

In transposing the directive into law in Scotland, I have sought to achieve an appropriate balance between ensuring that our approach to creating woodland protects the environment and biodiversity, and creating an enabling approach to planting for businesses and communities.

As we are all aware, creating woodland and planting trees is a win-win for Scotland, particularly in helping to achieve our ambitious climate change targets, with trees soaking up about 10 million tonnes of CO<sub>2</sub> a year.

The change that I understand is causing concern relates to increasing the threshold for environmental impact assessments for forestry projects outwith sensitive areas, and I want to reassure members by putting the change in its proper context and by making it clear that it is not happening in isolation. The SSI introduces another change that expands the definition of sensitive areas to include peaty soils. Because there is no threshold for afforestation in sensitive areas, all such schemes must be screened. Moreover, in national scenic areas, the threshold remains at 2 hectares.

The proposal to increase the threshold for an environmental impact assessment from 5 hectares

to 20 hectares outwith sensitive areas is modest and proportionate, given the pressing need to increase woodland creation in Scotland. Although Wales and Northern Ireland are not proposing to change their threshold, members might wish to note that the corresponding legislation in England proposes an increase to 50 hectares for low-risk areas. I also point out that, since 2000, only five out of 800 schemes below 20 hectares have required an environmental statement following EIA screening. In other words, we are talking about a maximum area of 100 hectares over those 17 years.

The legislation will not result in a reversion to planting up the flow country. That cannot happen. The new regulation expands the definition of the sensitive areas where EIA is always required to include peaty soils, and it applies only to very small schemes. That suggests that there is little risk in increasing the threshold to 20 hectares. Raising the threshold will also enable better deployment of staff resources, which should be focused on encouraging more and larger schemes to come forward while ensuring that they are monitored to better address the environmental impact of genuinely difficult and potentially damaging schemes. It means that we will be better placed to manage and minimise the potential impact of planting.

The change in threshold will also send an important signal of the Government's—and indeed Parliament's—commitment to increasing planting and to diversity in woodland creation schemes. We know that concerns about the EIA process can deter potential applicants for modest, low-risk schemes. That particularly affects farmers, the very group whom all parties are encouraging to integrate more woodland into their enterprises. It might also affect crofters.

I reassure members that good protections against the risk of these small schemes causing environmental harm will remain. Legislation includes provision for exceptional cases, allowing Forestry Commission Scotland still to require an environmental statement or to take enforcement action on a small project of less than 20 hectares. The ability to take such enforcement action is an important safeguard. I also note that the vast majority of 5 hectare schemes are likely to cost more than £25,000 and that, in reality, very few planting schemes are undertaken without grant funding. The procedures for grant approval require all the appropriate checks against the UK forestry standard to ensure that environmental risk is mitigated. Mr Callaghan, who is an expert on that, can fully explain all those matters if members feel that that would be useful.

New guidance that will be developed on implementing the amended regulations will be

clearer and will ensure that proper scrutiny is given to genuinely higher-risk schemes. Initial discussions on such guidance are already under way with Scottish Natural Heritage and the Scottish Environment Protection Agency, which support the change, and we would welcome input from wider stakeholders such as Scottish Environment LINK. That work will complement the relevant workstreams in the Mackinnon report delivery plan. We can also do more to raise awareness of the guidance and our expectations of those who propose planting schemes to ensure that developers and communities are clear about their responsibilities in safeguarding and protecting the environment in which they propose to create woodland.

I hope that my remarks address the concerns that have been raised and will help to persuade committee members not to annul the SSI. Planting more of the right trees in the right places is something that I think we all support. We need to focus our effort where it is needed, and the proposed change will allow us to do just that. My colleagues and I are happy to answer any questions that you, convener, and committee members may have. Thank you for that opportunity.

**The Convener:** Thank you, cabinet secretary. Richard Lyle has a question.

**Richard Lyle (Uddingston and Bellshill) (SNP):** I have a couple of questions. We all know that Scottish forestry is worth £1 billion to the economy each year and that it supports 25,000 jobs. Do you agree that modern forestry planting also creates new habitats for wildlife and places for recreation, and that it makes a huge contribution to meeting Scotland's ambitious climate change targets?

**Fergus Ewing:** Yes, I do and I think that it is a win-win situation, because more forestry is good for the environment and the economy. Mr Lyle referred to the estimated value to the economy, which is £1 billion a year and 25,000 jobs. The regulations before us are intended to safeguard the environment and to enable and facilitate the further expansion of the economic opportunities for Scotland that come from a truly green industry. I am grateful, indeed, that many organisations support the regulations, including Confor, which is present at this public meeting today; the UK Forest Products Association's David Sulman; and many others, including environmental organisations.

