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## **Public Audit and Post-legislative Scrutiny Committee Comataidh Sgrùdadh Poblach agus Iar-reachdail**

# **Post-legislative Scrutiny: Biodiversity and Biodiversity Reporting Duties**



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# Public Audit and Post-legislative Scrutiny Committee

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# Introduction

1. At its meeting on 18 January 2018, the Committee agreed to undertake post-legislative scrutiny of the biodiversity and biodiversity reporting duties placed on public bodies by the Nature Conservation (Scotland) Act 2004 (the 2004 Act)<sup>1</sup> and the Wildlife and Natural Environment Act 2011 (the 2011 Act).<sup>2</sup>
2. On 29 January 2018, the Committee issued a call for written evidence, seeking responses to four key questions:
  - How well do you believe public bodies understand the biodiversity and reporting duties placed upon them?
  - Do you believe that public bodies are adequately resourced to comply with the biodiversity and reporting duties?
  - Do you think the requirement to report on the biodiversity duty leads to effective actions for improving and conserving biodiversity by public bodies?
  - Are there any changes that could improve the actions taken by public bodies in respect of the biodiversity and reporting duties?
3. The call for evidence ran until 23 March 2018 and 14 responses<sup>3</sup> were received. The Committee also took oral evidence from stakeholders on 31 May 2018<sup>4</sup> and from the Cabinet Secretary for Environment, Climate Change and Land Reform (the Cabinet Secretary) on 7 June 2018.<sup>5</sup>

# Background

## The biodiversity framework

4. In June 1992, the UN Convention on Biological Diversity<sup>i</sup> was signed by the United Kingdom and 158 other countries at the Earth Summit, which took place in Rio de Janeiro ("the Rio Convention"). It was the first treaty to provide a legal framework for biodiversity conservation. However, the failure to meet the internationally set targets in the Rio Convention, to preserve biodiversity, led to the UN Convention on Biological Diversity setting new targets for 2020 ("the Aichi Targets") in 2010.
5. In 2004, the Scottish Government published its Biodiversity Strategy<sup>6</sup> to help ensure that it met its international obligations under the Rio Convention. In 2013, the Scottish Government published its "2020 Challenge for Scotland's Biodiversity" document.<sup>7</sup> This document was intended as a supplement to the 2004 Scottish Biodiversity Strategy with its main focus being on the Scottish Government's desired outcomes for meeting the new 2020 (Aichi) targets.

## The biodiversity and biodiversity reporting duties

6. One of the policy intentions of the 2004 Act was to acknowledge Scotland's commitments as set out in the Rio Convention. As such, the 2004 Act requires all public bodies to further the conservation of biodiversity when carrying out their functions ("the biodiversity duty"). When carrying out this duty, public bodies are required to have regard to the Rio Convention and to act with reference to the aims and objectives of the 2004 strategy.
7. The 2011 Act amended the 2004 Act by placing a requirement on public bodies to provide a publicly available report, every three years, on the actions the bodies have taken to meet the biodiversity duty ("the reporting duty").
8. The first biodiversity reports under the 2011 Act were due on 1 January 2015. At the end of this first reporting cycle, the Scottish Government commissioned a study to evaluate the compliance ("the 2015 evaluation study") and quality of this initial round of biodiversity duty reports. The subsequent report was published<sup>8</sup> in September 2016.
9. The 2015 evaluation study reported that of the 139 public bodies believed to have been in existence during the reporting period, only 61 (44%) produced a biodiversity duty report, 35 (25%) did not publish a report and 43 (31%) may have produced a report but they did not respond to the survey and no report was available online.

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<sup>i</sup> Biological diversity, shortened to biodiversity, is the term given to the variety of living things on earth. The UN Convention on Biological Diversity (1992) definition of biodiversity is: Biodiversity is the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part: this includes diversity within species, between species and of ecosystems.

10. Information on the Scottish Government's biodiversity strategy, guidance on compliance with the biodiversity and biodiversity reporting duties and the biodiversity reports published by public bodies can all be found on Scottish Natural Heritage's (SNH) website.<sup>9</sup>



## Issues explored

11. A number of key themes emerged from the Committee's evidence taking. These key themes, along with the Committee's conclusions and recommendations, are set out below.

