

Response to Scottish Government Consultation on Wildlife and Natural Environment Bill



September 2009

Introduction

Scottish Environment LINK is the forum for Scotland's voluntary environment organisations, with over 30 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 opportunity to comment on this consultation and on matters which could usefully be addressed in Wildlife and Natural Environment legislation for Scotland. This response draws together views of several LINK task forces and member organisations on a number of issues.

Section 2: Deer

Q1A What is your view on the proposal that the right to take or kill deer should be balanced by a statutory responsibility on landowners to manage them sustainably?

We support the principle of sustainable deer management and the introduction of a legal obligation on landowners to manage deer sustainably. The definition of sustainable management should follow the five principles of sustainable management agreed by the Scottish Government in the UK Framework for Sustainable Development.

The definition of sustainable management should include requirements;

- To improve the condition of protected areas for nature conservation such as Natura 2000 sites and SSSIs (already a legal requirement).
- To assist with the adaptation to and mitigation of climate change (for example the protection of peatlands) incorporating actions from the Climate Change (Scotland) Act 2009.
- To enhance key native biodiversity and habitats outside protected areas for nature conservation (for example species rich grasslands, semi natural native woodlands and capercaillie).
- To protect wider countryside in terms of Natura 2000 outside protected areas for nature conservation (for example Annex 1 habitats such as blanket bog).

- To support and enhance the protection of ecosystem services (for example, natural tree regeneration and flood prevention)
- To support the protection and enhancement of natural landscapes.
- To encourage unrestricted responsible access for the public.

Q1B Is there a better way in which a landowner's responsibility to manage deer might be framed?

Whilst the introduction of a statutory Code of Practice is a welcome improvement on current arrangements, we do not believe that this goes far enough. Instead, we support the principle of a statutory Deer Management Planning system, which recognises both public and private interests in deer management. This would ensure fair representation of relevant stakeholders as well as transparency and accountability in respect of deer management decisions. We question why deer are not being treated in a similar fashion to the management of other natural resources, for example water supplies through Water Framework Directive transposition. We suggest that Deer Commission Scotland should investigate other successful models of statutory deer management planning to develop the best model for such an approach for wild deer in Scotland. We envisage that any statutory deer management planning system should be linked to Scottish Government rural development incentives through the Scottish Rural Development Plan.

Whatever model is adopted, it is important that it is flexible to accommodate new challenges, for example growing knowledge about climate change impacts and the required adaptation and mitigation programme. Ultimately, the effective grouping of land managers could help deliver a wide range of rural land use public and private benefits.

Q2 What is your view on whether collaborative deer management structures should continue to be voluntary in the first instance?

In our view an effective deer management planning system is a pre-requisite for the delivery of effective sustainable deer management. It is recognised and accepted that Deer Management Groups (DMGs), based originally on the voluntary approach, were not constituted to deliver such objectives and lack the required resources and expertise to do so. We do not recognise the **collaborative** element of existing deer management structures. Other than information exchange there appears to be very little collaboration at a practical level (for example, in collaborative culling, shared larder facilities, marketing of venison). More fundamentally, virtually all DMGs that LINK landowning bodies have engaged with, have failed to deliver adequate deer management planning or other tangible outputs. It is time for a radical overhaul of the DMG system and we advocate the introduction of statutory deer management planning coordinated by SEARS. Being part of the SEARS system would facilitate integration of deer management planning with other rural development objectives in both the public and private interest.

It should be noted that current voluntary deer management planning structures do not cover all of the deer range, with roe deer to the south of the Highland line very poorly covered. There are environmental issues associated with high roe deer populations, which require resolution, as well as those within the red deer range.

Q3 Do you consider that there is a need to ensure that there is wider (eg. community) engagement in deer management? If so how?