**Richard Lyle:** I note that a Confor representative is present at this public meeting. Does the cabinet secretary agree with what Confor stated in a written submission to the committee:

"However, the reality is that unnecessarily complex procedures for approving planting applications means

Scotland has failed to meet existing planting targets for a number of years”?

Do you agree that we need to move heaven and earth to ensure that we reach our targets?

**Fergus Ewing:** Yes, I agree with Confor’s statement. We want the Forestry Commission Scotland’s time and resources to be focused on the most important cases. The statistics show that only five out of the 800 cases that were screened went to an environmental impact assessment. That means that more than 99 per cent of the work that was done was not required. It is duplicatory work that is carried out, broadly speaking, when the grant system applies in order that the requirements of the UK forestry standard are met. In other words, no one can get a grant without safeguarding the environment and looking into environmental matters.

Mr Callaghan can go into all the details of that, but I am entirely satisfied that what we are doing today with the regulations will safeguard the environment, which is the fundamental point that I want to make to Mr Ruskell and, indeed, all committee members. By removing that duplicatory work, which I think involves 150 cases a year, individual case officers, who are skilled professionals, can be put to better use looking at the really important cases in which there may be a serious issue in relation to the environment.

The regulations are intended to remove duplication and to allow staff time to focus on real cases in which there is a genuine environmental interest. In addition, the current procedure causes delays of two months or more in some cases, and delay has been identified as one of the barriers to more investment.

All those matters flow from the Jim Mackinnon report “Analysis of Current Arrangements for the Consideration and Approval of Forestry Planting Proposals”, which received pretty wide support, for which I was grateful, when we debated the general issues in the Parliament fairly recently.

**The Convener:** There is a claim that the UK forestry standard is not a suitable alternative to the EIA as it is primarily aimed at woodland management as opposed to creation. How do you respond to that?

**Fergus Ewing:** I put that claim to my officials and they simply responded to it by saying that it is not correct. It might help if one of my officials provided the committee with the technical detail, as I am not an expert in these matters. However, that, essentially, is the answer that I was given. Perhaps Mr Callaghan can help by responding to the question in his way.

**Brendan Callaghan (Forestry Commission Scotland):** Certainly, cabinet secretary. The UK

forestry standard covers all aspects of woodland management, including woodland creation. We might expect the focus to be on woodland management because Scotland has 1.4 million hectares of woodlands and is aiming to create 10,000 hectares a year.

However, a number of guidelines and requirements are specifically worded about and aimed at woodland creation, and I am happy to give a few examples. It is a major focus. Despite it being a small component of the overall woodlands area, it recognised that it is potentially a high-risk area because of the land use change. One biodiversity requirement is:

“The implications of woodland creation and management for biodiversity in the wider environment should be considered, including the roles of forest habitats and open habitats in ecological connectivity.”

I could give you more examples, if you wanted them.

11:15

**The Convener:** That is fine.

**Mark Ruskell (Mid Scotland and Fife) (Green):** Good morning, cabinet secretary, and thank you for joining us. I appreciate the time that you are spending on this. I have a couple of questions.

The environmental impact assessment page on Forestry Commission Scotland’s website says that

“These regulations have recently been amended”

and that they have already come into force. That is a little puzzling. Have I missed the boat?

**Fergus Ewing:** That has happened for legal reasons, which is why we have Barry McCaffrey here. He can explain the legal framework for the SSI, for which there is a particular deadline to transpose and implement in national law the general requirements for EIA across the board. Perhaps Mr McCaffrey could explain that. It is a perfectly sensible and fair question.

**Barry McCaffrey (Scottish Government):** The date flows from the amended directive, which requires all member states to implement the changes to the EIA regime in time for 16 May. Together with other administrations throughout the UK, that is what we have done. Technically, the regulations are in force today.

**Mark Ruskell:** The SSI is before the committee and the Parliament today. If I had put in an application for a block of forestry at 9.30 this morning, it would not be in force. Is it not doing a disservice to the Parliament if you bring forward regulations that have not yet been approved?

**Barry McCaffrey:** No. They are subject to the negative procedure, sir, and therefore they have taken effect. We laid them and respected the 28-day laying requirements, as is normal for SSIs that are not subject to approval under the affirmative procedure.

**Mark Ruskell:** You believe that environmental impact assessment regulations slow down the planting rate in Scotland, yet you identified that only six or eight EIAs have been completed in 800 applications.

