



OFFICIAL REPORT
AITHISG OIFIGEIL

Environment, Climate Change and Land Reform Committee

Tuesday 5 March 2019

Session 5



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Tuesday 5 March 2019

CONTENTS

	Col.
SUBORDINATE LEGISLATION	1
Conservation (Natural Habitats, &c) Amendment (Scotland) Regulations 2019 (SSI 2019/64)	1
Conservation (Natural Habitats, &c) (EU Exit) (Scotland) (Amendment) Regulations 2019 [Draft]	21
EUROPEAN UNION (WITHDRAWAL) ACT 2018	29
Environment (EU Exit) (Scotland) (Amendment etc) Regulations 2019 (SSI 2019/26)	29
Marine Environment (Scotland) (EU Exit) (Amendments) Regulations 2019 (SSI 2019/55)	29
SUBORDINATE LEGISLATION	30
Environment (EU Exit) (Scotland) (Amendment etc) Regulations 2019 (SSI 2019/26)	30
Marine Environment (Scotland) (EU Exit) (Amendments) Regulations 2019 (SSI 2019/55)	30
Wildlife and Countryside Act 1981 (Keeping and Release and Notification Requirements) (Scotland) Amendment Order 2019 (SSI 2019/37).....	30
Wildlife and Countryside Act 1981 (Prohibition on Sale etc of Invasive Animal and Plant Species) (Scotland) Order 2019 (SSI 2019/38).....	30

ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE
8th Meeting 2019, Session 5

CONVENER

*Gillian Martin (Aberdeenshire East) (SNP)

DEPUTY CONVENER

*John Scott (Ayr) (Con)

COMMITTEE MEMBERS

Claudia Beamish (South Scotland) (Lab)

*Finlay Carson (Galloway and West Dumfries) (Con)

*Angus MacDonald (Falkirk East) (SNP)

*Mark Ruskell (Mid Scotland and Fife) (Green)

*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Roseanna Cunningham (Cabinet Secretary for Environment, Climate Change and Land Reform)

Hugh Dignon (Scottish Government)

Steven Dora (Scottish Government)

Martin Gaywood (Scottish Natural Heritage)

Michael McLeod (Scottish Government)

Edward Mountain (Highlands and Islands) (Con)

Ben Ross (Scottish Natural Heritage)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Environment, Climate Change and Land Reform Committee

Tuesday 5 March 2019

[The Convener opened the meeting at 10:33]

Subordinate Legislation

Conservation (Natural Habitats, &c) Amendment (Scotland) Regulations 2019 (SSI 2019/64)

The Convener (Gillian Martin): Welcome to the eighth meeting in 2019 of the Environment, Climate Change and Land Reform Committee. I remind everyone to switch off their mobile phones, as they may affect the broadcasting system. We have apologies from Claudia Beamish.

Agenda item 1 is to take evidence on the Conservation (Natural Habitats, &c) Amendment (Scotland) Regulations 2019. I am delighted to welcome Hugh Dignon, head of wildlife and protected areas, and John Gray, policy officer, both from the Scottish Government. Joining us from Scottish Natural Heritage are Ben Ross, who works on the Scottish beaver project and is scheme manager for national operations, and Martin Gaywood, who is species action framework manager in the ecosystems and biodiversity unit.

I will ask some initial questions before opening the session up to my colleagues. I suppose that the first question is for Hugh Dignon. Can you outline the process that the Scottish Government and SNH have gone through to introduce the regulations since the Government's announcement in 2016 that it was minded to grant beavers European protected status?

Hugh Dignon (Scottish Government): Yes, of course. Broadly, we have undertaken two strands of work in that time. The first was a couple of technical exercises, one of which was a habitats regulations assessment under the habitats directive, to assess the extent to which allowing beavers to stay and giving them protected status would have an impact on other protected species and sites. That piece of work was required, and it has been completed and published.

In a similar vein, there was a strategic environmental assessment, which looked at the impacts on wider environmental issues of allowing beavers to stay. That was a significant piece of work, involving a public consultation, assessment of the impacts and so on. It took some time, but it

was completed and published late last year—that was when it finally made it on to the website.

We needed to go through that technical and formal process, but alongside that it was a matter of ensuring that stakeholders understood what we were doing and listening to their concerns. We worked with our colleagues in SNH to design a management system that would provide legal protection for beavers, while being flexible enough to ensure that land uses such as agriculture, forestry and fisheries could continue to operate in an unimpeded fashion.

The Convener: Where do you hope that we will be in five or 10 years' time, now that the regulations are in place?

Hugh Dignon: On the management system, I hope that we will have developed our understanding and learned how to manage beavers in a Scottish context. I am not anticipating that that will be hugely different from other European countries that have similar land uses and issues with beavers. However, there will inevitably be some Scottish aspects in the way that we manage beavers, and we will learn about those.

I hope that the beavers will be contributing to the biodiversity of Scotland by the wetland ecosystem engineering impacts that they will have and I guess that they will also continue their natural range expansion.

The Convener: The Scottish statutory instrument was supposed to be laid early in 2018. Can you give the committee an idea of why there has been a delay?

Hugh Dignon: The reason for that has been primarily about discussions with stakeholders. We could have pushed forward the technical aspects that I mentioned before, but we wanted to be sure that we were picking up the concerns of stakeholders properly as we developed the system, and they pushed us hard. It is the first ever reintroduction of a mammal into the United Kingdom, so it is a significant step and we wanted to take the time to make sure that we got it right.

We were also learning about the sorts of impacts that beavers were having in areas such as Strathmore, which is very intensively farmed. We had not fully appreciated the impacts that beavers would have until we started to see them on the ground. There was an element of learning for us and for the farmers, and it took time to come up with a system to deal with that.

The Convener: So, the delay has been about working with stakeholders to tease out some of their issues and to get them to a place where they are comfortable with the statutory instrument and the regulation change.

Hugh Dignon: That is right.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Since the illegal release of beavers in Tayside, we have seen significant impacts. I have just heard about the environmental assessments that were carried out. Was there a parallel assessment of the economic impact? It is obvious that that unplanned and unmanaged introduction was non-trivial for farmers, but, equally, there are potential positive economic impacts. It strikes me that, as well as an assessment of the costs that the Government might find itself incurring, an economic impact assessment should have been made. Was all that done on the back of the illegal release?

Hugh Dignon: At the time of the decision that was made in 2016, SNH produced a report, “Beavers in Scotland—A report to the Scottish Government”, which contained a socioeconomic analysis and covered both Tayside and the original release site in Knapdale. Since then, we have learned more as beavers have moved into areas of Tayside and as we have realised the sort of impacts that they can have, particularly in areas such as Strathmore, where there are certain types of field drainage systems and low-lying land in the flood plain that people are farming.

It is quite difficult for us to put a figure on that. We approach the issue by trying to prevent damage, rather than paying or compensating for damage caused. That has been the focus of our work on the management system.

The Convener: I neglected to mention that we have been joined by Edward Mountain, the convener of the Rural Economy and Connectivity Committee.

