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

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

# **The Conservation (Natural Habitats, &c.) (Miscellaneous Amendments) (Scotland) Regulations 2019 [draft] and the Environmental Protection Act 1990 Amendment (Scotland) Regulations 2019 [draft]**



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# Contents

<b>The Conservation (Natural Habitats, &amp;c.) (Miscellaneous Amendments) (Scotland) Regulations 2019 [draft]</b>	<b>1</b>
<b>The Environmental Protection Act 1990 Amendment (Scotland) Regulations 2019 [draft]</b>	<b>3</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>



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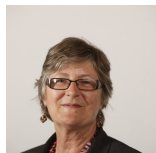
# Committee Membership



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Scottish National Party



**Deputy Convener**  
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Scottish Conservative  
and Unionist Party



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**Stewart Stevenson**  
Scottish National Party

# The Conservation (Natural Habitats, &c.) (Miscellaneous Amendments) (Scotland) Regulations 2019 [draft]

1. The Conservation (Natural Habitats, &c.) (Miscellaneous Amendments) (Scotland) Regulations 2019 [draft] were laid before the Scottish Parliament on 19 June 2019 and referred to the Environment, Climate Change and Land Reform Committee. The Committee must report on the regulations by 30 September 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 complete the implementation of the EU regulation on invasive alien species (Regulation (EU) No 1143/2014) which came into force in 2015. The Committee considered two negative instruments on 1 April 2019 which also sought to implement the EU regulation.
4. Specifically, the instrument has four objectives: to ensure there are offences and penalties in place for the contravention of the prohibitions on the keeping and sale of 13 species identified as of concern (and which cannot be addressed by the Wildlife and Countryside Act 1981 as they are not considered invasive in Scotland); to ensure there are offences and penalties in place for the contravention of other restrictions under the EU regulation; to make statutory defences for owners of companion animals and commercial stock; and make arrangements for licensing certain restricted activities.
5. The Delegated Powers and Law Reform Committee considered the regulations at its meeting on 3 September 2019 and made no comment.
6. The Committee considered the regulations at its meeting on 24 September 2019 when it took evidence from Mairi Gougeon, Minister for Rural Affairs and the Natural Environment.
7. During her evidence, the Minister confirmed the regulations would not impose an additional burden, but that some additional requirements would be placed on people in the horticultural trade (such as garden centre and pet shop owners) and those who sell species for research or medical purposes.
8. In response to a question, a Scottish Government official confirmed that, were any of the 13 invasive species not considered invasive in Scotland to become invasive in Scotland, the Government would address this under the 1981 Act. The official stated “that would have limited impacts in real-world terms, but it would change the basis on which the legislation was banning or controlling the keeping, selling, transporting and so on of the species”.
9. Following her evidence, the Minister moved motion S5M-18216— That the Conservation (Natural Habitats, &c.) (Miscellaneous Amendments) (Scotland) Regulations 2019 [draft] be approved.
10. Following debate, the motion was agreed to.

11. The Environment, Climate Change and Land Reform Committee recommends that the Conservation (Natural Habitats, &c.) (Miscellaneous Amendments) (Scotland) Regulations 2019 [draft] be approved.

# The Environmental Protection Act 1990 Amendment (Scotland) Regulations 2019 [draft]

12. The Environmental Protection Act 1990 Amendment (Scotland) Regulations 2019 [draft] were laid before the Scottish Parliament on 5 September 2019 and referred to the Environment, Climate Change and Land Reform Committee. The Committee must report on the regulations by 20 October 2019.
13. The regulations are subject to the affirmative procedure; the affirmative parliamentary procedure is set out in Chapter 10 of Standing Orders.
14. The purpose of the regulations is to amend section 57 of the Environmental Protection Act 1990 to ensure that ministers' power to direct holders of a waste permit to accept, keep, treat or dispose of waste covers all kinds of permits.
15. Currently, under section 57, ministers have the power to direct holders of a waste permit to accept, keep, treat or dispose of waste. That power does not, however, extend to holders of permits that were issued under the Pollution Prevention and Control (Scotland) Regulations 2012 (for example, larger industrial installations and waste incinerators) or operators that rely on exemptions from the waste management licensing regime.
16. The Delegated Powers and Law Reform Committee considered the regulations at its meeting on 17 September 2019 and made no comment.
17. The Committee considered the regulations at its meeting on 24 September 2019 when it took evidence from Mairi Gougeon, Minister for Rural Affairs and the Natural Environment.
18. During her evidence, the Minister stated the section 57 power was a "failsafe provision for use in circumstances in which the normal regulatory powers fall short or have been exhausted, such as where sites have been abandoned or where an operator becomes bankrupt". The Minister stated the power has never been used but that, during the Scottish Government's contingency planning ahead of a possible no-deal exit from the EU, a greater risk of market failures had been identified and, therefore, it was considered that Ministers may need a "viable power to direct waste holders and operators on the treatment and disposal of waste".
19. The Minister was asked about the lack of an appeals mechanism. A Scottish Government official confirmed that section 57 would only be exercised after seeking advice from SEPA and other relevant stakeholders and on the basis of "clear evidence of such a risk". It was considered that "the alternative of harm being caused to human health or the environment would, in such circumstances, outweigh the suggestion of a right to appeal". The Minister also confirmed that, as the instrument was in response to a specific issue identified as part of the contingency planning ahead of a possible no-deal exit from the EU, it did not relate to any preparations ahead of a predicted rise in incineration. The Minister also confirmed the instrument would not lead to any cost increases.



20. Following her evidence, the Minister moved motion S5M-18936— That the Environmental Protection Act 1990 Amendment (Scotland) Regulations 2019 [draft] be approved.
21. Following debate, the motion was agreed to.
22. The Environment, Climate Change and Land Reform Committee recommends that the Environmental Protection Act 1990 Amendment (Scotland) Regulations 2019 [draft] be approved.