In most cases, the current voluntary system gives little recognition to local or wider parts of the public interest. It is important that local and wider public interests are recognised in any new deer management structures. We propose a system of statutory deer management planning, which (whilst noting that the Forestry Commission Scotland system is voluntary at present) would be open to local public consultation, in a similar way to Forestry Commission Scotland's approach to woodland design planning for the public and private sectors. A web-based system, with alerts for people receiving notification about future deer management planning issues in their area, would facilitate public participation. For example, as well as private sporting interests, there is now a diversified rural economy involved with wildlife tourism, including deer watching, who could have a stake in deer management structures, if desired. On occasion, there would be conflicts between local and wider public interests or between private and public interests. There would have to be a satisfactory system for resolving these conflicts.

All approved Deer Management Plans should be made available to the public.

Q4 What is your view on the proposal that land managers should be required to prepare and implement a statutory Deer Management Plan where voluntary management structures are failing to deliver in the public interest?

We recommend a straightforward and immediate move towards a statutory system of Deer Management Planning supported by Scottish Government agencies and incentives.

The introduction of such a statutory backstop, as proposed here, is a welcome improvement, but does not, in our view, go far enough. It would not address the fundamental issue of a natural resource of wild deer continuing to be managed on a largely voluntary basis with inadequate regard for the public interest.

Q5 What is your view on the proposal that failure to comply with a Statutory Deer Management Plan should be an offence, and that DCS should be able to recover costs from landowners or occupiers, where it has to take action to enforce the plan?

We support this principle, subject to further understanding of the safeguards to ensure that landowners, who might be trying their best to meet deer management planning obligations, are unfairly penalised. However, we believe that this is an important area, because without a credible legal backstop there is a real risk that private landowners will not deliver what is required.

Q6 What is your view on the proposal that DCS's existing powers to constitute Deer Panels should be extended to enable DCS to require the Deer Panel to prepare and implement a Deer Management Plan, where a particular deer management issue arises?

Our vision of sustainable deer management requires a much longer-term (standing) approach to delivery, such as a move to a statutory deer management planning system, to provide safeguards for natural heritage, landscape and access objectives in



the public interest. Whilst we understand that such panels might be legislatively convenient, we believe that they are not fit for purpose.

Q7 What is your view on the proposal that DCS's current powers to intervene in deer management should be extended to a wider range of circumstances (set out above) than is currently the case?

We support the maintenance of DCS powers to intervene on account of protecting the natural heritage. However, we support the extension of powers as outlined below. We further believe that interpretation of "natural heritage" should be broadened or made more explicit to include;

- Delivery of, adaptation to, and mitigation of, climate change (for example protection of peatlands) incorporating actions from the Climate Change (Scotland) Act 2009.
- Protection and enhancement of designated sites for nature conservation and landscape.
- Enhancement of key habitats and biodiversity outside protected areas for nature conservation (for example species rich grasslands, semi-natural native woodlands and capercaillie)
- Protection for wider countryside Annex 1 habitats and species under Natura 2000.
- Protection and enhancement of ecosystem services (for example flood prevention and natural tree regeneration).
- Protection and enhancement of nationally important landscapes.
- Protection for unrestricted responsible access rights.

Q8-13 What is your view on the proposal that further action is required to improve the skills and competence in taking/killing deer?

This is not the particular remit of LINK, however in general we support high standards of ecological and sustainable land management allied to good practice in deer welfare. We support the introduction of measures to improve the skills base of those involved with deer management in understanding the ecological consequences of their individual and collective management actions. We believe that some basic ecological training should be built into the DMQ system.

Competence is also important in terms of public safety for those who take recreation in areas, which might be subject to deer management, and demonstration of high standards is essential in this regard.

Q14 What is your view on whether, consequential to effective local deer management structures being in place and a requirement for those who shoot deer to demonstrate skills and knowledge, the female close season could be reduced to cover the period of greatest risk to dependent juveniles?

This is an animal welfare issue, beyond our remit, however as a general point, we support high standards.

