

Evidence presented to the Rural Affairs and Environment Committee**September 2010****Wildlife and Natural Environment (Scotland) Bill Stage 1****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 welcomes the opportunities to update the law on wildlife and the natural environment, afforded by this bill. We particularly welcome elements such as the provisions on non-native species and on arrangements for Sites of Special Scientific Interest and have some positive suggestions for improvement in these areas. Whilst welcoming parts of the bill, we also have deep reservations about other aspects, especially the disappointing and unworkable proposals on deer management.

The bill, however, could be more than the sum of its parts. It could establish a long-term vision for our natural environment. The Birds Directive is now over 30 years old, while the Habitats Directive is 18 years old. It is time that these were transposed fully into domestic law, rather than relying on policy intentions and the rather obtuse wording of the 1994 Regulations¹. The failure to meet the 2010 biodiversity targets demonstrates that the wider countryside and protected areas provisions of these directives² are not working. Measures to better underpin the biodiversity strategy (see below) and require the ecological coherence of the Natura 2000 network (a concept recently established in the Marine (Scotland) Act 2010) could make Scotland a world-leader in nature conservation. In this way, protected areas and measures across the wider countryside could combine in ecosystem-scale conservation and ensure the restoration of our biodiversity. Peatlands (see box) are one example where such action would have multiple benefits.

Peatlands provide an excellent example of habitat restoration to deliver biodiversity objectives providing a range of ecosystem services of high priority. Scotland supports over 80% of the UK resource of blanket bog and there is considerable scope for peatland restoration to make significant contributions to climate change targets and water management obligations. Peatland restoration can be achieved cost effectively, as demonstrated by a number of NGO-managed peatland sites and partnership projects with support from the statutory agencies. Peatland restoration provides direct economic benefits in remote areas, and potentially offer huge cost savings for example through reducing water treatment costs. To deliver the right scale of restoration as a matter of urgency, before the habitat deteriorates further, losing biodiversity and exacerbating the problems for water and climate change, requires leadership from ministers, long term commitment, clear targets and coordinated effort across the agencies to reflect the wider ecosystem service benefits beyond just biodiversity. As yet, the provisions of the Nature Conservation (Scotland) Act 2004 have not stimulated such co-ordinated and decisive action – this bill could be opportunity to do so.

¹ The Conservation (Natural Habitats, &c) Regulations 1994 – Regulation 3, relating to the overall vision and generic provisions of the habitats Directive is especially ineffective.

² Articles 3 & 4 of the Birds Directive and Articles 2 & 3 of the Habitats Directive.

Deer management

Wild deer are a national resource and belong to everyone. The right to shoot deer and the benefits associated with this right go with land ownership. **With rights come responsibilities**; in this case the responsibility to manage deer 'sustainably' – in the public as well as the private interest. In addition to income and employment associated with deer stalking, the public interest includes climate change mitigation (e.g. woodland regeneration for carbon sequestration, prevention of trampling of blanket bogs and release of carbon dioxide), biodiversity, protected areas, flood prevention and water quality.

The **current voluntary deer management group system is failing** to deliver sustainable deer management in line with the national strategy³. Recent answers to Parliamentary Questions⁴ state that less than half of Deer Management Groups even have a Deer Management Plan and only 10% set and monitor culls. There are no sanctions for failing to produce a plan, or for failing to meet cull targets.

The Bill provides an opportunity to deliver truly sustainable deer management in Scotland. Currently, it merely introduces the option for Scottish Ministers to produce a Code of Practice (section 5A (9)) which SNH must only have "a regard to ... in exercising its functions under this Act". This code has no force in law and will not deliver sustainable deer management. Instead, a **statutory basis for all deer management planning** should be introduced. This would ensure the public interest was taken into account in setting plans and delivering culls. Specifically, the Bill should introduce a responsibility on landowners to manage deer sustainably in accordance with such a plan and the Code of Practice. An approach of this sort (the 'general duty') was originally proposed by the Scottish Government but has been dropped due to ECHR concerns. It is our view that statutory deer management plans which make clear the requirements on land managers, whilst giving appropriate procedural safeguards, would deliver sustainable management without infringing on the human rights of landowners. Indeed, such a system is already used for addressing damage to designated sites caused by deer under section 7 & 8 of the current Deer Act.

At the very least, a provision should be made to allow SNH to **require the production of a deer management plan in the public interest** and to recover costs. Further measures should also be introduced to improve the practical effectiveness of sections 7 and 8 of the Deer (Scotland) Act 1996, as well as urgent reform of schedule 2 "provisions as to control schemes" to make the process more straightforward to intervene in the public interest.

Game law reform

LINK members, collectively, have made no assessment of the Game Law proposals and have no comments to make as an umbrella group. However, we are aware that several of our members, notably RSPB Scotland and the Scottish Wildlife Trust, will submit specific evidence on this matter and we commend these to the Committee.

Non-native species

LINK members fully support the policy intentions of this bill in relation to the control of non native invasive species: invasive non native species legislation needs to cover a

³ Scotland's Wild Deer a National Approach. Scottish Government, 2008.

⁴ Parliamentary Questions S3W-33450, S3W-33451, S3W-33452



range of actions; these cover tackling these species at the earliest invasion stage possible; preventing establishment in the wild, controlling their spread or eradication.

Presumption against introduction of non native invasive species into the wild:

We very strongly support the general presumption against release, which is an innovative approach to a difficult legislative area and will put Scotland at the forefront of development of policy at an EU level.