## Compliance with the biodiversity and biodiversity reporting duties

12. Before considering issues around the levels of compliance with the biodiversity and biodiversity reporting duties, the Committee acknowledges the examples of good practice in respect of biodiversity, drawn to its attention through the written<sup>3</sup> and oral evidence<sup>10 11</sup> received as part of this inquiry.
13. The 2015 evaluation study discussed above however, revealed a low level of compliance with the reporting duty. In her evidence<sup>12</sup> to the Committee, the Cabinet Secretary advised that, following the end of the last reporting cycle in January 2018, compliance with the reporting duty was 41%. She indicated that it was hoped that, by the end of the year, the figure would be higher than that of 2015. However, the Cabinet Secretary acknowledged that there were still a high number of public bodies not engaged in the reporting process. She suggested that compliance with the reporting duty was directly linked to the compliance with the biodiversity duty. She said—

” I suspect that what is happening is that public bodies that have not really paid any attention to the original 2004 duty do not report because they have nothing to report. I am looking at officials for confirmation, but I suspect that people see the letter and think, “We do not really have anything to say.”

Source: Public Audit and Post-legislative Scrutiny Committee 07 June 2018, Roseanna Cunningham, contrib. 25<sup>13</sup>

14. The Committee asked the Cabinet Secretary if there was any evidence that the reporting duty actually added value to conserving biodiversity. The Cabinet Secretary agreed that it was likely that the public bodies which were actively furthering biodiversity (and, as such, complying with the biodiversity duty) would be doing so whether or not there was a reporting duty<sup>14</sup>. The Cabinet Secretary expressed the view that public bodies whose core activities do not relate to nature or biodiversity might find it difficult to identify what action is required to comply with both duties. She said—

” The question is how we make sure that we get all those public bodies that are doing such work to report it—I would be surprised if they are not doing so—and how we get those that do not have the issue at the forefront of their minds to understand that they should be thinking about it in the course of their business. That was what was asked of them.

Source: Public Audit and Post-legislative Scrutiny Committee 07 June 2018, Roseanna Cunningham, contrib. 21<sup>15</sup>

15. The evidence provided to the Committee suggested that those public bodies who manage land and who have lead roles in delivering on biodiversity targets for Scotland were clear on the action that they needed to take in respect of the biodiversity duty.<sup>16</sup> However, the evidence also suggested that public bodies, whose core functions do not readily lend themselves to biodiversity were not quite as clear<sup>12</sup>.
16. The Cabinet Secretary suggested that, in order to increase levels of reporting, some public bodies needed to understand what was required of them in complying with the biodiversity duty. She said—

” The challenge is in trying to increase the level of compliance on reporting. Behind that challenge is the challenge of getting a number of public bodies to understand that, however little can be done, it is still valuable and contributes.

Source: Public Audit and Post-legislative Scrutiny Committee 07 June 2018, Roseanna Cunningham, contrib. 37<sup>17</sup>

The Committee recognises that the low level of compliance with the reporting duty is closely linked to the lack of compliance with the biodiversity duty.

## **Actions to improve compliance with biodiversity and reporting duties**

17. The Committee explored the underlying reasons behind the low levels of compliance with the biodiversity duty (and the consequential lack of compliance with the reporting duty) and examined proposals for improving compliance.

### ***Clearer links between the reporting duty and international targets and outcomes***

18. One reason identified was a lack of understanding by some public bodies as to the type of action that they should be taking in compliance with the biodiversity duty. This was acknowledged by the Cabinet Secretary who said, in relation to public bodies—

” We asked them to have regard to biodiversity in the course of their normal functions and, some years later, we asked them to report on what that looked like. I suspect that there might be a bit of confusion about what exactly public bodies are supposed to be doing, and in some cases I suspect that they do not have much of a notion.

Source: Public Audit and Post-legislative Scrutiny Committee 07 June 2018, Roseanna Cunningham, contrib. 21<sup>15</sup>

19. In particular, evidence received by the Committee suggested that the absence of action by certain bodies might be due to a lack of understanding of and clear guidance on the interrelationship between key documents and specifically how

compliance with the reporting duty contributed to international biodiversity targets and outcomes.

20. For example, the policy memorandum<sup>18</sup> accompanying the 2004 Act indicated that public bodies should carry out the biodiversity duty with reference to the aims and objectives of the 2004 strategy. The written evidence from RSPB Scotland<sup>19</sup> indicated that the current guidance on the duties does not specify the actions public bodies should take in compliance with the duty and believed that this led to the loss of a link between the biodiversity duty and the 2004 strategy. RSPB Scotland stated that this results in the duty having limited effectiveness in "delivering gains for biodiversity".

