

Submission to Biodiversity and Biodiversity Reporting Duties Post-legislative Scrutiny Call for Evidence

INTRODUCTION

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 35 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

LINK members welcome the Committee's call for evidence on the biodiversity and reporting duties placed on public bodies. As mentioned in previous submissions, 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"¹. However, there is evidence that the biodiversity duty has failed to deliver the mainstreaming of biodiversity it was created to ensure.

This is particularly concerning as 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.

25 years ago, countries across the globe recognized the critical role of biodiversity for human wellbeing and this led to 193 countries signing up to the Convention on Biological Diversity (CBD). Since then, global 2010 biodiversity targets to preserve biodiversity were set and missed. Today we are two years away from the new set of targets - the Aichi targets - which form the framework for Scotland's second biodiversity strategy, the 2020 Challenge. Looking forward to 2030, Scotland has now also signed up to the UN Sustainable Development Goals which also references the need to halt biodiversity loss².

But today the 2016 State of Nature Scotland report shows that, overall, biodiversity and ecosystem services have declined. Scotland's Biodiversity Intactness Index (BII) is 81.3% when values under 90% indicate that "ecosystems may have fallen below the point at which they can reliably meet society's needs" (Hayhow et al., 2016: 3). Scotland ranks in the bottom fifth of all 218 countries analysed; 36th from the bottom³.

1) How well do you believe public bodies understand the biodiversity and reporting duties placed upon them?

It appears that overall public bodies do not always understand the biodiversity and reporting duties placed upon them. Public bodies have access to detailed guidance to support the development of their biodiversity duty action plans and reports⁴. However, according to 2015 data, 61 biodiversity duty reports were produced. This total represents 44% of the 139 public bodies believed to have been in existence during the reporting period. What is more, so far, for the January 2018 reporting deadline, only 42 bodies are listed on the SNH website⁵.

¹ <http://www.scotlink.org/wp/files/documents/LINK-response-to-Holyrood-inquiry-into-post-legislative-scrutiny.pdf>

² <http://www.un.org/sustainabledevelopment/biodiversity/#>

³ http://ww2.rspb.org.uk/Images/StateOfNature2016_Scotland_1%20Sept%20pages_tcm9-424988.pdf

⁴ <http://www.gov.scot/Publications/2016/10/2281/2>

⁵ <https://www.nature.scot/scotlands-biodiversity/biodiversity-duty-reporting>

A number of key public bodies have not yet released their duty reporting, including both Scottish National Park Authorities, Visit Scotland, Highlands and Islands Airports Ltd, Inverness Airport, Glasgow Prestwick Airport, Scottish Canals and Transport Scotland.

According to the 2015 Scottish Government report, among the ones that reported on their biodiversity duty, it would appear that some key factors affect the range of biodiversity related activities that a public body could carry out. These include (1) whether a public body owns or is responsible for land; and (2) whether a public body's main responsibilities involve biodiversity. Overall, larger and explicitly environmental, outdoors or natural-asset based bodies and those with biodiversity officers are more likely to produce thorough and relevant reports while small, office based and non-environmental public bodies are least likely to provide a compliance report.

While it is to be expected that for bodies that are directly working on biodiversity and related issues to provide more detailed accounts of their activities, the aim of the biodiversity duty is to ensure that other bodies whose overarching duty or aim is something different are in a position to mainstream biodiversity concerns in their operations.

2) Do you believe that public bodies are adequately resourced to comply with the biodiversity and reporting duties?

In the last reporting period only two public bodies highlighted resource and financial issues as arguments for not being able to deliver on their biodiversity duty. However, anecdotal evidence collected by LINK members points to the limited resources of Councils to employ biodiversity officers, a key position that would help support meeting the biodiversity duty requirements.

What is more, **obstacles to complying with the biodiversity duty include factors beyond the availability of financial resources**. For example obstacles can be a lack of knowledge or appreciation of how an organisation's activities impact on biodiversity. This is why it is important that the Scottish Biodiversity Strategy and Routemap are more closely linked with the delivery of the biodiversity duty to enable public bodies to meet their responsibilities.

Biodiversity considerations can be complex which is why adequate support and expertise is needed. What is more while biodiversity considerations may be well integrated insofar as a body's land or property is concerned, the same may not be true in terms of taking biodiversity into account in their policy development activities. It is indicative that the Scottish Government Guidance document provides a number of useful examples of additional activities that would support public bodies in the delivery of their biodiversity duty. However, **there is very little information with respect to the need to "mainstream" biodiversity despite the fact that this is a section in the Scottish Government's Guidance document reporting template (Section 2). As a result, actions that seek to mainstream biodiversity are generally absent from the reports.**

This is disappointing as this is a particularly important aspect of the biodiversity duty that seeks to address "how biodiversity is taken into account in [the] work [of public bodies], even where this is not directly related to biodiversity" or whether the body "think[s] about biodiversity in [its] strategies and plans".