Lines of responsibility: The principal impediment to effective implementation of invasive non-native species legislation to date has been the lack of clarity and clear lines of responsibility and accountability. Legislation must specify where the lines of responsibility for specific non-native invasive species lie, requiring Ministers to identify lead coordinating bodies for specified invasive non-native species. This could either be through the obligatory publication of implementation plans for specified species, identified through the Scottish Working Group or through a duty on relevant public bodies.

We note that the bill (page 18, new s.14C) provides for a Code of Practice. LINK members fully support this proposal – indeed, believe that it should be a requirement not a power – as it would guide the activities described above. We note that the Scottish Working group has already begun work on such a Code, and have been pleased to contribute. We support the requirement (subsection (5)) to consult on the production of this Code, and look forward to making further contributions.

The Bill allows Scottish Ministers the flexibility to regulate the release into the wild of every species of animal and plant in the world, except two: the pheasant and the red-legged partridge. We believe this is inconsistent and inappropriate in the face of published scientific evidence regarding the impacts these species can sometimes have in terms of damaging ground vegetation, predation of invertebrates, over-enrichment of soil and passing parasites to native wild birds. We urge the inclusion in the Bill **a capacity for Scottish Ministers to regulate in locally defined areas the release of non-native gamebirds**, should further environmental damage be manifest or deemed likely as a result of future high density releases.

Species licensing

We welcome proposals to remove unnecessary duplication by the proposed amendments to Schedule 6 of the 1981 Act.

We are gravely concerned, however, by proposal at s.18(2) to extend the grounds on which species licences can be granted to include “for any other social, economic or environmental purpose”. The level of protection afforded to European Protected Species under the Habitats Directive should be the minimum appropriate level of protection for species of conservation importance in Scotland. We do not accept that there should be any diminution in protection afforded to our most vulnerable and important species.

We welcome the intention at s.18(3) to allow Ministers to delegate licence-granting power to Scottish Natural Heritage. This could amalgamate all licensing activity within authority which would improve consistency of decision making, as well as ensure it is underpinned by scientific rigour. For this reason, however, we do not agree that this power should also be delegated to local authorities. Whilst accepting that few local authorities would be likely to wish to exercise this power, it is our experience that local authorities do not have adequate expertise and experience, and there may be occasions where there is a conflict of interest. In practice, we would expect local



authorities to consult with SNH and the case for extending licence-granting power beyond SNH has not been made.

Muirburn

Muirburn season: In many circumstances, we believe that muirburn is inappropriate for biodiversity and carbon storage and that Scotland should be moving towards a general presumption against muirburn as a land management practice, except in locations and circumstances where benefits are demonstrated and environmental damage avoided.

While LINK member organisations support the existence of the current muirburn season, we see the proposed extended muirburn season as a compromise that goes beyond our recommendation for the conservation of biodiversity. Extension of the muirburn season into the growing season for plants and the breeding seasons for animals risks destroying whole communities and their habitats.

Furthermore, we would stress that certain habitats, high altitude and steep and rocky habitats on Scotland's west coast, are extremely important for internationally important species that are threatened by muirburn (see reports on species status at www.ukbap.org.uk). We would encourage the committee to consider retaining power within the bill to limit muirburn in sensitive areas, including at high altitudes, where recovery time is extremely slow for affected plant communities and on steep and rocky slopes of the west coast where internationally important communities of rare bryophytes occur. Damage through muirburn remains one of the biggest threats to these communities, which have extremely limited global distributions outside of Scotland.

ASPs

These proposals affect only birds, and one site in particular, the RSPB Scotland reserve at Loch Garten. LINK members support the evidence submitted by RSPB Scotland in relation to this issue.

SSSI provisions

In general, LINK members consider these proposals to be a commendable "tidying up" of matters covered by Part 2 of the 2004 Act. Therefore, we welcome and support the bill as introduced insofar as these matters are concerned. We would also commend the more the detailed submissions of some of our members.

Other issues

Biodiversity duty: 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. The current bill offers the Scottish Government the opportunity to fill the legislative 'gaps' in the biodiversity provisions of the 2004 Act. These are:

- 1. Requirement for public bodies to report to parliament on their meeting of the current biodiversity duty:** LINK members believe an additional sub-section to section 1 of the 2004 Act 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.

2. **Legal underpinning of the SBS to enable effective implementation:** 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. We would recommend that the committee considers the following:
- (a) A legal requirement to implement actions for those 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. These plans should be underpinned in law through the requirement to report to parliament (see (c) below).
 - (b) 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). However, the current list includes many species for which urgent conservation action is not a priority. It is, indeed, rather unwieldy - confusing those using it. We would seek clarification that this list will be reviewed to focus on its original purpose – and amendment to clarify this purpose.
 - (c) 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.

This evidence is supported by the following members of Scottish Environment LINK:

Buglife
Bumblee Conservation Trust
Butterfly Conservation Scotland
Friends of the Earth Scotland
Hebridean Whale and Dolphin Trust
John Muir Trust
Marine Conservation Society
Mountaineering Council of Scotland
The National Trust for Scotland
Plantlife
Ramblers Association Scotland
RSPB Scotland
Royal Zoological Society of Scotland
Scottish Campaign for National Parks
Scottish Wildlife Trust
Woodland Trust Scotland
WWF Scotland

Note, however, that a number of these organisations will, in addition, submit individual evidence that will address matters not covered in this submission.

For further information please contact:

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