21. During its evidence with stakeholders on 31 May 2018, the Committee heard this issue being described as a "missing stage" in the current process. RSPB Scotland stated that—

” We have a strategy and a duty to report on its implementation, but the strategy is not converted into clear actions regarding who does what, and when. Therefore, it is difficult for public bodies to know what they are expected to do, when and how. If the actions were slightly clearer, it would be easier for the responsible bodies to report clearly on the actions that had been assigned to them.

Source: Public Audit and Post-legislative Scrutiny Committee 31 May 2018, Lloyd Austin, contrib. 17<sup>20</sup>

22. The evidence also suggested that it was not always clear how compliance with the duty contributed to international biodiversity targets. For example, in its oral evidence to the Committee on 31 May 2018, SNH explained that the biodiversity duty relates to public bodies and how they exercise their functions; it is not a duty to deliver against international targets.<sup>21</sup>

23. However, Scottish Environment Link (SE Link) argued that international targets were important in the context of the biodiversity duty as the national targets are based on what Scotland needs to do to meet the international targets. It suggested that what was missing was an explanation of what a public body needs to do to help meet those targets.<sup>22</sup>

24. In its written submission to the Committee, SNH expanded on this point, suggesting that further linkage was required. It concluded that—

” In order to ensure public bodies understand the relevance of biodiversity to their work and therefore identify appropriate actions, clearer descriptions of the benefits nature brings to society including multiple benefits need to be further developed.

Source: Scottish Natural Heritage, 2018<sup>23</sup>

25. The Committee heard from SNH on how, as part of delivery of the biodiversity strategy, it has set up a number of delivery agreements with some key public bodies that deliver on a range of partnership projects, many of which contribute to the international Aichi targets. The delivery agreements assist in providing those public bodies with a clear set of priorities to work to which, in turn, help informs their

biodiversity reports. SNH indicated that it planned to expand the number of organisations which have completed a delivery agreement.<sup>24</sup>

26. In her oral evidence to the Committee, the Cabinet Secretary indicated that, in the lead up to the reporting deadline, the Scottish Government writes to all public bodies<sup>25</sup>.
27. The Committee considers that, wherever possible, the actions taken by public bodies to fulfil the biodiversity duty should be clearly linked to key national outcomes. The Committee welcomes the work being undertaken<sup>24</sup> by SNH in supporting organisations to develop delivery agreements and to identify their contribution to the biodiversity strategy. It further welcomes SNH's plans to expand the number of organisations which have completed a delivery agreement, noting SNH's view that this will enable more public bodies to clearly articulate what they can contribute to biodiversity.

The Committee recommends that the Scottish Government works with Scottish Natural Heritage to explore how the links between key biodiversity documents can be made more explicit. In particular, the Scottish Government and SNH should explore how guidance on the biodiversity duty can make clearer how the actions of public bodies in compliance with the duty contribute to key national and international targets and outcomes.

The Committee considers that, in addition to writing to public bodies in the lead up to the reporting deadline, the Scottish Government should write to public bodies at the start of the reporting cycle, and at regular intervals, to remind such bodies of the biodiversity and reporting duties and how the work that they undertake as part of the day-to-day running of their organisations can contribute to fulfilling the duties.

## ***Provision of additional guidance and support***

28. While the Committee notes that the Scottish Government, through SNH, provides guidance to public bodies on the biodiversity and reporting duties, the written and oral evidence received by the Committee suggested that additional support for public bodies would be welcomed. For example, in its written submission, Aberdeenshire Council<sup>26</sup> commented that further guidance and clarity on how public bodies should respond to the duty in carrying out their numerous and diverse functions is likely to be helpful.
29. NHS Grampian<sup>27</sup> suggested that more information could be provided either online or through workshops to improve public bodies understanding of the duties placed on them. East Ayrshire Leisure Trust<sup>28</sup> suggested that the focus for improvement in respect of the duties should be on resources and training for non-nature conservation staff. Similarly, NHS Ayrshire and Arran<sup>29</sup> commented that specialist advice and support and additional resources would be required to support public bodies maximise their impact.

30. In oral evidence, Dundee City Council suggested that guidance which was focused on the type and environment of the public body would be helpful. Alison Anderson said—

” I am sure that you are aware that ours is a very urban area with a really tight administrative boundary and lots of competing priorities for us to deal with. We do not have a biodiversity officer or a local biodiversity partnership, and we would welcome some tailored guidance for Dundee about where we fit into the national scheme of things.

Source: Public Audit and Post-legislative Scrutiny Committee 31 May 2018, Alison Anderson, contrib. 25<sup>30</sup>

31. The Committee is aware of the work that SNH undertakes to support public bodies in complying with the biodiversity and reporting duties. However, the evidence to the Committee suggests that, even public bodies which do comply with the reporting duty, consider that they would benefit from additional support and potentially more tailored guidance.