**Fergus Ewing:** It is five.

**Mark Ruskell:** Okay. If the number is five, how are EIA regulations slowing down the planting rate? What is the analysis of the economic cost? My understanding of the process is that first there is a light-touch screening process, which is about identifying environmental impact. Only after that has taken place does the process move on to a full EIA. Which is it? Is it the screening process or the full EIA that is slowing down planting?

**Fergus Ewing:** I discussed that with officials, and Mr Callaghan can perhaps give us a practitioner's guide. At the moment, 795 out of 800 cases underwent a process that was not necessary, because an EIA was not needed. The process led to that conclusion in 795 cases. Only in five was an EIA necessary. The screening process seems to involve an element of duplication.

In the remarks that I made a moment ago, I was careful to say that in some—not all—cases, that could be causative of delay. In some cases, a delay of two or more months could ensue as a result of a process that essentially duplicates a process that is carried out when the grant application is determined. One cannot get a grant without complying with the UK forestry standard. I am told, although I am not an expert, that the standard is the most rigorous in the world, and it is designed to protect the environment. Were that not the case, I would not be here and we would not be debating the regulations today. I am satisfied that the standards protect the environment, and one cannot get a grant without complying with them to prove that one's scheme does not damage the environment. As Jim Mackinnon identified in his useful report, the screening work seems to be an element of duplication. Its removal will allow us to streamline the system and in some cases remove delay, while allowing staff to focus attention on other matters. There are 795 cases and I gather that each one takes about one day on average to deal with. All those working days could be put to better use, to meet the targets that we all share.

I hope that I have encapsulated everything; perhaps Mr Callaghan can add something.

**Brendan Callaghan:** It is worth clarifying that the 800 cases are the cases in the category between 5 and 20 hectares. That is the population that would be affected by the change. Our records on this go back to 2002. In addition, there are the cases above that—another 2,000 cases in total. Approximately 60 of those cases required environmental statements. It is a different population. That is not the total number of environmental statements in forestry. The total number of projects that required statements was about 60 in total.

**Mark Ruskell:** My final question is on pre-notification. My understanding is that Wales has not adopted this approach. In England, as the cabinet secretary has already outlined, there is a higher threshold of 50 hectares. However, England has put in place a pre-notification that would at least allow environmental issues to be flagged up early on—not at the end, when the UKFS needs to kick in before a felling licence can be granted, but at the beginning of the process. That prior notification is part of the regulations in England, so what was the thinking behind not building it in to the regulations in Scotland?

**Brendan Callaghan:** The cabinet secretary has asked me to answer that, if that is okay.

We certainly see pre-notification as an additional process. Given that we have just undertaken the Mackinnon review and we are looking for the most efficient and effective way of managing the woodland creation process, we considered it but thought that it was an additional step, which would not offer the same efficiencies.

As part of the Mackinnon review process, we are looking at things end to end. One of the review recommendations is that there should be much more up-front engagement right at the beginning—engagement with stakeholders and engagement between the developer and the Forestry Commission. We want to capture that in a revised process and revised guidance. We think that that is the way to deal with pre-screening. We are keen on it, but we were nervous that, by incorporating it into legislation, we would create a burden and it would be more difficult to be proportionate in that process.

**Fergus Ewing:** I was discussing this matter earlier. It is a perfectly sensible area to explore. My understanding is that it is a matter of practice—Mr Callaghan will correct me if I do not get this right—that when an application comes in, the competent officers in the Forestry Commission will not just stay in the office but will go to the proposed plantation area. Very often, they will know the area from their local knowledge but they will still go to inspect the locus—the proposed area—and then they will assist the applicant in

order to identify any environmental issues that they feel are necessary to consider.

That proactive, helpful, collaborative approach is one that, as I understand it, is already—quite rightly—part and parcel of our forestry process and of the good work that our forestry officers do. I think that as a matter of practice, that must be a good thing.

The guidance that I mentioned in my opening statement will of course deal with this further and, as I said, I undertake to work with Scottish Environment LINK and other parties to make sure that the guidance secures the widest possible support, because that is what I wish to do in forestry matters, as I think members are aware.

**Claudia Beamish (South Scotland) (Lab):** I am frankly very surprised that the instrument was put up on the Forestry Commission Scotland website before the committee was in a position to make its deliberations today. It may be a negative instrument, but it is coming to our committee today. Some members have concerns, to the point of one member wanting to annul the instrument, but we are now in a position where it is already on the website.

First, why has the instrument come to us only on the day when we have to meet the European Union deadline? Secondly, how far in the future are the infraction proceedings and the risk of fines? I understand that the process has phases. To build on what Mark Ruskell said, I feel that the approach that has been taken shows disrespect for the committee and the Parliament, and I am concerned about it. Will you or your officials comment on that?