Mark Ruskell (Mid Scotland and Fife) (Green): My question is for Scottish Natural Heritage. What legal tests will need to be satisfied in order to issue licences for lethal control or other interventions and how do those relate to requirements in the habitats directive?

Ben Ross (Scottish Natural Heritage): There are three basic licensing tests before someone can intervene by doing something that would otherwise be an offence. The first test is that there must be a purpose in the legislation for which we can grant a licence for an intervention. There are eight or 10 different purposes in the legislation. The most likely purposes for the cases that we have seen relate to preventing serious damage to crops, agriculture more widely and other forms of property or infrastructure, and to address issues relating to public health and safety. There are several different purposes, but those are the two that are most likely to be used.

The second test is whether there is a satisfactory alternative to carrying out an action

that would otherwise be an offence. The third test is the assessment of whether those actions that are being carried out are likely to compromise the conservation status of beaver populations.

Mark Ruskell: Are those compatible with the habitats directive? Have you sought a view from the European Commission on that?

Ben Ross: We have not sought a view from the European Commission, but those tests are compatible—they apply to all European protected species. We have a range of European protected species in Scotland and we are already well versed in managing those. We have to use those tests all the time for hundreds of licences every year.

Mark Ruskell: However, you have not sought specific views from the European Commission.

Ben Ross: No. The European Commission has a lot of guidance on how to operate the derogations and we have referred to those.

Mark Ruskell: The Government wrote to NFU Scotland last week and said that it would

“guarantee that any farmers experiencing or anticipating problems from beavers on prime agricultural land will be given licences to manage beavers if they are required”.

How can the Government guarantee that such licences will be issued in line with the key principle that lethal control should be a last resort?

10:45

Hugh Dignon: There are a couple of aspects to that. The phrase “if they are required” indicates that such a guarantee is contingent on there being a need for a licence—that is, that one of the purposes that Ben Ross described has been met.

Having had discussions with farmers in the intensively farmed parts of Tayside, such as Strathmore and Strathearn, we have agreed that some tests do not need to be replicated for every single application. We understand now that there are no satisfactory alternatives for dealing with some aspects of beaver impact that need to be managed. That is not novel; it happens in other areas of licensing.

The test requires the licensing authority—which is SNH in this case—to be satisfied that there is no satisfactory alternative. It does not require the licence applicant to demonstrate every single time that they have tried every other alternative. If a licensing authority such as SNH says that it understands the situation very well and that licence applications are identical—for example, they might be to do with burrowing into riverbanks that protect vulnerable farmland or blocking field drains, which causes the waterlogging of fields—the arguments that are used do not have to be

replicated every single time. If those arguments have been made and Ben Ross and his colleagues have discussed matters with farmers, those farmers can expect to get a licence. They would not need to continually restate the arguments every time that they make an application.

Mark Ruskell: Will there be transparency in the licensing regime in the way that we have transparency for seal culling through Marine Scotland licences? Will there be transparency from SNH on who has the licences, how many beavers have been translocated, how many have been lethally culled and what measures have been put in place, or will that be closed off?

Ben Ross: We have to report back on our licence activities as a whole anyway. There are limits to the information that can be provided at the individual level and there is data protection legislation relating to identifying individuals, but we should be able to provide the details of what we are licensing more broadly while being very careful that we are not providing people's identities.

Mark Ruskell: Would that information be at the level of detail of the seal culling licensing regime that Marine Scotland manages?

Ben Ross: I am not familiar with exactly what level of detail is provided in that.

Mark Ruskell: With respect, it would be useful if you could write to the committee with details of how the licensing regime will be transparent and what it will cover in respect of reporting.

Ben Ross: Yes.

The Convener: There are some supplementary questions to that line of questioning.

Finlay Carson (Galloway and West Dumfries) (Con): Why should stakeholders, farmers and landowners have any confidence in any framework or licensing scheme that is brought in, given the failure to prosecute wildlife crime in the illegal translocation of beavers to an area outwith the trial? Why would they have any confidence that you can ensure that the licensing is fit for purpose, as it is quite obvious that there was an illegal movement of beavers and there have been no prosecutions?

Hugh Dignon: Basically, those are two separate issues. The appearance of beavers in Tayside was quite clearly the result of either illegal releases or, at best, people deliberately allowing animals to escape. It also seems that there was not a one-off event. As the relevant authorities, it was difficult for us to know when that happened, and it was very difficult to gather evidence. It was reported to the police, and I think that they investigated, but such things are incredibly difficult to prosecute. There was not a clear one-off act by

a person who could be prosecuted, so it was always going to be difficult to pursue people.

We have learned lessons about how to manage such situations, and we have strengthened the law. We are also more conscious of the need to keep an eye on people who have collections of animals and people who may have ulterior intentions in that respect.

I understand that licensing is sometimes a controversial subject. It is a controversial subject in relation to certain species, but it works on a pretty routine basis in relation to a whole range of other species, and I think that there is a broad degree of trust that SNH and the Scottish Government are reliable partners in such situations.

As I said to the convener, over the past two years, we have worked on building relations with the NFUS and assuring it of our intentions. I hope—and think—that it is pretty reassured by what we have had to say. In many ways, the proof of the pudding will be in the eating, so we will see how that goes.

Martin Gaywood (Scottish Natural Heritage):

As well as the legal side of things, there is best practice. Having learned from our experience of the beaver situation on Tayside and, in particular, the white-tailed eagles, we brought together many of the land use and conservation organisations that are interested in conservation and translocation through the national species reintroduction forum, which allows the organisations to talk together about how we can plan ahead, be more strategic and better utilise best practice.

Out of that process, we developed “The Scottish Code for Conservation Translocations: Best Practice Guidelines for Conservation Translocations in Scotland”, which has been signed up to by all the forum's members on the land use side and on the conservation side. The code is very much about trying to promote best practice, based on internationally recognised guidelines, and about ensuring that practitioners are very careful about preparing properly by consulting with stakeholders and ensuring that the legal elements are addressed. The code was published in 2014.

John Scott (Ayr) (Con): I want to go back to non-lethal controls and the translocation of beavers to non-prime agricultural land. My view is that that will, in effect, spread the number of beavers across parts of Scotland to which beavers would not otherwise have gone. I note that “prime agricultural land” means land classes 1, 2 and 3.1, but the bulk of Scotland is non-prime agricultural land, for which there will be a different regime. The prime agricultural land will be protected from the

worst ravages, but the non-prime agricultural land will be expected to carry the burden of the species reintroduction. Is that a fair assessment?

Hugh Dignon: I do not think so.

John Scott: There will be different standards.

Hugh Dignon: First, translocation is not considered to be a primary management tool. It is a difficult tool to use, and there are welfare concerns for beavers that are translocated. As you indicated, there will always be questions about where we release beavers that are translocated. The intention of ministers is definitely not to expand the range of beavers by translocation. That will definitely not happen.

John Scott: So where will you put them?

Hugh Dignon: As I said, we are not planning to translocate a lot of beavers. There will be times when translocation is the right solution, but that will depend on assurances about the cost—because it is quite an expensive technique—the welfare aspects and, most importantly, there being suitable release sites. As I said, translocation is not the prime way in which beavers can be managed.

