



The Scottish Parliament  
Pàrlamaid na h-Alba

Published 7 March 2019  
SP Paper 481  
2nd Report, 2019 (Session 5)

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

## **Comataidh Atharrachadh Clìomaid is Ath-leasachaidh Fearann**

# **The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019**



**Published in Scotland by the Scottish Parliamentary Corporate Body.**

---

All documents are available on the Scottish Parliament website at:  
<http://www.parliament.scot/abouttheparliament/91279.aspx>

For information on the Scottish Parliament contact Public Information on:  
Telephone: 0131 348 5000  
Textphone: 0800 092 7100  
Email: [sp.info@parliament.scot](mailto:sp.info@parliament.scot)

# Contents

<b>The Conservation (Natural Habitats, &amp;c.) (EU Exit) (Scotland) (Amendment) Regulations 2019</b>	<b>1</b>
---	----------

---

# Environment, Climate Change and Land Reform Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Environment, Climate Change and Land Reform.



<http://www.parliament.scot/environment-committee>



[Ecclr.committee@parliament.scot](mailto:Ecclr.committee@parliament.scot)



0131 348 5051

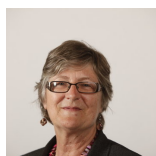
# Committee Membership



**Convener**  
**Gillian Martin**  
Scottish National Party



**Deputy Convener**  
**John Scott**  
Scottish Conservative  
and Unionist Party



**Claudia Beamish**  
Scottish Labour



**Finlay Carson**  
Scottish Conservative  
and Unionist Party



**Angus MacDonald**  
Scottish National Party



**Mark Ruskell**  
Scottish Green Party



**Stewart Stevenson**  
Scottish National Party

# The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019

1. The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 [draft] were laid before the Scottish Parliament on 18 February 2019 and referred to the Environment, Climate Change and Land Reform Committee. The Committee must report on the Regulations by 29 March 2019.
2. The Regulations are subject to the affirmative procedure; the affirmative parliamentary procedure is set out in Chapter 10 of Standing Orders.
3. The purpose of the Regulations is to amend the Conservation (Natural Habitats, &c.) Regulations 1994 to ensure they continue to operate effectively following the UK's withdrawal from the EU. (The 1994 Regulations deliver the protected areas and species requirements of the EU Habitats Directive and the protected areas requirements of the EU Wild Birds Directives.) It also makes minor changes in salmon conservation legislation to reflect the changes made to the 1994 Regulations to ensure that the provisions continue to operate as intended following EU withdrawal.
4. Under the protocol agreed by the Scottish Parliament and Scottish Government in relation to subordinate legislation relating to the UK's withdrawal from the EU, the Scottish Government categorises each instrument – high, medium or low – to assist committees' prioritisation in terms of scrutiny. The Scottish Government categorised this instrument as low as it is technical in nature and does not introduce a change in policy.<sup>i</sup>
5. The Delegated Powers and Law Reform Committee considered the Regulations at its meeting on 26 February 2019 and recommended the instrument should have been categorised as medium. The DPLRC argued this was on the grounds that the Regulations transfer significant oversight functions from the European Commission to the Scottish Ministers in relation to nature conservation and that this has been identified as a high-risk area by stakeholders in terms of Brexit and environmental protection.<sup>ii</sup>
6. The Committee considered the Regulations at its meeting on 5 March 2019 when it took evidence from Roseanna Cunningham, Cabinet Secretary for the Environment, Climate Change and Land Reform and Scottish Government officials.
7. During her evidence, the Cabinet Secretary confirmed the Regulations transferred the existing powers and obligations currently exercised by the European

---

i Cabinet Secretary for Government Business and Constitutional Relations. [Protocol on the scrutiny of SSIs made using powers under the European Union \(Withdrawal\) Act 2018](#), 8 January 2019.

ii Delegated Powers and Law Reform Committee. 10th Report, 2019 (Session 5). [Subordinate legislation considered by the Delegated Powers and Law Reform Committee on 26 February 2019](#) (SP Paper 476).

Commission to Scottish Ministers to ensure their operability; the Regulations did not introduce any policy changes. The Cabinet Secretary confirmed there are sufficient governance arrangements in place and that guidance would be published at the point at which the Regulations came into effect.

8. When asked whether the Regulations introduced a proportionality test in relation to the management of protected sites, Scottish Government officials confirmed that the provisions in relation to the management of protected sites remain unchanged. Officials clarified that the Regulations seek to replicate the principle set out in the Habitats Directive whereby member states make a proportionate contribution to the Natura network based on the habitats and species set out in the Directive and found in that territory. The Cabinet Secretary clarified the provision does not invoke the EU general principle of proportionality in this context.
9. Following her evidence, the Cabinet Secretary moved motion S5M-16057— 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.
10. Following debate, the motion was agreed to.
11. The Official Report from the meeting will be published on Parliament’s website on 8 March 2019.
12. The Environment, Climate Change and Land Reform Committee recommends that the Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 [draft] be approved.