**Fergus Ewing:** I am grateful to have the opportunity to try to allay members' concerns. Plainly, we mean absolutely no disrespect to the committee, and I would not tolerate any disrespect. My understanding is that, because the instrument is a negative one, it is in force unless it is annulled today. If it is annulled as a result of the democratic procedures of the Parliament, it will be annulled and of no effect, and I will ensure that the website of the Forestry Commission is immediately—today—altered to that effect.

As I discussed briefly with members beforehand, I understand that the reason why the instrument is on the website is simply that it is the law that is in force at the moment and there is a requirement today to comply with EU law. That requirement is in legal terms discharged, if you see what I mean—we have passed a law and met the deadline. It is currently the law unless it is annulled, so the Forestry Commission is right to display a notice on its website of what that law is. The notice may last only half a day or until the end of this discussion, if members are minded to annul

the instrument, but the process is the correct legal one. It is in no way a matter of discretion; it is a correct legal process to demonstrate that the Forestry Commission has immediately complied with and met the requirement to transpose EU law into the domestic legal system. It is purely a technicality. I am grateful that Claudia Beamish has raised the issue. I have given a somewhat arcane legal answer, but that is because it is an arcane legal matter. It is absolutely the correct position.

I am advised that there was in fact no committee meeting on 9 May, so consideration of the instrument was put back to today, which is the last possible day. Obviously, I have no criticism of the committee in that regard. I think that the motion to annul was lodged on Friday.

Mr Brash is the expert here, so maybe I am chuntering on when he could provide a more succinct explanation.

**Bill Brash (Scottish Government):** Basically, we worked with our lawyers. For negative instruments, we have 28 days in which to lay the legislation, although Parliament requires 40 days. We did that and the instrument, along with the other instruments that we will come to later, went through the Delegated Powers and Law Reform Committee. It was therefore ready to come to the lead committee a while back. However, when I liaised with the clerks, I was told that, unfortunately, it could not be considered on 9 May, although it was perfectly ready. It went through the DPLRC in, I think, early April, so it was available for this committee. However, as a result of that meeting, the clerks decided to bundle together several pieces of subordinate legislation, some of which—for instance, the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017—went through the DPLRC quite a while ago. I am afraid that we were in the hands of the committee as to when it could fit us into its schedule, but the instrument was available to be seen.

**The Convener:** That is correct—the committee did not meet last week, which has been a factor. However, you will understand the concerns that members have expressed about the issue.

**Bill Brash:** Yes.

**The Convener:** It has been good to air the issue and get it on the record.

**Claudia Beamish:** With respect, convener, that does not answer my question about what would have happened if, out of respect for the committee, the instrument had not been put on the website until after the committee had considered it. How soon would the Scottish Government have jeopardised its situation? When would the infraction process have begun? We would of

course have to take that into account but, as I understand it, there would be several phases before we got to that. Therefore, would it not have been more appropriate to put the instrument up later in the day? It is there now—and it will stay there unless we agree to the motion to annul—but perhaps a different approach might be more appropriate in the future. I want to push that point. The approach seems to be a little bit ahead of things.

**Fergus Ewing:** It is the law now, in accordance with the negative procedure, and as a Government we must comply with the law and must do so immediately. There is no question about that.

The infraction process is a process, not an event. Claudia Beamish is quite right to say that there are stages of infraction and, if that is important, I am sure that Mr Brash can explain what those stages are. From my point of view as a Government minister, I want to avoid any infraction if I can, and to take all prudent steps so to do. The Forestry Commission was right to do what it did, which was to comply with the law. If it is altered, it will immediately comply with the law and make appropriate amendments to the website in the course of the day, if that were to be the decision of the committee and the Parliament.

11:30

**Claudia Beamish:** I have one other question about the UKFS scheme. It has been pointed out to me—it may not be correct, but I seek clarification—that the scheme does not have statutory status but is, in the main, voluntary, and that its status is open to question on private land. It may well be that I am misinformed, but it would be helpful to clarify that for the record.

**Fergus Ewing:** I will ask Mr Callaghan to give an authoritative answer.

**Brendan Callaghan:** The UKFS brings together a whole suite of guidelines and statutory requirements that exist in law relevant to forestry. Many aspects of it are statutory. They may not be specific forestry legislation; they could be to do with water, protected habitats, designated sites or things of that nature. A forest manager will have in one place all the statutory requirements and the good-practice guidance that we would expect them to comply with. The real bite is that it is, in a sense, almost statutory because it is part of our Scottish rural development programme, so the condition of providing grant aid is that people must comply with the UK forestry standard. That is pseudo-legal in that it is part of our approved programme with Europe, which is enacted in legislation in Scotland. In a roundabout way, the guidance almost comes to have a legal standing.