John Scott talked about other areas bearing the brunt of beaver reintroduction. The key issue is that the prime agricultural land that we are talking about—in Strathmore, for example, and similar areas—is particularly vulnerable to beaver impacts, because it is very flat and low lying. Such land is susceptible to flooding because it is often close to riverbanks. With land that is further up the hillside and at a gradient, beavers inevitably will have less of an impact on flooding and the blocking of field drains.

John Scott: I should have declared an interest as a farmer. Forgive me, but it is not just prime agricultural land where drainage systems outflow into rivers. That is an odd thing to have said. I have known you for a long time, but you know as well as I do that there are field drainage systems that exit into rivers across the whole of Scotland, not just in prime agricultural land.

Hugh Dignon: The issue is with fields that have long, low-gradient drain ditches, which can be blocked by beavers. The level of water can rise in those ditches, thus stopping the drainage from the fields. That phenomenon may not take place so readily where there is some sort of gradient on the land.

John Scott: All you need to do is block the drainage mouth and the drains will back-fill—that is self-evident.

Hugh Dignon: If that is the case, the beaver licensing and management arrangements will come into play, but in other parts of Europe and

the world, it is the flat, low-lying land that is particularly susceptible to beaver impacts, and farmers who farm on hillsides where there is more drainage see less impact. We expect it to be broadly similar here. I am not saying that there will be no impact on those farmers or that there is no field drainage in their systems but, as a general rule, the impact will be less in those areas, and farmers may well find that it is easier to tolerate living alongside beavers there.

Ben Ross: From the licensing perspective, the fact that this approach is proposed for prime agricultural land does not preclude licences on other areas of land. The test that I referred to earlier still applies; if the impact threatens the livelihoods of farmers, there will be the ability to license activities, including dam manipulation, to resolve issues. We still propose to send out expert advisers to visit farms, look at those problems and come up with solutions. The only difference with prime agricultural land is that, through experience, we recognise the value of that land and the ease with which beavers can impact on it.

The Convener: I want to ask a question on the background to this issue, as I was not on the committee when it was involved in deliberations on it previously. When you have made a decision to translocate beavers into a certain area, what is the process? Who do you inform? What consultation is there? How do you correspond with the people who might be affected?

Martin Gaywood: There have not been many translocations. The Scottish beaver trial, which is a licensed translocation, took place at Knapdale. The situation in Tayside arose not because of translocations but because of escape or unauthorised release. I think that I am correct in saying that, within Tayside, there may have been one or two small-scale translocations that removed a problem beaver from A to B.

On your wider question on the process of decision making, it depends on the purpose of the translocation. For example, over the next few years, we anticipate having opportunities for the translocation of animals for conservation purposes. We anticipate an opportunity to move up to 28 animals from Tayside to Knapdale as part of a licensed translocation process. That is done rigorously; it has to go through the Scottish code for conservation translocations process that I mentioned, under which all the biological and socioeconomic risks and benefits are assessed and the planning, mitigation, health screens and so on are done. The translocations are then done by appropriate workers.

At the moment, there is a lot of interest in beaver releases in England, and we are liaising with our colleagues down south about the potential for the translocation of some animals from Tayside

to the south. We are waiting for further details, but if that request is made, it will also have to go through the rigorous Scottish code for conservation translocations approach. There is an opportunity to use beavers from places such as south-east Tayside where there is a beaver management problem, which means that we would be addressing a management need and fulfilling a conservation purpose.

It is important to emphasise that translocation is probably a short-term issue, as there will be a point at which there will be no more release sites to find, and we will have to find alternative ways of managing the beavers. At the moment, there are places where we might be able to release them—Knapdale or, potentially, England—but that opportunity is likely to last only a few years, and the number of release sites will go down.

The Convener: I am conscious that a couple of other committee members want to come in but, before that, Edward Mountain wants to ask a question.

11:00

Edward Mountain (Highlands and Islands) (Con): I make it clear that I am attending the meeting as an individual member, and not as convener of the Rural Economy and Connectivity Committee. I declare an interest as I am a member of a farming partnership and I have an interest in wild fisheries.

I will ask about translocation. Beavers tend to live in small natural family groups, and translocating beavers from one location to another where there are no other beavers is relatively straightforward. Translocating beavers to areas where there are existing beavers is likely to cause further problems in that area. Will Mr Dignon confirm that the Government has no intention of translocating beavers from one catchment to another without considering all interests and carrying out a public consultation with all the stakeholders involved? There is a serious concern that beavers will be moved from Tayside to the Cairngorms, which could affect people there.

Hugh Dignon: Yes, I confirm that that would be the position. We would seek to ensure that all the relevant interests were properly consulted and viewpoints taken into account. There are no imminent plans to translocate. As far as the ministers are concerned, the focus right now is to absorb and learn the lessons of how to manage beavers where we have them, rather than seek to expand their range by translocation.

John Scott: How will SNH monitor the cumulative impact of lethal control on beavers, including on their ability to naturally spread? What

is the baseline that the impact will be measured against?

Martin Gaywood: We have done two surveys, one in 2012 and one in 2018, of the beaver population in Tayside. The 2018 survey showed that we have recorded 114 beaver territories in the Tayside area. That does not mean that we know of all of them, but it is a decent estimate of the population. That number of territories represents 320 to 550 animals. That is in effect our baseline, and we can use it to make assessments of change in future. We have compared the 2018 survey with the 2012 survey to identify where there has been a change in range or a change in the number of field signs, so we have an indication of where beaver populations are spreading and where they are increasing or decreasing in number. We can continue to use that methodology in future to make assessments of general changes in the beaver population, for whatever cause, including the impacts of lethal control.

John Scott: If the Scottish statutory instrument is passed, presumably unlicensed lethal control of beavers will become a wildlife crime. Have there been discussions with Police Scotland about how it will approach unlicensed interventions in the initial period after the regulations come into force? The panel could also answer that question in respect of further unlicensed releases of beavers that are moved around the country. There will be two different wildlife crimes here: the unlicensed moving of beavers around the country and the unlicensed destruction of beavers. What preparations are required to ensure that the transition is made smoothly?

Hugh Dignon: At this stage, I do not think that we have had any specific discussions with the police about monitoring the unlicensed killing of beavers. That is a point that we will take up with them. We have good on-going relations with the police in Tayside in relation to beaver management. The police have been involved alongside the Scottish beaver forum, in which these issues have been discussed. As I mentioned earlier, we have been very clear about how we see further releases of beavers. Ministers have said that it is a punishable offence.

John Scott: There is nothing that you can do about it.

Hugh Dignon: It is difficult to do anything when we learn about it several months or years after the event, which is what happened in Tayside.

John Scott: They chose not to resolve the problem at the time.

Hugh Dignon: They could perhaps have resolved it by removing the animals, although a judgment was made about how practical that was.

John Scott: Yes, so they chose not to do anything about it.