Q15 What is your view on whether, consequential to effective local deer management structures being in place and a requirement for those who

shoot deer to demonstrate skills and knowledge, the national male Close Season could over time be removed?

We can see no animal welfare justification for a close season for male deer. We believe that with an effective statutory deer management planning system in place, there should be adequate safeguards in place to prevent over exploitation of male deer.

Removal of the male deer close season would allow for greater flexibility of deer management without the need for authorisation.

However, we would expect a safeguard to prevent an escalation in the negative impact of the open season on responsible access to the countryside. This could be achieved through insertion of a requirement to follow the advice as laid out in the Scottish Outdoor Access Code.

Q16 Do you have a view on whether, consequential to effective deer management planning structures being in place, and a requirement on those who shoot deer to demonstrate skills and knowledge, there could be flexibility to have male Close Seasons set at a local level?

We believe that a statutory system of deer management planning would make such local arrangements possible, although they would be difficult to police effectively. It is important that such arrangements are only permitted where there is an approved statutory deer management plan in place.

Q17-19

We have no comments as this is outside our remit.

Q20 Should cull return be provided by owners/occupiers or by individuals who are on the proposed register of competence?

We support a statutory system of cull returns. Accurate data on deer populations and culls is a fundamental principle of sustainable deer management. On balance, we feel that the onus should be put on DMGs to compile the full cull return for their area. This will ensure that the DMGs have full access to the local data required for sustainable deer management decisions, involvement in the system, and there would be greater transparency. Once compiled and supplied to SEARS the data should be publicly available on the SEARS website.

Section 3: Game Laws

LINK members welcome and support the proposals to modernise the game laws. Game species are clearly part of Scotland's natural heritage and should be managed in a modern, sustainable manner, that secures their conservation as well as sustainable use for economic benefit. As the current game laws do not achieve these objectives, it is very welcome that the Scottish Government propose to modernise them.

Our members are strongly in favour of option (c) the incorporation of game species within the Wildlife and Countryside Act 1981 as amended. In addition, the legislation

regarding mountain hares must fully comply with the provisions of the Habitats Directive.

While this change will require a range of consequential changes, we believe that it is very possible without unduly affecting any legitimate and sustainable shooting practices. We note that some of our members have submitted detailed comments on this section of the consultation and other LINK members fully support these comments.

Section 4: Non native Invasive Species

Q39. Do you consider that providing definitions where the meaning is not clear is useful? Do you think the definitions provided through the CBD Guiding Principles should be used where they are available or do you wish to propose alternatives?

Yes, we agree that provision of definitions is useful and we would support the use definitions provided by CBD, where these are available.

Q40. Do you have any comments or suggestions relating to the proposed definition for the "wild", or more appropriate ways this could be determined?

We propose that animals should not include sessile animals e.g. sponges, tunicates, which should be classed with plants in this sense, although it is not clear how legislation can prevent the arrival and transfer of sessile animals in the marine environment.

Defining "in the wild":

Animals: we agree with the definition that no animals should be released from the control of humans.

Plants: we agree with the proposal to define "wild" land as land under extensive (or no) management that retains its semi natural character and is not subject to commercial cropping. Exceptions should include forestry, agriculture, gardens (which should include designed landscapes (see below), golf courses, enclosed areas and curtilage) and wind shelters.

Definition of designed landscapes: there is a need to define what a designed landscape is and how a landowner could identify his land as a designed landscape or not. The word "historic" should be removed as this implies that only designated historic landscapes are included. The definition pertaining to this bill must include and go beyond designated designed landscapes. The policy aim should be to define, for example, when a woodland is part of a defined landscape and when it is not. Designed landscapes should include urban roadsides (i.e. where planting is planned or completed). Conversely, rural roadsides should not fall under this category. We also support the principle that a landowner must ensure reasonable impediment to escape into wider countryside for plants & animals.

