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Post-legislative scrutiny suggestion	
Your suggestion for post-legislative scrutiny (this can either be an Act or part of an Act)	
<p>We have four suggestions for acts that should undergo post-legislative scrutiny:</p> <ul style="list-style-type: none"> a) The Marine Scotland Act (201) b) The Wildlife and Countryside Act (1981) c) Biodiversity duty under the Nature Conservation (Scotland) Act (2004) and the Wildlife and Natural Environment (Scotland) Act (2011) d) Operation of the SSSI network under the Nature Conservation (Scotland) Act 2004 	
Why should this act be examined (e.g. what outcome would you hope is achieved)?	
<p>a) The Marine Scotland Act</p> <p>The Marine Scotland Act was introduced in 2010 to provide a strategic overview of the use of the marine environment, and deliver Good Environmental Status (GES) in line with the Marine Strategy Framework Directive (MSFD) by 2020.</p> <p>While the outcomes of the Act are still being delivered, LINK members believe it would be beneficial for the Act itself to undergo scrutiny to ensure the provisions within the Act are still sufficient to meet its objectives. Additionally, given that a Scottish Inshore Fisheries Bill is expected, scrutinising the Act may highlight opportunities for better co-ordination between the Act and the future Inshore Fisheries Bill.</p> <p>As set out in the Act, a National Marine Plan for Scotland has been developed and will be reviewed next year, and progress continues to developed regional marine plans. Scottish Government has made good progress developing a network of Marine Protected Areas, which is set to be reviewed by the end of 2018. The Act covers a broad range of processes to guide the sustainable use of Scotland's marine area encompassing a variety of sectors, within environmental limits.</p>	

b) The Wildlife and Countryside Act (1981)

The Wildlife and Countryside Act (1981), as amended, is operating at a UK-wide basis but it is still very important for the protection of species. Regrettably, the schedules have not been updated in over 12 years despite recommendations being made to the Scottish Government by the Joint Nature Conservation Committee (JNCC). In its reports of 2002, 2008 and 2014, the JNCC urged strengthening measures to protect some of Scotland's most endangered species. For example, the JNCC has recommended that two moths living on Scottish islands receive protection under Schedule 5 of the Act. These are the Talisker burnet moth and the Slender Scotch burnet moth. Similar recommendations have been made for over 10 species.

By not updating the schedules of the Act, we are disregarding important policy tools that can help reverse the serious threat posed by continued biodiversity loss in Scotland.

c) Biodiversity duty under the Nature Conservation (Scotland) Act (2004) and the Wildlife and Natural Environment (Scotland) Act (2011)

Under the [Nature Conservation \(Scotland\) Act \(2004\)](#), all public bodies in Scotland are required to further the conservation of biodiversity when carrying out their responsibilities. The [Wildlife and Natural Environment \(Scotland\) Act \(2011\)](#) requires public bodies in Scotland to provide a publicly available report, every three years, on the actions which they have taken to meet this biodiversity duty.

For public bodies already established on that date, the first reports were published in January 2015 while for bodies established after January 2012, reports were due within three years of their establishment. As a result, we have had a chance to review how the biodiversity duty has been interpreted by different bodies. Based on the [reports](#), results have been mixed with many public bodies falling short of fulfilling their responsibilities.

The biodiversity duty is critical to halting biodiversity loss in Scotland as it places a responsibility on public bodies and office holders "to further the conservation of biodiversity". However, there is evidence that the biodiversity duty has failed to deliver the mainstreaming of biodiversity it was created to ensure.

Overall, there is a continuing policy failure to halt the loss of biodiversity, with lots of effort going into planning, but insufficient action on the ground. This is why the biodiversity duty needs to be reviewed for its effectiveness and capacity to deliver change.

d) Operation of the SSSI network under the Nature Conservation (Scotland) Act 2004

The SSSI network provides protection for areas of land that are of special scientific interest. Scottish Natural Heritage is responsible for designation SSSIs and for ensuring that they remain in favourable condition. The Nature Conservation (Scotland) Act 2004 states that the SSSI network should be "representative of the diversity and geographic range of Scotland's natural features, the natural features of

Great Britain, and the natural features of member States". Whilst there are just over 1,425 SSSIs in Scotland, the network is not fully representative of the important natural features in Scotland. In particular, lichens, fungi, bryophytes and invertebrates are poorly represented. One notable omission from the network is one of the last [unexploited populations of Freshwater pearl mussels in Scotland](#) and probably Europe. Despite it's discovery in 2013 it remains [unprotected](#).

By completing the SSSI network Scotland would make our environment more resilient to global challenges such as climate change as well as preserve important and unique wildlife.

As far as you are aware, does your suggestion fit with the criteria set out in the checklist? *(Please note that the clerks will check each suggestion against the checklist)*

a) The Marine Scotland Act

The Act has been in place since 2010, but as we are half-way to 2020, the date by which the Act is meant to have delivered on its ambitions, we believe that it is a good time to review whether the Act's existing provisions continue to be fit for purpose. This is particularly important given that the Act has not in-built post-legislative scrutiny mechanism.

No other Committee has carried out post-legislative scrutiny of this Bill and we understand that there are no plans to review the Act by the Government.

The Act is a key piece of legislation that covers quite broad range of processes. It is therefore highly likely that a post-legislative scrutiny check will unveil different vies regarding how the provisions of the Act are being delivered.

b) The Wildlife and Countryside Act (1981)

The relevant schedules of the Act have not been reviewed in recent years and to our knowledge, there are no plans for them to be reviewed in light of the JNCC recommendations. As a result, a range of species which are currently facing a number of pressures are not receiving the protection they need.

c) Biodiversity duty under the Nature Conservation (Scotland) Act (2004) and the Wildlife and Natural Environment (Scotland) Act (2011)

While the Scottish Parliament has looked extensively at the delivery of the Scottish Biodiversity Strategy, with the government publishing reports outlining progress in its implementation, there is no equivalent mechanism with respect to the biodiversity duty. This is concerning given that the ultimate policy goal, halting biodiversity loss, is one of the most critical of our time and can contribute towards addressing climate change and making our environment more resilient. As a policy challenge, biodiversity needs to be mainstreamed as it is relevant not only in terms of conservation policy but it also needs to be taken account in terms of planning decisions, land use policies and the operation of different economic sectors.

What is more, many public bodies are under budgetary pressures and very often

expertise that could be used to meet the requirements of the biodiversity duty is no longer available. As such, different public bodies interpret the biodiversity duty in different ways which limits the impact of this requirement towards halting biodiversity loss.

d) Operation of the SSSI network under the Nature Conservation (Scotland) Act 2004

To our knowledge, addressing the operation of the SSSI network in Scotland is not a priority within the current government programme nor are there any set dates for reviewing the network.

Suggestions for post-legislative scrutiny

Please send your completed form to papls.committee@parliament.scot by midday on Friday 28 July 2017.