Hugh Dignon: They chose not to remove the animals. I do not think that they chose not to prosecute people. There was an interest in exploring the extent to which it would be possible to pursue criminal offences.

Angus MacDonald (Falkirk East) (SNP): I turn to the issue of resourcing. What demand do you anticipate for the issuance of licences and accreditation for lethal control, based on, for example, any understanding of the current level of unregulated culling? Are you satisfied that SNH can meet the demand?

Ben Ross: There are two aspects to that. One is about the ability to issue sufficient licences, and I am confident that we can do that. Next week, the licensing team will start to develop the licences and process the first of them. We have a list of 15 to 20 farms that want licences at the moment, but we hope to work with NFU Scotland, Scottish Land & Estates and others to ensure that people are fully aware of the framework and the service that we can offer, in terms of licensing, advice and the mitigation scheme.

On the accredited controller training for lethal control, we have three training seminars planned and booked, which will start in approximately two weeks. We have about 30 people interested in that. Again, I am confident that we can meet the demand.

Angus MacDonald: Do you expect to have more training seminars at a later date?

Ben Ross: Yes. If there is demand, we can deliver the training.

Angus MacDonald: What resources will be required for you to fulfil the various new functions, including licensing and accreditation for lethal control and the provision of site-based advice, for which I presume there will be a cost?

Ben Ross: We have been providing site-based advice for five or six years, so we are relatively well versed in what it tends to cost. We now also have a mitigation scheme, and I expect that demand for that will increase. We have money from the Scottish Government to help to fund the scheme. At the moment, we have about 40 potential scheme cases, and we are confident that we can deal with those. There is an unknown element to the levels of demand but, as I say, we have five or six years of experience of dealing with farmers—I should say that it is primarily but not exclusively farmers. We have the resources to be able to do that.

Angus MacDonald: Staying on the issue of resources, I note that Fisheries Management Scotland has highlighted that beaver dams can

prevent the free passage of fish and that some dams will need to be notched or removed by fisheries managers. Although the management guidelines allow such work to occur, Fisheries Management Scotland has highlighted the significant resource implications in simply locating the dams prior to any assessment of issues relating to fish passage. That is clearly a new role for fisheries managers that is not currently funded. Do you recognise that concern and do you agree that fisheries managers should be supported in undertaking such work in future?

Ben Ross: We are working with fisheries managers on that. As well as trialling various mitigation techniques, such as dam manipulation, we are implementing techniques that enable us to predict where problems will occur. There is ongoing research into ways of modelling where dams are likely to be built, based on habitat characteristics and physical characteristics of certain locations. We can also explore more novel techniques by which we can monitor water levels and use the predictions to see whether we can provide efficient ways of surveying watercourses to look for potential blockage areas.

Angus MacDonald: Can you say more about what you mean by “efficient ways”? How would you carry out the surveys?

Ben Ross: The scheme relates not only to fisheries but to drainage. We have talked about automatic sensors for water levels that will enable us to remotely detect that a dam is being built in a certain area. There has also been talk of using drones to look for dams. The point of the scheme is about coming up with innovative ways of doing things, and we do that through our work with Fisheries Management Scotland, the Scottish beaver forum and others.

Mark Ruskell: The guidance that you have drafted appears to allow the continued shooting by farmers and land managers of pregnant beavers and their kits during the dependency period. Why is there no close season for lethal control in the guidance?

Ben Ross: There is a presumption against control during the kit-dependency period, but we have to recognise that some of these problems can occur at any time of the year—a farmer can lose a quarter or a half of a field at any time of the year, even one that coincides with the kit-dependency period. We have tried to encourage a situation in which sufficient monitoring is going on to ensure that action can be taken to prevent that from happening. However, we have to acknowledge that, sometimes, it will happen. The methods that are subsequently used should take account of the need to minimise the welfare implications. Although it is not the preferred approach, we acknowledge that, sometimes, that

approach will be necessary, but that it will involve adapting how control is carried out in order to minimise the impacts.

Mark Ruskell: Do you intend to issue licences for lethal control during the current kit-dependency season in the run-up to May?

Ben Ross: If they are necessary, yes.

Finlay Carson: I am aware that the Scottish beaver forum and a technical group are considering a mitigation scheme. Can you give us an idea of the current status of that scheme and the process for developing it? How can stakeholders, including landowners, get involved?

Ben Ross: The scheme is up and running. We are considering about 40 cases at the moment. About 50 per cent of them are agricultural; the remainder involve an even spread of woodland damage, recreational path damage, riverbank erosion, residential issues and so on. Works have been carried out in relation to a number of those cases and are planned for others. They are all at various stages of being dealt with. One case, which involved maintaining water levels in a small reservoir, was dealt with last week when we installed a device to manage the water levels there. Fencing and exclusion options are going ahead on certain farms in Perthshire; work is being done to protect specimen trees and gardens; and trials are under way to exclude beavers from certain watercourse and drainage ditch networks to alleviate problems that are being experienced in high-risk areas and lessen the need for lethal control in those areas. We are conducting a lot of different work streams.

11:15

Finlay Carson: We often hear the term “public money for public goods”. Do you see us moving towards a mitigation scheme that incentivises landowners by providing compensation payments to those who support beavers through, for example, riparian buffer zones or beaver wetlands support?

Ben Ross: I am not sure whether that would relate to the mitigation scheme or the future of agri-environment arrangements. That might be a question for Hugh Dignon.

Hugh Dignon: We expect agri-environment schemes to develop in that way in the future, so that there are payments for public goods, as Finlay Carson says.

John Scott: I want to go back to a question that was asked about flooding and the ability of beavers to upset complicated hydrological calculations in natural flood prevention for, in particular, upper Tayside with regard to the risk of flooding in places such as Perth.

In our discussions on the Flood Risk Management (Scotland) Bill, it was envisaged that complicated hydrology would have to be carried out and we discussed beavers’ ability to disrupt that over a fortnight. How do you see that playing out? Hugh Dignon was involved in that bill, as I was, and we know about taking the tops off floods. By definition, beaver dams are always full of water—otherwise, they would not be there—so they are not beneficial in that regard, except perhaps to slow down the flow rate. However, they certainly do not help with capacity in the catchment area. How is that being dealt with, or is it not even being discussed?

Hugh Dignon: There is a lot of speculation about that, but it is difficult to know. We have seen no evidence so far that beavers have caused such flooding, and I am not sure that there is much evidence from elsewhere either.

As you will know, there was flooding in Alyth a few years ago, where a number of claims were made about the potential role of beavers. However, the Scottish Environment Protection Agency, SNH and Perth and Kinross Council carried out a pretty comprehensive examination and found that there was no beaver impact in that flooding. I am not aware that there are particular concerns about beavers causing flooding.

John Scott: I am suggesting not that they cause flooding, but that they thwart the good intentions of the delicate hydrological calculations that have been done to take the tops off floods through natural flood prevention techniques.

Hugh Dignon: SEPA is a member of the beaver forum and flooding is clearly SEPA’s field, but it has not expressed any concerns about the position as it stands. I am not an expert in that area and I do not have anything further to say about SEPA’s assessment of the issue.