Q41. Do you have a view on the proposal to place a responsibility on an owner to ensure animals are kept in such a way as to prevent their escape

and that a landowner would commit an offence if a non-native species spreads from their land or managed area?

We support this proposal. The landowner must ensure reasonable impediment to escape into wider countryside. However, it is difficult to define a managed area for marine (see Q 49a).

Q42. Do you have a view on the proposal to remove the term "ordinarily resident"?

We agree with the proposal to remove this term. Section 14, part 1 should say if any person allows to escape into the wild any animal. We would recommend deleting section 14 1a, with exceptions on page 41 (see below).

Q43. What are your views on the proposal that a no-release general presumption would provide a more effective and simpler framework?

We support this proposal.

Q44A. What are your views on the policy intention relating to animals?

We agree with the policy intention relating to animals.

Q44B. Can you think of other exceptions that should be included?

The last listed exception should include release of animals at, or near, point of capture, for domestic pest control, humanitarian reasons and scientific survey purposes.

We propose that consideration should be given as to whether honey bees are included.

Q45A. Do you consider that this approach will provide a more precautionary approach for the release of plants?

Yes, we believe so.

Q45B. Can you think of other exceptions that should be included?

We would add specimen trees and shrubs to the commercial forestry list. We would also suggest deleting "roadsides" from urban amenity. Non invasive species should be defined using CBD definition and reference to the UK Non native species secretariat list and risk assessments.

Q46. What are your views on how information - on whether a species is native or non-native and what its natural range is - should be provided?

The CBD definition of non natives is appropriate and should be adopted here. The list of non native invasive species, used by the UK non native species secretariat, must be followed up with species action plans, drawn up at Scottish level. Action to control, contain or eradicate present species must be agreed on a one by one basis.

Containment and eradication must be conducted on a planned basis. For newly arrived species, rapid detection and response must be delivered as a duty on SNH to agree



newly arrived species that require rapid control and eradication, under a species action plan, invoking the powers in this act.

In order for this to be effective, the bill must provide a duty on specified public bodies to draw up and implement plans for the control, containment or eradication of non native species. These bodies can use the powers identified on page 43 to deliver this duty.

Q47A. What are your views on the proposal to introduce a power enabling specified bodies to take reasonable mitigating action to control, contain or eradicate non-native species or species outside their native range?

We support this proposal.

Q47B. Which organisations should this be provided to?

This should be provided to any agency working on behalf of Scottish government.

Q48. What are your views on the proposal to increase the remit of various inspectors to deal with invasive non-native species issues?

We support this proposal.

Q49A. What are your views on the proposal to provide a power to Scottish Ministers to require individuals to control and remove non-native species contained on their land, site, or property (e.g. boat)?

We support this proposal. This duty should apply to specific bodies e.g. relevant public bodies, to ensure that listed, specific invasive non native species that originate from their land / area of control are controlled, contained and / or eradicated.

However, we foresee severe difficulties in defining a "managed area" in the sea as few areas, with the possible exception of docks enclosed by locks, could be said to be managed. However, there may be some value in retaining a power to require the owner of a hard structure to which organisms are attached (e.g. ships, buoys, pontoons) to remove them. It is doubtful whether this could ever be extended to the seabed or to hard structures attached to the seabed (oil rigs, wind turbines, mooring blocks, piers, breakwaters).

Q49B. How should this power be used?

This power should only be used where there is a strategic plan for control, containment and / or eradication in place and where the target population is threatening the wider countryside.

Q50. What are your views on the proposal that specified bodies should have powers to access land to investigate, survey and control (where access is denied)?

We agree with this proposal.

Q51A. Do you consider that costs of any action should be able to be recovered?

We believe that the costs of survey and investigation are unlikely to be recoverable. However, any subsequent control action costs should be recoverable, following the polluter pays principle. This may act as a deterrent and encourage land owners to take responsibility for non native invasive species originating from their land / area of control.

Q51B. Do you have any views on how these powers should be used?