The Committee recommends that the Scottish Government and Scottish Natural Heritage review the evidence from public bodies received by the Committee which proposes additional guidance and support to assist them in complying with the biodiversity and reporting duties and consider what further assistance could be provided, including whether such assistance could be tailored to particular types of public bodies.

### ***Making the duties more proportionate***

32. The Committee also received evidence that suggested that there was a need to ensure that reporting requirements were proportionate to the differing sizes and types of public bodies. In particular, this was an issue raised by the National Museums Scotland in its written submission.<sup>31</sup> Dundee City Council made a similar point in oral evidence to the Committee on 31 May 2018. The local authority suggested that it would welcome proportionality to reflect the differing biodiversity challenges faced by local authorities, where local circumstances can vary significantly between, for example, urban and rural areas.<sup>32</sup>
33. The written submission from SNH<sup>24</sup> confirmed that, following recommendations made in the 2015 evaluation study, it had updated the biodiversity guidance to ensure that it was better tailored to public bodies of differing sizes and for those who own or manage land. The Committee noted that in its written submission, Aberdeenshire Council<sup>26</sup> commented that it found the reporting template provided by SNH to be very helpful.
34. The Committee raised the issue of proportionality with the Cabinet Secretary during the evidence session on 7 June 2018 and sought her views on whether the biodiversity and reporting duties could be changed to be more proportionate to the size and core functions of public bodies.

35. The Cabinet Secretary acknowledged the importance of proportionality, but indicated that the guidance already recognised that. She said—

” There are three levels, with three different templates, so public bodies ought to be able to find something that fits their core function, size and all the rest of it.

Source: Public Audit and Post-legislative Scrutiny Committee 07 June 2018, Roseanna Cunningham, contrib. 29<sup>33</sup>

36. The Cabinet Secretary acknowledged, however, that it was likely that some public bodies were still unaware of the guidance and the availability of the templates. In her oral evidence to the Committee, the Cabinet Secretary undertook to write to public bodies reminding them that the current reporting deadline had passed in January 2018 and to highlight the parliamentary interest in the lack of compliance with the reporting duty.<sup>34</sup>

The Committee notes the availability of guidance and templates for public bodies of differing sizes and functions. The Committee recommends that the Scottish Government and Scottish Natural Heritage consider what further steps could be taken to raise awareness of such guidance and the templates.

The Committee also recommends that the Scottish Government and Scottish Natural Heritage continue to review the guidance to ensure that concerns expressed by stakeholders in relation to proportionality are reflected in such guidance.

The Committee welcomes the Scottish Government's commitment to write again to public bodies reminding them of the reporting duty and highlighting the Committee's interest in the lack of compliance with the duty. The Committee recommends that the letter should also draw attention to the availability of differing reporting templates.

## ***Availability of biodiversity data***

37. Evidence to the Committee also suggests that improvement in access to and quality of biodiversity data could assist in improving compliance with the biodiversity duty. For example, one of the issues raised by stakeholders in the oral evidence session on 31 May 2018 was the need to be able to access up-to-date local biological information and records.<sup>35</sup> The Committee heard that access to baseline biological information allows public bodies to determine the progress they have made towards furthering the conservation of biodiversity and, as such, complying with the biodiversity duty. Both SE Link and the Cabinet Secretary spoke of the work currently underway by the Scottish Biodiversity Forum on a business plan which would put forward suggestions and proposals on how best to establish a mechanism for gathering biological information throughout Scotland.<sup>36</sup>



38. Nevertheless, the Cabinet Secretary expressed a note of caution suggesting that focusing resources on recording and reporting on biological data might run the risk of detracting from the actual activity to comply with the biodiversity duty.<sup>36</sup>

While the Committee is mindful of the need to avoid creating additional layers of reporting, it welcomes the progress being made by the Scottish Biodiversity Forum towards the sharing of biological data.

The Committee notes that an improvement in the accessibility to and quality of biodiversity data could support public bodies in complying with the biodiversity duty.

The Committee recommends that the Scottish Government keep under review the work being undertaken by the Scottish Biodiversity Forum to ensure that such developments are designed with a view to providing support to public bodies in fulfilling their biodiversity and reporting duties.