John Scott: I will now go back to the scripted questions that I have been given.

What opportunities are there for the scheme to contribute to Scotland’s wider 2020 biodiversity targets?

Hugh Dignon: Martin Gaywood will say more about the detail. One of the prime reasons for the interest in beavers is their impact as ecosystem engineers and their ability to create wetlands and the associated ecosystems for invertebrates, birds, amphibians and so on. They will make a significant difference to the biodiversity of Scotland.

Martin Gaywood: There is a lot of evidence that shows that, as ecosystem engineers, beavers can have a positive impact on overall biodiversity. They do that through the creation of wetlands, coppice woodlands and more patchy

heterogeneous habitats. They provide a greater range of habitats for a greater range of species. Some of the habitats that they produce, such as standing or fallen deadwood and wetland areas, are in decline in Scotland.

I go back to the previous point about flooding. We were talking about some of the negative impacts of beavers, and, at a localised level, beaver-related flooding can cause a problem. However, there is now a fair amount of evidence to show that there is potential for beavers to play a role in natural flood management. We need to find out more about that. There is some really interesting research coming from Devon; the University of Exeter has done some work that shows that, where beaver dams are operating, they have a softening and attenuating effect on peak flow, increasing water storage and so on. There is a research bid in to study that on a bigger scale and in more detail, to explore the potential of using beavers as a tool in natural flood management. We will get the result of that research bid later in the year.

John Scott: The committee would be very interested in seeing that piece of work.

Martin Gaywood: Okay.

The Convener: I have a further question on that. You mentioned biodiversity increasing as a result of having beavers in our landscape. How will you monitor the effect on biodiversity?

Martin Gaywood: The key thing is that we anticipate an overall increase in biodiversity. We will focus most of our attention on the Natura sites, because we have a statutory role there in considering the potential impact of beavers. We must also bear in mind that they can have adverse impacts on conservation interests, too—we must acknowledge that. There is an issue with the Atlantic hazel woodland over at Knapdale. We are monitoring the impact of the beavers on the woodland and trying to mitigate it. We are also exploring the opportunities for replanting and using the beavers almost as a totemic species for creating more woodland in the area.

The Convener: If people are translocating beavers illegally, they are interfering with that work, which involves monitoring the areas where you know that there are beavers and building scientific evidence of the advantages of having beavers in Scotland.

Martin Gaywood: The illegal release of beavers is not a good thing in all sorts of different ways, not least because it undermines the whole idea of having a professional conservation-orientated process. I talked about the code approach, in which we are trying to encourage a best-practice approach in various ways.

There is a lot of opportunity to monitor biodiversity in more detail. For the moment, our focus will be the Natura sites, simply because of resource issues. There is also wider academic interest in the role that beavers can play. For example, we have worked with the University of Stirling, which is looking at the role of beavers in biodiversity and evidence that shows the positive effects that they can have. There is a wider academic community that is interested in the impacts of beavers, and work is being carried out on that.

Mark Ruskell: It is good to hear all that positivity, given that, in many ways, it has been quite a negative session so far.

The NFUS briefing to the committee refers to “pre-emptive work” on beavers, which suggests to me that there may be attempts to prevent beavers from naturally spreading into different catchments. Would that be permitted under the guidance and licensing framework? Beavers are naturally moving into different catchments. For example, there is good evidence of beavers where I live, on the River Teith, and that they are spreading further down the river to the Forth.

Do you believe that pre-emptive work to prevent beaver populations from developing in other catchments would be allowed, or would it be illegal?

Hugh Dignon: The statement that ministers made back in 2016 recognised that beavers would expand their range naturally. We are not going to attempt to prevent that, but at the same time we are not going to translocate animals to encourage that expansion. For the time being, the beavers are in Tayside in quite significant numbers and we recognise that they are expanding their range into the Forth catchment.

I do not think that that was what the NFU was referring to; I think that it was referring to pre-emptive work on farms where farmers anticipate that there will be damage from beaver activity. It relates to putting in place measures to pre-empt such damage. That is very much in line with the policy that we want to adopt, which is about preventing damage rather than seeking to cure or deal with it after the event.

Ben Ross: I agree with that point about pre-emptive work. Mark Ruskell's view was not my take on the intention. Some work has already been done, or is under way, to anticipate the areas where there may be bigger issues. That involves modelling where dams are likely to be built, for example, and, as I said, some preliminary work to look at potential risks that beavers may pose to flood embankments. That is the sort of pre-emptive work that I understood was happening.

Stewart Stevenson: We can deal with the next issue fairly briefly. There are 550 animals in Tayside—I think that I heard that—which is pretty clear evidence of a successful and self-sustaining population. However, I believe that that population comes from a relatively small number of antecedents. Is there sufficient genetic diversity in the population? Am I correct in recalling that the Knapdale population is Norwegian, whereas the Tayside population is Polish, so there is some diversity?

Martin Gaywood: The Knapdale animals are Norwegian—the original ones were all Norwegian. We do not know exactly where the animals on Tayside came from, but our work so far makes us pretty sure that most of the original ones came from Bavaria. The Bavarian animals themselves were the result of translocations from various places across Europe, because they had become extinct in Bavaria and were reintroduced in the mid-20th century.

When we first started the work at Knapdale, we decided on Norwegian animals based on morphological studies of bone and so on. We now have new genetic tools, and there are issues with the fact that the animals in Knapdale are not genetically diverse enough. We have been using Tayside animals for the reinforcement exercise that is going on; we felt that the risk of inbreeding was too great and that it would be good to bring in some Tayside animals.

We do not know the origin of the Tayside animals, as I said, but genetic tests have been done on them and it is fair to say that their genetic diversity is limited. That may be an issue down the line for their genetic health, with an impact on their physical health and so on. The jury is out on that—it is probably a question of keeping an eye on the situation.

Overall, there are some extremely inbred populations in Europe. There are now more than 50,000 beavers in Norway, all of which are descended from probably fewer than 100 animals that were there in 1900. However, they are not showing any obvious physical problems or issues at the moment.

With the Tayside population, it is a matter of having a watching brief, keeping an eye on the animals and monitoring their genetics and health. If an issue begins to become a problem for them, there might be an argument for bringing in stock from other populations to bolster their genetic health.

Stewart Stevenson: Finally, I have a question for Hugh Dignon. Is there anything in the regulations to suggest that they remove the rights of anyone who is affected by the illegal release of beavers to use the civil courts to seek redress

from the people who are thought to be responsible?

Hugh Dignon: I do not think so.

Stewart Stevenson: That is the answer that I expected; I just wanted to get it on the record.

The Convener: We have a couple of minutes left, so I will bring in Edward Mountain.

Edward Mountain: Thank you.

From going through suggestions to help with managing beaver activity in and out of rivers, I see that some would be in contravention of the Water Environment (Controlled Activities) (Scotland) Regulations 2011. If a controlled activities regulations licence is given and farmers are to carry out the works, who will pay for that licence?

11:30

Ben Ross: I am interested to hear from you which activities you think would need a CAR licence, because not all do. If, for example we wanted to use a particular water gate design in one burn and drainage network, we would arrange for the CAR licensing requirements to be met and paid for as part of that scheme.