We would propose that all control, containment and / eradication programmes must be strategically planned and implemented. Also that recovering control costs will have to be assessed on a case by case basis and will have to take into account historical contexts. Once public bodies have issued an order to control / for removal, and land owners do not comply to all practicable extent, then costs should be recoverable.

Q52. What are your views on the proposal to provide an offence relating to cause and permit?

We support this proposal.

Q53. What are your views on the proposals to ensure fish are treated in the same manner as other species? What is the best way of achieving this?

We are supportive: penalties in the Aquaculture and Fisheries (Scotland) Act 2007 should be equal to those for all other groups of organisms. For ballast water, whilst remembering that shipping is not a devolved issue, the Scottish government should nevertheless ensure that the ballast water treaty, with appropriate mechanisms to sterilise ballast water, should be ratified by the UK government as soon as technically possible.

Q54. What are your views on the proposal to extend the provisions of the Destructive Imported Animals Act 1932 to include greater numbers of invasive non-native species?

We are supportive. This legislation should supersede the 1932 act, if this act is to achieve its policy aims. This includes the proposals included here to revise Schedule 9 under the Wildlife and Countryside Act 1981 and to move towards a presumption of no release.

Q55. What are your views on the proposal to make an Order under Section 10 of the Destructive Imported Animals Act 1932 for Muntjac deer (*Muntiacus reevesi*) for Scotland?

We support the general principle to control or prevent the import and keeping of certain non native species. This principle should be applied to all species and not just mammals. There should be a power to vary the schedule as need arises.

Q56. Do you consider than an Order under Section 10 of the Destructive Imported Animals Act 1932 should be made for All Cervus species on the



"refugia" islands (Outer Hebrides, Arran, Islay, Jura, Rum; and proposed refugia islands - Scarba, Lunga and the Garvellachs)?

Yes, in principle, we do. While there are legitimate questions about the genetic integrity of extant *Cervus elaphus* populations on these islands (due to previous introductions) the intention should be to 'hold the line'. In addition, there should be a power to enable public bodies to remove species that threaten the genetic integrity of refugia populations and to prevent the import of species to these islands.

Q57. Do you have any comments on how a licensing system for the prospective orders under section 10 of the Destructive Imported Animals Act 1932 should work?

The key requirement of any licensing system is to ensure that the conditions in which species are kept are specific and tight enough to ensure that the possibility of inadvertent escape is minimised.

Section 5: Species Licensing

LINK members support the review of licensing roles to make the system more transparent and consistent with the requirements of the EU 'Birds' and 'Habitats' Directives. We believe that it is most appropriate and logical, that SNH, as Scottish Government advisors on issues pertaining to the natural heritage, should be the future single licensing authority for all species licences relating to agriculture, natural heritage, public health and safety. This approach would ensure greater consistency and coherence within the Scottish Government licensing system. We therefore support Option 2 set out in the consultation document. However, we would also be content to see licences that relate to development planning decisions devolved to local authorities, subject to advice and approval from SNH.

Whatever option is selected, LINK members would wish to be re-assured that, whoever is administering licences, the decisions remain firmly rooted in full compliance with EU environmental legislation, especially the Birds and habitats Directives.

We recognise the anomaly that has developed between European Protected Species and domestically protected species, especially with regard to licences linked to development, agriculture and forestry. We are content that this anomaly is addressed as suggested in Q61, however, we would make two observations. First, the solution must address agriculture and forestry operations, as well as development (this is recognised in the text on page 58, but not the wording of Q61). Secondly, the overall impact of such licences should be monitored so that the conservation status of the species affected is known – and, were declines to occur, the number/nature of such licences can be reduced.

Section 6: Other Issues

SNARING

LINK members have a limited remit on the subject of snaring. However, our nature conservation members are concerned that any system of trapping wild animals is done in a manner that does not adversely affect non-target species. At present, we



are not convinced that the current regulations on snaring provide sufficient certainty with regard to this issue. We therefore urge the Scottish Government, in considering a new approach, to ensure that – in future – there is greater certainty that non-target species cannot be caught.