## ***Local engagement***

39. At its meeting on 31 May 2018, the Committee explored the value of public engagement in the conservation of biodiversity and how engagement with the public could be strengthened in the future. The Committee heard from Dundee City Council of the importance of balancing the tension between national and local significance and relating the biodiversity duty to issues that were of importance to the local community.<sup>37</sup> SNH spoke of there being a strong role for local biodiversity action partnerships working alongside local organisations, such as schools and local action groups.<sup>38</sup>
40. The Cabinet Secretary also acknowledged the importance of public engagement in the conservation of biodiversity. She expressed the view that local authorities already have a significant level of engagement with the public in this field as much of the activity undertaken by them in the delivery of biodiversity involves vast numbers of volunteers.<sup>39</sup>

The Committee acknowledges the importance of public and local engagement in helping further the conservation of biodiversity and, as such, in assisting public bodies in complying with their biodiversity and reporting duties.

The Committee recognises that a requirement to report on the public and local engagement undertaken by public bodies in complying with the biodiversity duty would help to ensure that such activity takes place. It therefore recommends that the Scottish Government explores requiring biodiversity duty reports to include information on the public and local engagement which the public body has undertaken to inform its approach to complying with the biodiversity duty.

## Issues around reporting

41. The Committee also explored a number of practical issues around the reporting duty, namely around the timing of the reporting cycle and the publications of reports.

### *Timing of reporting deadline*

42. The Committee heard from stakeholders that the timing of the reporting cycle often created difficulties. The Committee learned that, in relation to local authorities and health boards, it can often take up to three months for the draft report to pass through the required governance processes.<sup>40</sup> It was suggested that moving the reporting date from 1 January could help speed up the process.<sup>16</sup>
43. NHS Ayrshire and Arran suggested moving the reporting date to coincide with the reporting date for the climate change duty, where public bodies are expected to submit their reports for the period 1 April to 31 March to the Scottish Government by 30 November that year.<sup>41</sup> In her evidence to the Committee, the Cabinet Secretary confirmed that there was 100% compliance rate in respect of the climate change reporting duty despite there being no sanctions for a failure to report.<sup>34</sup>
44. Nonetheless, the Cabinet Secretary considered that there were likely to be similar compliance issues with almost any other reporting date. She responded that it was not necessary to change the reporting date, which would require primary legislation, as the Scottish Government was always content to accept late reports.<sup>42</sup>

The Committee acknowledges the difficulties that some public bodies may face in complying with the statutory reporting date of 1 January. The Committee also notes the Scottish Government's willingness to accept late submissions.

However, the Committee notes that, without a change to primary legislation, there is always a risk that this approach may not be adopted by future administrations.

The Committee therefore recommends that the Scottish Government explores with public bodies in the first instance whether a majority of organisations would have a preference for an alternative reporting deadline and, if so, consider whether an appropriate legislative vehicle could be found to make this small change to the relevant legislation.

### *Publication of reports*

45. The 2015 evaluation study recommended that the Scottish Government should publish the biodiversity duty reports on its own website (rather than including a link to another organisation's website) and that the Scottish Government should acknowledge receipt of all report links/reports from public bodies. Currently, the biodiversity duty reports, with other information relating to the biodiversity duties, are available on SNH's website.



46. The Committee was concerned to hear at its evidence session on 31 May 2018 that Dundee City Council had sent its biodiversity duty report to the Scottish Government in December 2017 and that, to date, it had not been published on SNH's website. It learned that it was only when Dundee City Council had contacted the Scottish Government to ask about the report that receipt of the report was acknowledged.<sup>43</sup>
47. In its oral evidence to the Committee, SNH agreed that the system had a number of glitches that could be looked at to make the process more effective. It also suggested that public bodies could send the reports directly to SNH.<sup>22</sup>

The Committee considers that it is clearly important that biodiversity duty reports from public bodies are published online without delay. It recommends that the Scottish Government and Scottish Natural Heritage work together to improve the process for the receipt and publication of biodiversity duty reports and that this process is made clear in the guidance provided to public bodies.

## Conclusions

48. The Committee recognises that, while many public bodies are complying with the biodiversity and reporting duties, there are others which are not. In particular, the evidence to the Committee suggests that public bodies whose core functions are linked to biodiversity are generally aware of and comply with the biodiversity duty and the reporting duty.
49. The Committee notes the evidence which suggests that the low level of compliance with the reporting duty is closely linked with a lack of compliance with the biodiversity duty. The evidence suggests that this may be linked to a lack of awareness of what actions public bodies could and should be taking in compliance with the biodiversity duty. The Committee has therefore made a number of recommendations with a view to improving compliance with both duties.

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