Edward Mountain: Putting a machine in a river to remove or breach a dam, or using sheet metal piling, rock armour and mesh to prevent burrowing would all require a CAR licence. In my experience, CAR licences are expensive and time-consuming. Somebody has to pay for them. Will the Government pay for licences, or would it waive the fees for farmers who have to apply for one? That question is particularly for Ben Ross.

Ben Ross: With due respect, I say that the question whether the Government will pay for a licence is probably for Hugh Dignon.

Removal of dams would require a CAR licence if an excavator were being used in-stream. However, most such work that I am aware of is carried out from the bank. Use of machinery does not necessarily require a CAR licence. Again, I say that many of the methods do not require a CAR licence.

Edward Mountain: Will the Government pay for a CAR licence, if one is required?

Hugh Dignon: That issue has not come up yet, but we will think about it. As Ben Ross said, our experience is that CAR licences have not been required. Most beaver dams are on small burns into which one would not be able to get an excavator, so excavation would be done by hand or by a machine from the bank. Those are the methods that we have seen.

As I have said, the Scottish Environment Protection Agency has played a role throughout in

the Scottish beaver forum. It is aware of the discussions and has advised that it does not anticipate that CAR licences will be required, as a rule, but that there might be circumstances in which a CAR licence is required. I am not aware that we have had any such circumstances yet, except in areas where we are trialling mitigation measures—Ben Ross mentioned the use of water gates—where we will pay for the CAR licence.

At this stage, we want to look case by case at whether a CAR licence is required. We are learning a lot as we go along and we see exactly what is required, what the costs are and so on.

John Scott: Norway has been mentioned: you said that there are 50,000 beavers there. How do land users perceive them? Are they confined to better agricultural land or distributed widely across the country? Does the latitude affect their distribution? What are the lessons to be learned from Norway?

Hugh Dignon: One of the first things to note about Norway is that it is not part of the European Union: the European protected species status therefore does not apply, so beavers are regularly hunted without the need for a licence. I am not sure about the distribution—Martin Gaywood is better placed to talk about that.

Martin Gaywood: Beavers are quite widely distributed in Norway, especially throughout its southern half, and are certainly not limited to agricultural land. Large parts of the country are forested and they use that habitat.

John Scott: Are the beavers welcome?

Martin Gaywood: My impression is that they are, broadly, welcome. They inevitably cause problems in some areas, but the Norwegians are quite pragmatic: they manage the beavers in various ways including, often, culling.

It is interesting for us that there are salmon rivers in Norway and that fisheries managers on Norwegian rivers do not consider beavers to be a problem. I appreciate that there are differences between Norwegian rivers and Scottish rivers, but that is an interesting aspect. We have discussed with the Norwegians what goes on on their rivers that have salmonids and beavers present, and what might happen here.

John Scott: Are there health and safety implications for dam removal if you cannot get excavators on to river banks and burns? Individuals will have to dismantle dams by hand, if no other way is available. Who would carry the insurance for, for example, the farm work on such a project?

Ben Ross: No, we have—

John Scott: I especially want to know what the situation is with regard to areas where beavers have been introduced illegally with the tacit acceptance of the Scottish Government.

Ben Ross: I do not know what the insurance implications are. We can carry out activities and be insured to do so, but I do not know about farmers.

John Scott: I am sorry: will you repeat that?

Ben Ross: I do not know what the situation would be for a farmer who was removing dams, or what the liabilities would be, if that is what you mean.

John Scott: Indeed, that is what I mean.

The Convener: Before I bring the session to a close, I have a final question, which will pick up on issues that were raised by Mark Ruskell. The management framework appears to rule out translocation as an alternative to lethal control. Are there circumstances in which translocation would be used instead of culling?

Ben Ross: Translocation is being used now. There is a suite of management options available—there is not only lethal control. Our translocation policy says—as Martin Gaywood said—that where a recognised conservation project can be a receptor, we can permit translocation to it. That possibility is limited. There is the proposal on Knapdale—animals that might be causing problems in Tayside are being moved there. However, the number of animals that can be moved is limited. There are projects down south that are likely to happen soon. We will be able to work with licence holders or farmers, and tell them that we can remove the animals, rather than revert to lethal—

The Convener: Will you get to a point at which you might have to issue a licence for culling?

Ben Ross: The option exists. Translocation is not without its risks: there are very real welfare implications associated with capture and there are practical considerations.

The Convener: I thank you all for the time that you have spent with us today.

11:37

Meeting suspended.

11:43

On resuming—

Conservation (Natural Habitats, &c) (EU Exit) (Scotland) (Amendment) Regulations 2019 [Draft]

The Convener: Agenda item 2 is evidence from the Cabinet Secretary for Environment, Climate Change and Land Reform, and her Scottish Government officials, on the draft Conservation (Natural Habitats, &c) (EU Exit) (Scotland) (Amendment) Regulations 2019. The cabinet secretary is accompanied by Scottish Government officials Steven Dora, who is a policy manager; Michael McLeod, who is the head of marine conservation; and Norman Munro from the legal services directorate. Good morning to you all.

I have an initial question for the cabinet secretary. What informal consultation did the Scottish Government undertake in drafting the regulations, and what issues were raised?

The Cabinet Secretary for Environment, Climate Change and Land Reform (Roseanna Cunningham): There was no statutory requirement to consult formally, but we engaged with stakeholders—people will understand that only a short time has been available—and have taken on board their comments. For example, drafting changes were made in response to comments on the importance of consulting Scottish Natural Heritage for the purpose of issuing guidance, and officials worked with key partners including SNH to ensure that amendments will work for Scottish interests. We have engaged with the Department for Environment, Food and Rural Affairs and other United Kingdom Administrations on the content of equivalent statutory instruments through which similar technical amendments are being made.

We spoke to others: we did not have enough time to do a formal consultation, but there has been discussion.

Finlay Carson: We know that a wider Scottish Government consultation is taking place on governance gaps. Will you set out the Government's view on the extent to which the draft regulations can achieve equivalence with current EU arrangements? Where are the outstanding governance gaps?

Roseanna Cunningham: We do not see huge governance gaps. In effect, we are taking the European Commission out of the picture for the purposes of a post-Brexit scenario, but all the various reporting requirements will pretty much stay as you would expect, so we do not anticipate there being a governance gap, in the sense that people might think that there is going to be a big problem.

Equivalence with the current arrangements will be achieved by the draft regulations. In a sense, creating that equivalence is what they are about. There is no change being made to the existing policy approach and we have made changes only where we consider them to be absolutely necessary. All the protections and standards that are currently provided by the habitats directive and the relevant bits of the wild birds directive are being retained. The regulations are really about ensuring that the existing protection regime can continue to work effectively.

The regulations are not exactly the same as the current ones because that will not be possible when we are outside the EU. We have to have something that can operate effectively from 11 pm on 29 March—or whenever it might be—and the draft regulations make that technical fix.