**Claudia Beamish:** Thank you. That is helpful.

**The Convener:** Do any other members have questions on the topic? If not, before we move to item 3 and consideration of the motion to annul, I am mindful that the cabinet secretary is accompanied by Claire Dodd, who is here to offer expertise. I would like to ask her a question about one of the other SSIs—the one on flood risk management. There was a consultation in 2016 on those proposals, but it did not include flooding activity. Why was that the case?

**Claire Dodd (Scottish Government):** We originally had the opportunity to be part of the project with a number of other regimes that were taken forward in that main consultation. At the time, it was decided, due to the technical and specific nature of flood risk, and because we had well-established and close working relationships with local authorities, that we would develop our own timeline. A full consultation was not carried out on our regulations, but engagement was undertaken with SEPA and with experienced local authority flood risk management practitioners to explore the various issues.

The changes that are provided for in the flooding regulations are mainly procedural and there are no material changes to the way in which assessments are carried out or when they need to be carried out. The work on the other regimes preceded the work that we undertook on our regulations, and it was found during that work that the provisions in our flooding regulations are broadly equivalent to those proposed in the other regimes. That main regime consulted local authorities, SEPA and other EIA practitioners, so it was felt that there was no added value in our undertaking a full consultation on our regulations. Feedback from that consultation was used to inform and develop the flooding regulations.

**The Convener:** Thank you for that—it is useful to get that information on the record.

Item 3 is consideration of motion S5M-05579, which asks the committee to annul the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017. It should be noted that the Scottish Government officials cannot take part in the formal debate. I remind members that, according to paragraph 4 of rule 12.2A of the Parliament's standing orders, substitute members have the right to vote. The motion will be moved and there will be an opportunity for a formal debate on the SSI, which can procedurally last up to 90 minutes.

I invite Mark Ruskell to speak to and move the motion, if he so wishes.

**Mark Ruskell:** I have listened to the discussion during the previous agenda item, and I intend to move the motion to annul the regulations. Having said that, I think that there is a lot on which all of

us around the table can agree. I think that we all agree on the economic importance of forestry—it creates 25,000 jobs in some of our most impoverished rural areas. I think that we all agree that the Scottish Government's forestry planting target of 15,000 hectares a year will make a welcome and significant contribution to Scotland's climate change plan. I think that we also all agree that we need to look at simplifying any regulations that place an undue burden—I emphasise the word "undue"—on the forestry sector. However, the current environmental impact assessment regulations do not place an undue burden on the forestry sector. We have EIAs because we need to look before we leap. We need to plan properly and get that planning in place up front in the process.

I hear what the cabinet secretary says about screening, but that is not a full environmental impact assessment. There do not need to be hundreds of big reports—on paper from dead trees—and lots of consultancy time in order to pursue a forestry application. It is a relatively simple process, but it uncovers potential environmental impacts that might need, in a few cases, to be given further consideration. It also brings transparency.

From undertaking a number of items of casework in the Ochils near where I stay, I know that the environmental impact assessment process can be beneficial. I will cite a particular example. There were a number of proposed blocks of forestry in an area and there were concerns about access, archaeology and biodiversity. The process was constructive. Throughout the EIA process, stakeholders were involved with the management company and the proposer of the forestry application. As a result of that, it was an iterative process in which positive changes were made. Consequently, we have had a good forestry planting scheme approved in that area. There are areas of commercial forestry, but the scheme gets the right balance. However, that happened only because there was a very good, up-front planning process, which the EIA had required.

I am concerned about the thresholds being raised, because I can see what the cumulative impact might be. Proposers of forestry planting might well package up blocks of forestry of just under 20 hectares. That would enable a much simpler process to be used but it would potentially miss any concerns about archaeology, biodiversity and access—all the issues that sometimes arise from forestry.

I think that we can all welcome the UK's forestry standard and the fact that it will be embedded in the guidance that the cabinet secretary is working on. However, it is not about planning, it is not about identifying where or why and it is not about

identifying up front in the planning process what the impact will be. It is about good management. I accept the point that has been made that anyone who wants to apply for a forestry felling licence at the end of the process will have to meet the UKFS. I applaud that, but the UKFS is not—and we should not pretend that it is—an up-front planning tool.