Q64. What are your views on the proposal to create a new offence of tampering with a lawfully set snare?

We believe that there should be a defence to the proposed new offence of tampering with a legally set snare in the case of snared domestic animals. It would be perverse for a pet owner to be liable to prosecution for rescuing a snared dog.

BADGERS

We have no particular comments on this issue.

MUIRBURN

Heather moorland is an important natural heritage resource in Scotland. As well as traditional sporting and extensive agriculture uses, it can also be of value as a biodiversity, landscape and outdoor recreation resource. The conservation and enhancement of these latter values is in the public interest – and should be at the heart of Government plans to amend the muirburn regulations (alongside providing for private, traditional use that is sustainable and compatible with the public interest).

The Hill Farming (Scotland) Act 1946, which currently regulates muirburn activity in Scotland, was brought in at a time when the promotion of agricultural production and sporting management was considered a prime public policy objective. These days, public policy objectives for muirburn have changed markedly and the muirburn regulations require a legislative overhaul.

We therefore welcome proposals by Scottish Government to make changes to the current muirburn legislation to promote more diversified land management approaches, including helping meet site conservation objectives, to protect biodiversity, to conserve landscapes and to enable outdoor recreation. This follows welcome changes incorporated in the Climate Change (Scotland) Act 2009 which enable Scottish Ministers to vary the permitted muirburn dates in response to climate change.

Whilst the impacts of muirburn on climate change are poorly understood, we strongly dispute the suggestion on page 66 that muirburn helps reduce CO₂ emissions. While this may be true “in certain circumstances”, it is likely to be exceptional cases – in most cases, burning vegetative matter, especially over peaty soils will be a net emitter of CO₂. As presented, it appears that the Government view is the opposite and we believe this should be clarified.

Thus, given the uncertainties, we see this as an important area for further research and for improved guidance to practitioners, as the benefits or otherwise in relation to climate change mitigation or adaptation will depend very much on how well, and indeed where, muirburn is practised. It is also important to distinguish between muirburn on heather dominated heath habitats, and burning of other habitats such as blanket bog, or on areas of native woodland regeneration, where this practice might be damaging to carbon stores and which we do not support.



**Q67A What are your views on the proposal that Scottish Ministers be given powers to issue licences for prescribed burning outwith the specified season?
Q67B For what permitted purposes do you think these licences should be issued?**

We support these proposals, subject to appropriate conditions that the powers are used for specific public interest purposes and that key environmental legislation is upheld. The purposes that we would support include habitats restoration and conservation management.

Q68A What criteria should be used to assess licence applications?

We consider that the following justifications might be required: -

- Evidence of need for out of season burning
- Training/experience of personnel
- Available fire control equipment
- Provision of a burning plan and risk assessment
- Survey information to demonstrate lack of impacts on breeding birds and presence of other taxa, which could form part of the risk assessment.
- A full research proposal

Q68B What conditions should be attached to licences?

The conditions should include a requirement to make an annual licensing return to Scottish Natural Heritage, detailing the work carried out and any future monitoring put in place to evaluate success. In addition, conditions should specify: -

- Compliance with the Muirburn Code.
- That burning is only undertaken in the appropriate weather conditions to reduce the likelihood of wildfire.
- A requirement to undertake a survey and then avoid areas sensitive to nesting birds or other biodiversity and habitats which might be adversely impacted by muirburn. A similar approach to ensure that landscape and access needs are protected after consultation with SNH.

Q69A What are your views on the proposal that Scottish Ministers be given powers to vary the permissible dates for muirburn for reasons other than to adapt to climate change?

We support the proposal that Scottish Ministers should be allowed to vary the permissible dates for muirburn on natural heritage and wider delivery of ecosystem services grounds, subject to compliance with other environmental legislation.

