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Mairi Gougeon MSP
Cabinet Secretary for Rural Affairs, Land Reform and Islands
Scottish Government

27 March

cc. Gillian Martin MSP, Cabinet Secretary for Net Zero and Energy
cc. Alasdair Allan MSP, Minister for Climate Action

Natural Environment Bill – Environmental Impact Assessments and Habitats Regulations

Dear Cabinet Secretary,

As a coalition of environmental organisations with around 500,000 supporters, we welcome the publication of the draft Natural Environment Bill. We strongly support the introduction of statutory nature recovery targets and are keen to work constructively with you and your officials in relation to the targets, the proposals to improve deer management, and to modernise the role of National Parks.

We however would like to express our significant concerns over Part 2 of the Bill as it is currently drafted, which would hand Ministers extremely broad powers to make extensive reforms to our most vital environmental protections with little scrutiny. We write in the hope that we can work together at this early stage in the Bill process to ensure that the legislation is fit for purpose and ensures certainty for all with requirements to maintain or increase protections only.

Our overall concern with Part 2 of the Bill is that the powers are too broad in scope and have the potential to undermine not only existing important protections but also the achievement of the statutory nature targets. The Habitats Regulations and Environmental Impact Assessments (EIAs) are a cornerstone of environmental protection, and any changes to them should not undermine their integrity or application.

We specifically note with concern the section of the policy memorandum which refers to Net Zero and Offshore Wind. We are strongly supportive of the Scottish Government's ambition to meet Net Zero and the role of renewable energy in achieving this. However, the Scottish Government has been clear that the climate and nature crises are inseparably connected – indeed, this very Bill will put nature recovery on the same legislative basis as climate as a government objective which Ministers will have a duty to meet. Action to tackle climate change and nature loss must be pursued in a manner that supports both objectives, and the Bill should ensure that any changes to EIAs for the purposes of reaching Net Zero are consistent with statutory nature targets. The successful rollout of onshore wind happened under the current regulatory environment, demonstrating that these protections do not prevent the development of appropriately sited renewables.

Environmental Impact Assessments

EIAs are a vital protection for the natural environment. Development and other changes of use of land and sea are significant drivers of biodiversity loss and it is necessary that, when new development or other proposals are likely to have a significant environmental effect, decision making is informed by an understanding of these impacts, and crucially, ecological mitigation is required. The EIA process is a critical tool to enable public scrutiny on how decisions are made, which upholds our right to participate in public decision-making enshrined in the Aarhus Convention.

The consultation on these proposals, as well as the policy memorandum accompanying the Bill, imply that significant reform to the EIA regime may be pursued. It is our view that any significant reforms to EIAs should be pursued through primary legislation, and that it would be inappropriate for major reform to be undertaken through the use of Henry VIII powers especially as most changes will be done through the negative process.

Habitats Regulations

The Habitats Regulations are our most vital environmental protection regulations especially for our rare and vulnerable habitats and species. There is a substantial body of scientific evidence demonstrating that they and the Directives they derive from deliver significant biodiversity benefits including in the context of a changing climate. LINK members accept that there may be a small number of cases where flexibility in designations is required – for example, in the case where a designated feature is no longer present on a site and it would be impossible for it to return due to climate change. However, it is our view that there currently exists sufficient flexibility within the Regulations to respond to the majority of climate changes. Therefore, this cannot be used to justify the introduction of such extensive new enabling powers.

In addition, the Habitats Regulations set out a clear procedure, rigorously tested in case law, confirmed to be fit for purpose following multiple legal and government reviews, for ensuring the protection of designated sites, their features and certain species whilst allowing for development, including that aimed at climate change adaptation, to proceed. Where issues arise in the operation of the Habitats Regulations, it is often through lack of understanding or proper application therein - including issues that are in large part due to the [well-documented lack of capacity](#) amongst competent authorities and NatureScot.

Purposes for modification or restatement

We note that the draft Bill includes a purpose section, which in theory limits the ability of Ministers to make modifications to the Habitats and EIA regulations. However, the purposes as drafted are so broad that we can take little reassurance that they, in any meaningful way, will require Ministers to limit changes to maintain and improve environmental standards, particularly as the government has opted not to include a non-regression provision or even a requirement to consider the urgent needs of nature conservation.

For example, the purpose in Clause 3(c) could be interpreted as allowing for a standardisation with English or UK legislation, regardless of whether this would be a weakening of standards. The purpose under Clause 3(d) in relation to 'technology' is extremely vague and not justified. And the purposes in

Clause 3(e) and (f) are so broad as to allow almost any change – to ‘improve’ the operation of the law, for example, is an entirely subjective test, and a future administration may consider that a significant weakening of environmental protections would be justified to ‘improve and simplify’ the law.

The Delegated Powers and Law Reform Committee recently published its [report](#) on the Inquiry into Framework Legislation and Henry VIII powers, which includes the finding: *“The Committee considers powers allowing flexibility ‘just in case’ are unlikely to meet the test for the necessity of the power, and as such, be considered inappropriate.”* We believe this strongly reinforces our position on the scope and necessity of the proposed powers, particularly with regard to the Environmental Impact Assessment and Habitats Regulations provisions within the Bill.

In the spirit of constructive dialogue, we would like to discuss how the Bill must be improved. We expect that there are amendments to the Bill which could allow Ministers flexibility while reassuring us that such powers would not lead to a reduction in environmental standards nor nature protection and conservation. We hope that we can have early and detailed engagement with you and your officials.

Yours,

Dr Deborah Long, Chief Officer of Scottish Environment LINK

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