I do not see why, in order to meet the terms of the European directive, we need to jump to the 20-hectare threshold. In Wales, that approach has been rejected. In England, as I said, the threshold has been increased to 50 hectares, which is worrying, but a full prior notification process has been brought in. If the cabinet secretary wants to remove the screening process, we need clarity about what up-front part of the process will identify potential environmental impacts at the outset and enable stakeholders to get involved in helping to design schemes in a more environmentally protective way.

Earlier, Mr Callaghan said that he is very keen on prior notification but that it can also be seen as a burden—I am not sure which it is. If we were certain that the guidance would require prior notification, so that proposers of forestry applications would have to go to the Forestry Commission and there would be an iterative process involving stakeholders, that would bring some comfort. Such an approach is the bare minimum and is what happens in England. However, I think that we can do a lot better in this Parliament.

I move,

That the Environment, Climate Change and Land Reform Committee recommends that the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/113) be annulled.

**The Convener:** I open up the debate to other members.

**Claudia Beamish:** I speak in support of annulling the regulations. I listened carefully to what the cabinet secretary said, and I am somewhat reassured on the points that have been raised. However, the point at which grants are applied for is not the same as the point of the creation of the new scheme, and I think that the 5 hectare threshold for scrutiny is the correct one. I note that the approach in the regulations was rejected in Wales, as Mark Ruskell said, and that there were clear environmental reasons for that.

For the record, I am extremely supportive of the climate change targets. I heard the cabinet secretary's points about support for planting targets and the judgment that will be made on peatlands and the flow country if the regulations remain in force, as the Scottish Government hopes that they will do—that is important.

However, I am not reassured to the degree that I feel comfortable with the new approach to EIA, so I support the motion to annul.

**Kate Forbes (Skye, Lochaber and Badenoch) (SNP):** I appreciate the points that members made and the briefing that we received from the RSPB—although I think that it is notable that we did not receive many briefings on the regulations and that only the RSPB's briefing opposed the change.

The big question for me is whether there are standards that are fit for purpose to ensure that we meet environmental expectations when we plant. The fact that 795 applications did not require EIAs and met the UK forestry standard is notable.

The cabinet secretary made an important point about how incredibly expensive planting is. Although, as Claudia Beamish said, the application for grant funding is not made at the initial planning stage, common sense tells us that it is highly likely that any planting will require grant funding and will need to meet the UKFS. In the light of that, although I accept what members said about the need to meet high environmental standards, I think that the vast majority of planting will require grant funding and will therefore require to meet the highest environmental standards.

11:45

**Richard Lyle:** In the past number of years, I have sat on this committee and listened to members commenting that we are not planting enough. The Government has been hammered on various occasions by members of other parties who think that it is not planting enough. Now we are being castigated because we are trying to plant more; I find that strange.

I take cognisance of the RSPB, but I am really impressed with Confor for the simple fact that—and I will state it again—

“Scottish forestry is worth £1 billion ... each year.”

If we do not keep planting, forestry will go into decline and this excellent business that supports 25,000 jobs will be at risk in a number of years.

I missed another point that is in the paper. If this economic and environmental success story is to continue, Scotland needs to plant more trees. Why do people not get that? We need to plant more trees. As far as I am concerned, we are trying to resolve the issues and we should be supporting this industry.

**The Convener:** Thank you, Mr Lyle. Mr MacDonald.

**Angus MacDonald (Falkirk East) (SNP):** Thank you, convener. I concur with Kate Forbes's comments and, indeed, those of Richard Lyle.

It is worth noting that there has been no objection from the Scottish Wildlife Trust or WWF Scotland. A salient point in the debate is the Woodland Trust Scotland's comments that it is prepared to accept an increase in the threshold in non-sensitive areas given the forestry planning process, the safeguards provided by UKFS and the application of regional forest strategies.

**The Convener:** Claudia Beamish, I believe you want to come back in.

**Claudia Beamish:** I have a point of clarification. I do not believe that, in any of my remarks, I said that I was not positive about the Scottish Government's planting regime. In fact, I have been extremely supportive of it and pushed forward on agroforestry and all sorts of similar issues. I have also tried to make sure that the Scottish rural development programme schemes were mentioned.

My concern about the environmental arrangements at the stage of planting is, however, serious enough to say that I think that, if we are to have forestry, which we must have, and if we are to meet our targets, which I fully support, that forestry must be done in an environmentally appropriate way. That is where I am.

**The Convener:** Thank you. Peter Chapman.

**Peter Chapman (North East Scotland) (Con):** I support the Government's aim to modernise and simplify the framework, which has held back the planting targets—I support increasing them. We need to put procedures in place to hit the 10,000 hectare target and then go on to hit the 15,000 hectare target eventually, and I support that.