Q69A For what reason do you think the dates should be varied?

There are two key reasons for which we support the variation of dates, both of which would be in the public interest. These are habitat restoration or other conservation management, and scientific research



Q70 Would varying the permitted dates to allow prescribed burning in September be beneficial?

We support this idea, subject to the advice of SNH on its biodiversity, landscape and access implications.

Q71 If a power to vary the muirburn season is created, what are your views on the proposal that Scottish Ministers should be able to vary the permissible dates on a geographical basis to take account of regional variation?

Whilst we accept that there is climatic variation in different parts of Scotland (and for example, this may effect the egg laying dates of breeding birds), we believe that this might be a difficult system to administer whilst at the same time providing adequate safeguards for the natural heritage. The system of licensing out of season burning, administered by Scottish Natural Heritage, might be a more appropriate vehicle for taking account of regional variation, whilst at the same time providing safeguards for the environment.

Q72 In order to reduce the impacts on nesting birds, should it be specified that muirburn is not permitted (unless under licence) after 30th April?

The 30th April is too late. We believe a spring muirburn closure date of 31st March, with the facility to apply for licences from Scottish Natural Heritage to carry out muirburn after this date, upon proof that adequate safeguards to protect ground nesting birds are in place., would be preferable.

Q73 What are your views on the proposal to permit the lighting of suppression fires at night, to assist in the control of wildfires?

We have no evidence to indicate the success of suppression fires at night to assist with the control of wildfires. We would be unable to support this proposal unless such evidence was available.

Q74 What are your views of the proposal to remove the legal requirement to give neighbours at least 24 hours written notice of the intention to make muirburn, and the approximate location and size of the burn?

We believe that this provision is inconsistently used at present and support the removal of the neighbour notification requirement.

Q75 What are your views on the proposal that Scottish Ministers be given powers to restrict certain types of burning practice, which risk soil exposure and erosion?

We support this proposal.

Q76A What are your views on the need to review the Muirburn Code, or the associated supplement on best practice?

We believe that the Muirburn Code could be updated to include increased reference to soil, peat and wildlife protection. It will also need to include any legislative updates arising following this consultation process.



Q76B Which aspects need to be reviewed and why?

The Muirburn Code should include measures arising from the Climate Change (Scotland) Act 2009, and the Land Use Strategy that will be developed under this legislation which will address the protection of peatlands and other carbon stores, strictly avoiding the burning of active peatlands. It also needs to address more fully the protection of biodiversity, the consideration of landscape matters and the maintenance of responsible access.

Q77 Are there any other legislative changes which would encourage well managed muirburn; increase the scope for the beneficial use of prescribed burning; or allow wildfire risk to be managed more effectively

More enforcement of existing and additional proposed regulations.

REVISIONS TO THE PROVISIONS ON SSSIs AND ASPs

We support the proposals made in relation to SSSIs. We also support that made in relation to ASPs; however, this is dependent on Ministers being committed to use their powers under the Land Reform (Scotland) Act 2003 or the Nature Conservation (Scotland) Act 2004 to replicate the public access provisions of the existing ASPs, where this is shown to be in the public interest.

Issues not raised in consultation paper

There are a number of issues, not addressed in the consultation paper, that LINK members consider fall within the remit of a “wildlife and natural environment” initiative, some of which require legislative changes, and which, if not addressed, would be a missed opportunity by the Scottish Government.

1. Biodiversity.

The commitment by the UK and Scottish Governments to halt and reverse the decline in biodiversity by 2010 will, it is generally recognised, not be fulfilled.

LINK members, therefore, consider that the Scottish Government should assess whether there are any legislative ‘gaps’ in the biodiversity provisions of the Nature Conservation (Scotland) Act 2004 that would, if filled, help us address this issue. We offer a number of suggestions.