Finlay Carson: Are you confident that the proper governance structures will be in place to enforce the rules?

Roseanna Cunningham: Yes.

Finlay Carson: Okay.

With regard to the process for designating special areas of conservation, does the Government consider that the new process, which requires consultation of nature conservation agencies, achieves equivalence with the current situation? Do you foresee there being gaps through loss of European Commission oversight that will need to be addressed?

Roseanna Cunningham: The process for designation achieves equivalence with the current situation. That is what the draft regulations are designed to do. They do the bare minimum to the designation process to ensure that it remains operable. I say again that what is being done is simply to ensure operability, whenever the trigger time is.

We will continue to act on the advice of SNH and the Joint Nature Conservation Committee when we do designations, and we will follow the criteria that are provided by the European habitats directive, notwithstanding Brexit. We are simply replacing the function that is currently provided by the European Commission at the next-to-last stage of the process. This is literally just about fixing the technical bit that needs to be fixed to make the process operable immediately upon not just a no-deal Brexit, but any Brexit.

Angus MacDonald: How do you see the European Commission's function in scrutinising reports that are submitted under the habitats regulations being replaced following our exit from the EU?

Roseanna Cunningham: We have already spoken a little bit about that: it is to do with the

reporting duties that I mentioned earlier. The reporting requirements are intended, as a minimum, to reflect those that are set out in article 17 of the habitats directive and article 12 of the wild birds directive.

We will report publicly on implementation of the regulations within six years from the date of exit from the EU and every six years thereafter. We do not think that it is appropriate to set out the format in the regulations because that would introduce a counterproductive degree of restriction.

In effect, we have observed the format for EU reporting. We are lifting what we do and putting it into the regulations to ensure that we can continue to do it after the trigger point of Brexit.

Angus MacDonald: In the absence of EU reporting, how will the Scottish Government and SNH approach assessing biodiversity trends in Scotland and comparing them with the rest of Europe?

Roseanna Cunningham: We will continue to take advice on this. The reporting requirements are closely aligned. The UK as a whole will continue to report in a similar way to how it reports now. It is a contracting party to the Bern convention and it is worth remembering that there are other international conventions that apply to a lot of the work that we do on the environment and which are not reliant on the EU connection, on which there has been a focus. At the point of Brexit, the UK will continue to contribute to the Bern convention Emerald network. The reporting requirements are closely aligned, so comparison with published EU reports will still be possible.

Mark Ruskell: Is any of the existing EU-level guidance on interpreting and applying the directives still to be brought in to domestic guidance?

Roseanna Cunningham: I am sorry, I do not understand what you mean by that.

Mark Ruskell: Is any of the existing EU-level guidance that relates to the habitats directives still to be brought in to domestic guidance?

Roseanna Cunningham: Unless there is something very specific that you are referring to, I do not think that anything is waiting to be brought in.

Mark Ruskell: Is there nothing to be transposed?

Roseanna Cunningham: We are not in the middle of doing something that might be affected by Brexit, if that is what you mean. There is nothing that can run at cross-purposes.

Mark Ruskell: Are we fully aligned?

Roseanna Cunningham: We are fully aligned. Nothing new is being suggested that looks as though it would give us an issue. If Brexit does not happen for another 21 months or two years or whatever, I cannot speak for the position at that point. I can speak only about the position now.

This is preparation for a no-deal Brexit. We are having to do it on this timescale to make sure that we are in a solid place for 29 March. Right now, nothing is waiting and I am not aware of anything on the horizon that might fall into that category. Of course, I cannot rule out the possibility that if Brexit is delayed considerably, something might emerge, but we are committed to doing the work that is necessary.

Mark Ruskell: Will you use the powers in the SSI to issue guidance on interpretation straight away? What are your plans on that?

Roseanna Cunningham: We will work on guidance as soon as is manageable. The intention is to do that sooner rather than later.

Mark Ruskell: How quickly?

Roseanna Cunningham: With the greatest of respect, officials are probably quite busy just getting all this done. Guidance will be published when the SSI comes into effect. It will not be published in advance. This instrument will not happen unless Brexit happens, so there is no separate publication schedule for the guidance.

In the longer term, we will review and update existing Scottish guidance but the guidance that goes along with this particular instrument will be published when the instrument comes into force and I have no idea when that might be.

Mark Ruskell: That is a useful clarification. I have one more question about the introduction of a proportionality test into the regulations, in relation to how sites are managed, not designated. That seems to be quite a significant divergence from what is currently in the habitats directive. I understand that it is aligned with what DEFRA wants to do, but I think that it raises significant concerns around the appropriateness of management actions on protected sites and whether we could end up downgrading some of that much-needed management work.

Roseanna Cunningham: That is not the intention—

Mark Ruskell: Can you reassure me about why that proportionality test, which is a new thing, is in there?

Roseanna Cunningham: We are not going to introduce the possibility of permitting activity in protected sites that would otherwise not be allowed. The use of the term “proportionate” is intended to reflect the relative importance of

habitats and species within the UK on an international scale. It is clearly defined in the regulations, which say:

“‘proportionate’ means proportionate to the relative importance of—

(a) the part of the natural range lying in the United Kingdom’s territory; and

(b) the part of the natural range lying outside the United Kingdom’s territory”.

The EU general principle of proportionality is not invoked in that context. It is in effect about protecting habitats and species that are of international importance and significance in the UK.

Steven, does this relate to the Scottish Crossbill?

Steven Dora (Scottish Government): No.

Roseanna Cunningham: I thought that this might relate to an issue about the Scottish Crossbill, but it does not.

Mark Ruskell: I am still not clear why there is a divergence between what is in the habitats directive and what is in this instrument. It is bringing in a proportionality test in relation to management. I am sorry, but your answer does not make it clear what that means.

Roseanna Cunningham: There are things across the EU that are of great significance that might not be habitat issues for the UK at all. If we simply bring over the whole management process, without some reference to that reality, we run the risk of disproportionately applying rules to things that are not really the issues that we need to be concerned about. There are habitats directive and wild birds directive issues that are regarded in the same way on an EU-wide basis, because we are working on an EU-wide basis at the moment. However, we will not be operating on that EU-wide basis any more, so we have to ensure that we can give proportionate importance to the habitats directive and wild birds directive issues that relate to the UK and not to the rest of the EU.

Mark Ruskell: Can you give an example of where that might apply and where we might want a separate approach to proportionality in relation to a certain species, compared to another one? The provision is quite a broad, catch-all one to put into legislation.

Roseanna Cunningham: Michael McLeod can answer that.

Michael McLeod (Scottish Government): Favourable conservation status is an EU-wide concept that is managed at an EU level on a biogeographic scale—we are in the Atlantic biogeographic region. If you remove Scotland and the UK from that process but still want to uphold

that, you have to define something that works in comparison to what the habitats directive currently says. The habitats directive requires member states to make a proportionate contribution to the Natura network, based on habitats and species that are found within their territory and are listed in the directive. The drafting of the principle that we are discussing tries to replicate the spirit of that provision in the directive. It is not about managing individual sites; it is about adapting the network as a whole to ensure that it is protecting an appropriate range and proportion of each habitat and species that are found in Scotland and the UK.