We must recognise that the proposed change is modest. It seeks to increase the area from 5 hectares to 20 hectares, but in low-risk sites to start with. Nobody is suggesting that it will be done in high-risk sites. Every planting scheme has to adhere to the UK forestry standard, which is a high standard in its own right. I see no problem in increasing the area to 20 hectares, and I support Kate Forbes and Richard Lyle and so on and their thoughts on the issue.

**The Convener:** Thank you. Does any other member have a point?

**Alexander Burnett (Aberdeenshire West) (Con):** I echo Peter Chapman's comments and I have no further comment, save to note my entry in the register of interests, particularly regarding forestry, as previously declared.

**Finlay Carson (Galloway and West Dumfries) (Con):** I would like to put it on the record that I do not agree with Richard Lyle that we should be banging on just to reach targets—we must recognise the importance of the environment. However, I will support the Government, because I

am satisfied that the changes will not have a negative impact on the environment. That is the most important thing.

**The Convener:** For the record, like a number of members, I had some questions on coming into this meeting, but they have been answered. The proposed changes are modest and proportionate. Also like other members, I note the absence of any concerns being raised by a considerable number of respected environmental organisations. Perhaps more than anything, I am heartened by the cabinet secretary's comment about consulting Scottish Environment LINK on the development of the guidance, so I am inclined to support the regulations.

I invite the cabinet secretary to respond.

**Fergus Ewing:** Thank you, convener, and thanks to all members who participated in the debate, which has been interesting and useful. I will make a number of points.

I emphasise to the two members who indicated that they still have concerns that we are keen to address the substance of those concerns as we progress with the guidance. At the outset, I emphasised that we will engage with Scottish Environment LINK and we have done. I have met non-government organisations, as have Jo O'Hara—the head of the Forestry Commission—and colleagues. We will continue that approach because we want to maintain as much of a consensus as possible.

Under the new directive and the regulations, the screening process is stricter than it was. That point has perhaps not been made. That is correct for larger, high-risk areas. We considered a threshold of 50 hectares, as is the case down south, but came to the conclusion that a more moderate measure of 20 hectares was appropriate. That was a value judgment. Perhaps we are between the Welsh and English approaches but, as Mr Chapman said, it is a more moderate proposal, which is good.

I stress that there is no threshold for land with 50cm or more of peat, or for sensitive areas. They will have screening for EIAs. Many members referred to that important point.

I am grateful for the support of the Woodland Trust, which does great work, as I saw at Loch Arkaig, which I visited a few weeks ago.

A year ago or thereabouts, WWF produced a report that said that, unless we increase our planting targets on these islands, in just a few decades' time 80 per cent of the timber that is used in Britain will have to be imported. That is a staggering figure and an issue that we have to tackle. Mr Lyle is correct to say that we have to increase our planting targets for the environment

and for the economy. Sawmill owners are already stating that they are concerned about the drop in the availability of wood in just over a decade's time. That is a matter of commercial significance for some of them and, given that they are the mainstay of many rural economies, we must pay heed to that. I am gratified that all members take that on board.

I could say a lot more, but I stress that, in taking forward the work, we will emphasise the importance of early engagement. Engagement with stakeholders will continue. It is not affected by the removal of the requirement for screening, so communities will be the subject of close engagement, which is encouraged, as is engagement with the developer. That will be at the heart of the new guidance procedure. I am more than happy to keep members of the committee informed about progress on that work and share our proposals for the guidance, if members of the committee would like, in order further to reassure the members whom I have perhaps failed to totally reassure today.

I invite members to support the Government's regulations and reject the motion to annul.

Thank you for the opportunity to speak on those matters.

**Mark Ruskell:** I thank all members and the cabinet secretary for their contributions to the discussion, which has been measured and thoughtful.

To answer Richard Lyle's point directly, the issue is getting the right trees in the right places. We all want more trees, but they must be in the right places and we need some kind of environmental guidance on that.

The cabinet secretary spoke about the creation of new guidance and the continuing work with environment NGOs and other stakeholders to get it right and ensure that we have in place a proper planning process that can step in where screening is being removed. That gives me some reassurance.

However, I am still concerned that the regulations do not contain a direct commitment to prior notification. That backstop exists in the English legislation. Although it can be argued that the English legislation is weak, it has been strengthened by the addition of a prior notification requirement. I have not heard the cabinet secretary say that the guidance will incorporate such a requirement. There needs to be a backstop: an agency must have the ability to step in early doors and say, "There are environmental issues with this planting application, so we need to step in." We do not have that.