- Enhancement of public bodies duty. The Scottish Government has issued guidance to public bodies on the implementation of this duty. However, it is less clear whether any action has been taken to monitor or to report on the effectiveness of the duty or the guidance. Moreover, there is no public knowledge of the extent to which it is promoted to, or followed by, Directorates of the Government outwith of the Habitats and Landscapes Division, despite many of these (eg those responsible for CAP and SRDP being crucial to the meeting of biodiversity targets).

LINK members, therefore, believe an additional sub-section to section 1 that requires Ministers to publish guidance (already fulfilled), promote it, monitor its

implementation and report their actions to promote/monitor to Parliament (as part of the s.2(7) report) would be invaluable.

In addition, it would be also be valuable to explore the definition of public body, and ensure that anyone conducting publicly funding work is included.

- More effective implementation of the strategy. In the view of many stakeholders, a key cause of the failure to meet the 2010 target is the unfocussed and unstructured implementation of the Scottish Biodiversity Strategy. Some changes would improve this:
 - First, the s.2(4) list of species and habitats should include only those “of principal importance for the purpose mentioned in s.1(1)” (ie conservation). It should therefore be reviewed to restrict it to those where conservation actions are necessary. This is clearly possible without amendment and we have urged officials to take this approach to the current review. However, if this does not occur, we would recommend an amendment to s.2(4) to better define the meaning of “principal importance”.
 - Secondly, having identified the species and habitats most in need of conservation action, it is then appropriate to identify the actions needed, those responsible for those actions, and require those bodies/persons to take the appropriate actions. While the current implementation plans are intended to do this, they are not underpinned in law and lack ‘punch’.
 - Thirdly, the report under s.2(7) should be fuller and more useful if it indicated progress on each action referred to in the paragraph above and, if action has not proceeded, what reason has been given by the body/person responsible for not taking that action.

2. Review of Permitted Development

A number of activities that can be carried out under Permitted Development Rights (PD) can result in significant impacts on the environment, and are therefore be of significant public interest. For example, development carried out as PD can include land drainage works, bulldozed roads, and mineral extraction, all of which can impact on the natural environment. Agricultural and forestry operations are often considered as PD, even where identical works carried out for other purposes would require planning permission. This inconsistent treatment is probably a result of efforts to avoid any additional regulation of these industries in the post-war period, when every encouragement was being given to increase agricultural and forestry production. However, the public interest is now considered to be far wider, with environmental protection central to Government policy. It is appropriate therefore to reconsider the extent to which these sectors benefit from PD rights.

Current options for control of PD rights affect only designated sites, and do not allow for a strategic, nationwide approach. Thus, the land use systems needed to mitigate the contributions to climate change, to adapt to climate change, to fully meet the aspirations of the Scottish Biodiversity Strategy, to ensure the conservation of our important landscapes and aspirations for responsible access can be threatened by ongoing damage permitted by these rights..



Under these circumstances, LINK members believe the Scottish Government should undertake a comprehensive review of PD, especially those classes of PD affecting land use and the natural environment. This should assess the impact of these largely uncontrolled activities against Scottish Government natural heritage and climate change objectives. Such a review should perhaps be carried out every 5 years. This would broadly correspond to and complement the statutory review of the National Planning Framework and the new format development plans.

3. Other miscellaneous matters

LINK is aware that many of its member bodies have responded to this consultation separately, many giving detailed comments in relation to their own areas of expertise, including on a range of issues not addressed in the paper. Without repeating these, the signatories to this response listed below would broadly support the principles flagged in relation to wider issues, given the expertise which fellow LINK members have in these specialist matters.

This response was compiled on behalf of and is supported by:

Association for the Protection of Rural Scotland
Bumblebee Conservation Trust
Buglife
Cairngorms Campaign
John Muir Trust
Mountaineering Council of Scotland
National Trust for Scotland
North East Mountain Trust
Plantlife Scotland
RSPB Scotland
Scottish Allotments and Gardens
Scottish Raptor Study Group
Scottish Wildlife Trust

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