The Guidance can also appear to be contradictory in that it notes that "to comply with the biodiversity duty, reported actions need to have a direct impact on biodiversity", however, it offers specific examples which relate to sustainability in general and are therefore indirectly relevant to biodiversity.

3) Do you think the requirement to report on the biodiversity duty leads to effective actions for improving and conserving biodiversity by public bodies?

When well implemented, the requirement to report on the biodiversity duty can deliver considerable benefits. Addressing the loss of biodiversity needs a joined-up effort from all public bodies so that collectively decision-making delivers for our nature. For example, reports by Historic Environment Scotland and the Royal Botanic Garden Edinburgh provide very clear and comprehensive reports.

As an improvement to the current requirement, further explained in question 4 below, statutory delivery targets and upgraded reporting mechanisms could focus public bodies' efforts to effective action.

4) Are there any changes that could improve the actions taken by public bodies in respect of the biodiversity and reporting duties?

LINK believes that there are a number of actions, both legislative and non-legislative, that should be considered in order to support public bodies in delivering their biodiversity and reporting duties. The Government has provided Guidance which while helpful has not provided public bodies with enough clarity on how to meet their biodiversity duty, particularly with respect to the aspect of "mainstreaming". **We believe that making clearer the type of actions the duty would prescribe to meet Scotland's biodiversity ambitions could be delivered through better implementation and very targeted legislative change.** For example, in the case of planning authorities, they can use Local Development Plans (LDP) to take steps towards meeting their biodiversity duty through strengthened statutory policies and guidance. Better protection of ancient woodland through LDP provisions and appropriate development management could be a step undertaken towards meeting biodiversity duties. In addition to this, planning authorities can identify other areas under their remit where policies can be strengthened and designed to contribute towards their biodiversity duty.

Public bodies should be supported in making a greater effort to secure the overall objectives of the Scottish Biodiversity Strategy including restoration of biodiversity and delivery of landscape (and seascape) scale conservation management with targets given to public bodies, including statutory delivery targets. Improved reporting mechanisms which focus on biological outcomes in addition to the amount of land and sea designated need to be considered as well as focusing on ecosystem goods and services.

The biodiversity duty on public bodies should therefore be strengthened and its implementation better more effectively scrutinized. There is currently no mechanism to ensure and monitor that all public bodies report on their duty and as a result there is no indication that the number of public bodies currently failing to report on their duty will fall.

An amendment requiring the publication of a set of actions or strategy was discussed when the biodiversity duty was being negotiated. At the time, there were ministerial commitments to produce a clearer set of actions to provide guidance for public bodies but this did not materialise as originally envisaged. A statutory obligation to provide such an action plan could remedy that. Furthermore, an action plan could help prioritise and sift key actions as well as help use limited resources in the most efficient way. As such, we would foresee potential benefits from a more strategic approach.

Furthermore, a key policy tool that would help enhance the delivery of the biodiversity duty is the introduction of a National Ecological Network (NEN) in tandem with progression of Scotland's ecologically-coherent network of well-managed marine protected areas. The NEN could help prioritise actions and therefore support public bodies in delivering their biodiversity duty. The Biodiversity Route Map requires the introduction of an NEN which would help provide policy cohesion in terms of different policy areas but also geographies. NGOs have developed their vision for an NEN but next steps are dependent on the Scottish Government further pursuing this policy.

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According to a 2010 report looking at similar duties in England and Wales, it was concluded that “promotion of the duty in Wales has involved annual audits of local authorities’ and National Park authorities’ performance with respect to the duty, appointment of member-level Biodiversity Champions and more active promotion by the Welsh Assembly Government and the Minister for the Environment, Sustainability and Housing. These measures may explain the slightly higher proportion of Welsh compared with English authorities undertaking some actions to promote, conserve and enhance biodiversity”⁶. It would be worthwhile considering how such actions could help deliver the Scottish biodiversity duty.

This LINK Parliamentary Briefing is supported by the following member organizations of the Wildlife Subgroup:

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⁶ CTX 0811: Review of the Biodiversity Duty contained in Section 40 of the NERC Act 2006