For those reasons, I am not reassured enough to withdraw my motion, and I would like to push it to a vote.

**The Convener:** Therefore, the question is, that motion S5M-05579, in the name of Mark Ruskell, be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Beamish, Claudia (South Scotland) (Lab)  
Ruskell, Mark (Mid Scotland and Fife) (Green)

**Against**

Burnett, Alexander (Aberdeenshire West) (Con)  
Carson, Finlay (Galloway and West Dumfries) (Con)  
Chapman, Peter (North East Scotland) (Con)  
Dey, Graeme (Angus South) (SNP)  
Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)  
Harper, Emma (South Scotland) (SNP)  
Lyle, Richard (Uddingston and Belshill) (SNP)  
MacDonald, Angus (Falkirk East) (SNP)

**The Convener:** The result of the division is: For 2, Against 8, Abstentions 0.

*Motion disagreed to.*

**The Convener:** The committee's report will confirm the outcome of the debate. Does the committee agree to my approving the final report, as convener?

**Members** *indicated agreement.*

**The Convener:** I thank the cabinet secretary and his officials for their attendance. I briefly suspend the meeting to allow them to leave.

11:56

*Meeting suspended.*

11:57

*On resuming—*

### **Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/101)**

### **Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Amendment Regulations 2017 (SSI 2017/112)**

### **Agriculture, Land Drainage and Irrigation Projects (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/114)**

### **Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/115)**

**The Convener:** Agenda item 4 is the consideration of four negative instruments, which are listed on the agenda. I invite comments from members.

**Richard Lyle:** I am concerned that there are errors in each of the instruments. We are told that SSI 2017/101 contains minor drafting errors. For example,

"regulation 13(5)(b) refers to regulation 11(1) of the Environmental Information (Scotland) Regulations 2004, but it was intended to refer to regulation 11(2) of those Regulations."

We are told that the meaning of several provisions in the instruments could be clearer and that they should therefore be drawn to the attention of the Parliament. Several things are referred to in the wrong way. Can we say to someone somewhere, "Can you get these right first time, please?"

**The Convener:** I suspect that that is a view that the Delegated Powers and Law Reform Committee has expressed on previous occasions.

As members have no other comments to make, does the committee wish to take up Mr Lyle's point in writing to the Government, or shall we entrust that task to the DPLR Committee?

**Richard Lyle:** I remember that when I was on the Rural Affairs, Climate Change and Environment Committee there was serious concern about points being missed and instruments being laid that were incorrect. At the time, the committee wrote to the Government to express its concern.

**The Convener:** It strikes me that the errors in question are minor rather than major drafting

errors; they are about clarity. We can write to the DPLR Committee or to the Government to raise the issue.

**Richard Lyle:** I will not press the matter if it is not felt to be a fair criticism.

**The Convener:** Are members minded that we write to the Government?

**Members:** No.

**Richard Lyle:** I just wanted to highlight it, convener.

**The Convener:** You have done that on the record. Does the committee agree that it does not wish to make any recommendations in relation to the instruments?

**Members** *indicated agreement.*

## Annual Report

12:00

**The Convener:** Agenda item 5 is consideration of a draft annual report for the parliamentary year from 12 May 2016 to 11 May 2017. Hasn't time flown? I refer members to the draft report and invite any comments.

**Claudia Beamish:** The report reflects very well the wide range and depth of the scrutiny that we have attempted in this committee. I would like to see a little more detail under point 3, on the draft climate change plan, because that was one of the major areas that we scrutinised and took evidence on in the past year. I wonder whether we might highlight that the committee agreed, in its report, to scrutinise the final plan further and to monitor the plan once it is finalised and as it develops. I am keen to highlight those two points, and possibly others if other committee members feel that it would be appropriate, but a little more detail on that area would be valuable.

**The Convener:** That seems to be a reasonable point. Are there any other views on that?

**Emma Harper (South Scotland) (SNP):** Do we need to mention in the annual report the chamber debates that we have had, such as on climate change and deer management?

**The Convener:** It seems reasonable to suggest adding those in too, since we have had a couple of debates.

I suggest that clerks draft the formal wording for what Claudia Beamish suggested and that it is sent to members for agreement, rather than waiting for next week's meeting. If members respond by tomorrow evening, that would be helpful, so that we can get the report completed. Is that agreed?

**Members** *indicated agreement.*

**The Convener:** The annual report will be published next week.

During the next meeting, on 23 May, the committee will consider its work programme and PE1615, on state-regulated licensing for game bird hunting in Scotland.

12:00

*Meeting continued in private until 12:35.*



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