Mark Ruskell: What you are describing concerns designation, whereas the provision that I am asking about concerns management. Those are two different things. If something is designated, how you apply management proportionately is a different question to that of whether you would proportionately designate a species based on its range, biogeography and everything else that you discuss. Why is the principle being applied to management rather than designation?

Michael McLeod: It is not being applied to management; it is being applied to the adaptation of the network in the future. The provisions for the management of sites are in regulation 48 of the original 1994 regulations and transpose article 6 of the habitats directive. The article 6 provisions in the habitats directive require you to take appropriate steps to ensure that sites are managed properly.

We have not changed regulation 48 at all; it still stands, for each and every site that we have in what is currently the Natura network. That provision will apply if we adapt the network to include further sites in the future using the new adaptation provision.

12:00

John Scott: Why does the power to introduce regulations to amend the schedules and annexes not include requirements to seek expert advice from statutory agencies?

Roseanna Cunningham: We will seek advice; there is not an intention not to do so. Any amendments will be made on the basis of scientific advice from nature conservation advisers. The power taken is necessary to account for possible future technical and scientific progress, but we would always seek advice. Amendments would probably be prompted by scientific advice rather than the other way round. We can issue guidance in the future to clarify how that advice will be formally taken. Obviously, we will work with the other UK Administrations to

ensure consistency across the UK, and any amendments would be subject to the affirmative procedure. There is every intention to take advice.

John Scott: One would not doubt your motives at all, cabinet secretary, but things might be clearer if there was a specific requirement in place in the legislation.

Roseanna Cunningham: The directive does not have that, either. We need to remember that all that we are doing is transposing what exists; we are not creating new things over and above that.

John Scott: I take your point.

Can you foresee circumstances in which the Scottish ministers would amend the schedules or annexes to the birds or habitats directives in a different way from the rest of the UK? Would that fall under a common framework, given that the regulations create a “UK site network”?

Roseanna Cunningham: Sure. The committee has taken evidence for over an hour on something that we are doing that is different from what the rest of the UK does. In fairness, Michael Gove also had to consider the possibility of the reintroduction of lynx on an English basis, which he was entitled to do. The possibility of that kind of decision making is contained within the devolution of environment powers as is.

There might be some divergence. Indeed, there is divergence, because we are in the process of reintroducing beavers formally. That has already arisen—it is nothing unusual. I would not expect there to be massive divergence. The odd thing will arise out of the specific circumstances that exist in Scotland. Obviously, we are retaining all our current environment powers, but there is an existing UK biodiversity framework in place. Currently, there are discussions at the official level about how we can set up an agreement across the four Administrations to ensure that things are managed properly at that more general level. However, I cannot rule things out, given that the committee has just gone through a whole session on a divergence.

John Scott: To be clear, there is latitude for divergence under a common framework, notwithstanding the fact that the regulations create a “UK site network”. You have just given us an example of that.

Roseanna Cunningham: Yes. It is recognised that there is devolution of powers. That has always been the case. The situation with the beavers is under the current set-up, not the future one. There is nothing new about the situation.

John Scott: Fine. Thanks very much.

Stewart Stevenson: I have a couple of tidy-up points.

Terminologically, the Scottish regulations use the term “UK site network” essentially to replace references to Natura 2000, but the UK regulations use the term “national site network”. The Green Alliance has suggested that we should have a shared description, which would be “international site network”. Do you have any views on that? It is a comparatively modest point.

Roseanna Cunningham: The definitions are the same, so it is the terminology that is in question. Nobody would be surprised to discover that the England and Wales terminology of “national site network” would cause a bit of confusion for Scotland. Indeed, I wonder whether Wales is content with a “national site network” that covers both sides of the England-Wales border. We thought that, to avoid there being an issue about the use of “national” in the UK context, we would simply use the designation “UK site network”, to make it clearer. As I said, the definitions are exactly the same.

Stewart Stevenson: By the same token, are there any issues for the powers of the Scottish ministers deriving from the UK regulations? I realise that that is not directly related to today’s discussion, but it is an adjunct to it.

Roseanna Cunningham: I think that the answer to that is no. The UK regulations create no new powers that apply in Scotland—they have not crossed a line on any of that. The UK Government is doing what it is doing, which is the equivalent exercise to what we are doing here.

The Convener: As members have no more questions, cabinet secretary, would you like to add anything that you have not had a chance to say?

Roseanna Cunningham: No.

The Convener: In that case, we move on to the third item on the agenda, which is consideration of motion S5M-16057.

Motion moved,

That the Environment, Climate Change and Land Reform Committee recommends that the Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 [draft] be approved.—[*Roseanna Cunningham*]

Motion agreed to.

The Convener: I thank the cabinet secretary and her officials.

12:07

Meeting suspended.

12:08

On resuming—

European Union (Withdrawal) Act 2018

**Environment (EU Exit) (Scotland)
(Amendment etc) Regulations 2019 (SSI
2019/26)**

**Marine Environment (Scotland) (EU Exit)
(Amendments) Regulations 2019 (SSI
2019/55)**

The Convener: Our fourth agenda item is to consider whether two instruments have been laid under the appropriate procedure. Both the instruments have been laid under the negative procedure. Do members have any comments?

Stewart Stevenson: I can see no reason why they should be anything other than negative instruments.

The Convener: As members have no more comments, is the committee content for the instruments to be considered under the negative procedure?

Members indicated agreement.

The Convener: The instruments will be considered under the next agenda item.

Subordinate Legislation

**Environment (EU Exit) (Scotland)
(Amendment etc) Regulations 2019 (SSI
2019/26)**

**Marine Environment (Scotland) (EU Exit)
(Amendments) Regulations 2019 (SSI
2019/55)**

12:09

The Convener: The fifth item on our agenda is consideration of the aforementioned instruments. As members have no comments on the instruments, are we agreed that we do not want to make any recommendations in relation to them?

Members indicated agreement.

**Wildlife and Countryside Act 1981
(Keeping and Release and Notification
Requirements) (Scotland) Amendment
Order 2019 (SSI 2019/37)**

**Wildlife and Countryside Act 1981
(Prohibition on Sale etc of Invasive Animal
and Plant Species) (Scotland) Order 2019
(SSI 2019/38)**

The Convener: The sixth item on our agenda is consideration of two negative instruments. Do members have any comments on the instruments?

Stewart Stevenson: I note that our briefing says that

“The Scottish Government is working with the UK Government and the other Devolved Administrations on the implementation”,

which I welcome.

The Convener: Does the committee agree that it does not want to make any recommendations in relation to the instruments?

Members indicated agreement.

The Convener: At the committee’s next meeting, which will be on 12 March, we will hear from Police Scotland, the Crown Office and Procurator Fiscal Service and the Scottish Society for the Prevention of Cruelty to Animals on the Scottish Government’s “Wildlife Crime in Scotland: 2017 Annual Report”.

We now move into private session, so I ask that the public gallery be cleared.

12:11

Meeting continued in private until 12:22.

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