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Jenny Marra MSP
Convener
Public Audit and Post-legislative Scrutiny
Committee
The Scottish Parliament

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Dear Jenny,

Post-legislative Scrutiny: Biodiversity and Biodiversity Reporting Duties

Further to my letter dated 5 December 2018, I am writing to provide additional details of the work we are undertaking to give effect to the Committee's recommendations to improve public body compliance with biodiversity and biodiversity reporting duties.

As you noted in your letter dated 31 January 2019, we had written to all public bodies in Scotland reiterating the importance of their contribution to Scotland's biodiversity and the reporting duties on them. Since this letter was sent, we have received a number of reports from public bodies which we have uploaded on the relevant website <https://www.nature.scot/scotlands-biodiversity/biodiversity-duty/biodiversity-duty-reporting>.

I have outlined the work we are doing on each of the recommendations made by the Committee in an appendix to this letter.

Yours

ROSEANNA CUNNINGHAM

Scottish Government Response to the Public Audit and Post-legislative Scrutiny Committee's recommendations on Biodiversity and Biodiversity Reporting Duties

- *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.*

Scottish Government officials are working with Scottish Natural Heritage to identify how the current guidance can be updated with a view to helping each public body demonstrate the contribution it makes towards biodiversity, and how it is helping us to progress towards and achieve national and international targets and outcomes.

Current guidance refers to the 2020 Challenge for Scotland's Biodiversity, Scotland's Biodiversity: a Route Map to 2020 (Six Big Steps for Nature) and the Aichi targets, and we are working with Scottish Natural Heritage to develop a comprehensive diagrammatic representation of the links between the work they are doing and our biodiversity targets.

- *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 duty.*

Based on this recommendation, we will commit to writing to public bodies at the beginning of the reporting cycle to remind bodies of their reporting duties. This year we are aiming to issue this letter by 1 April 2019.

We are of the view that providing a reminder to public bodies in the reporting cycle would be a useful way to engage with public bodies on biodiversity and also provide them a reminder about their biodiversity duty and the guidance that is available. Therefore we will also commit to sending out an additional reminder at least once during the reporting cycle. The letter will remind bodies about the templates and guidance that are available on the website.

- *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.

In conjunction with Scottish Natural Heritage we will review the evidence that the Committee received from public bodies. Currently the guidance is split into categories. It outlines a smaller set of opportunities for small bodies, likewise for medium and then large bodies. The guidance acknowledges that small bodies may potentially undertake fewer actions than larger bodies and that the reports should reflect the size of the public body. However, we will review the guidance and consider what further assistance could be provided.

- *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.*

As outlined above, we have committed to writing to public bodies both at the start of the reporting cycle, and again during the cycle. We will consider the most appropriate date for this to occur once the reporting deadline has been confirmed. Through these reminders we will promote the use of the available guidance and 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.*

As the Committee noted, the current guidance and templates already cater for small, medium and large bodies. Working with Scottish Natural Heritage and keeping in mind the evidence the Committee received, we will continue to review the guidance so that it is as helpful as possible to public bodies. As previously mentioned, when we send out a reminder we will refer to available guidance and will also specifically highlight any updated areas.

- *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.*

The work of the Scottish Biodiversity Information Forum is a useful resource which we will keep under review. We will be considering, with the Forum and other partners, how to take account of their recommendations in reviewing the guidance to public bodies with a view to helping them fulfil 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.

In the guidance we will suggest that public bodies may find it helpful to include information on public and local engagement they have undertaken in compiling their report. However, we are conscious of the burden that we are already placing on the public bodies and we do not wish to make this burden greater by adding to the legal requirements on them.

- *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.*

In the initial reminder letter that we will send out to public bodies for the 2019-2021 reporting cycle, we will include a section where we give public bodies an opportunity to indicate their preference for a different reporting deadline. If the public bodies indicate a preference for the date to be adjusted we will work through the possible arrangements and, if practical, we will make the change to legislation at the earliest possible convenience.

- *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.*

We have been working with Scottish Natural Heritage to update the report publishing process, taking into account feedback from the public bodies, with the aim of streamlining the process for this reporting round. Once a revised process is in place, we will update the guidance available to public bodies.