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Cabinet Secretary for Climate Action and Energy
Scottish Government

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Natural Environment Bill: Invasive Non-Native Species

Dear Cabinet Secretary,

At the Rural Affairs and Islands Committee session on 4th June, you were asked about the potential for amendments to the Natural Environment Bill to tackle specific issues related to Invasive Non-Native Species (INNS).

We are writing to emphasise that we have identified three significant issues which require a change to primary legislation to allow the Scottish Government to manage this primary driver of biodiversity loss.

Access for surveillance and control of mobile Invasive Non-native Species (INNS)

To effectively control and eradicate highly mobile INNS, free and rapid access to all locations where the species is or may be present is critical. Currently, that rapid access is compromised to such an extent that key INNS programmes involving highly mobile species – including ones funded by the Scottish Government like the Orkney Native Wildlife Project (ONWP) – face serious operational hinderance.

Currently, NatureScot can set up Species Control Agreements and have powers to issue Species Control Orders with relevant landowners under s 14 of the Wildlife and Countryside Act 1981 as amended by the Wildlife and Natural Environment Act 2011.

However, the processes involved are time-consuming, and not suitable for the rapid responses required. We urge that the Natural Environment Bill should therefore create a new power for NatureScot, to allow area- and time-restricted rapid responses to highly mobile species and facilitate their timely and effective control and eradication during major INNS projects.

We propose the creation of a new "Species Control Area" provision, to be designated by Ministers. These areas would be time-limited, discrete and defined, focused on places only when and where there is a specific project established to eradicate INNS.

In a Species Control Area, NatureScot staff, and/or persons authorised by NatureScot, would have powers to enter land for specific purposes connected with INNS eradication. Obstruction of authorised persons carrying out such a task would be an offence. We propose checks and balances – such as an appeal provision and limit the access/operations to those that could be carried out

without entry to dwellings/property (that is, on open land). The latter would need to remain subject to Species Control Orders.

The most recent Minutes of the ONWP Technical Advisory Group state: '*TAG consider the restrictions to Land Access as causing an existential threat to the project'.* We consider a change in primary legislation the only way to effectively address this urgent issue.

Regulation of the release of non-native gamebirds

Releases of non-native species are governed by the Wildlife and Countryside Act 1981. This Act, Section 14, has been considerably amended and now exists in different forms in England, Wales and Scotland. In Scotland, the Wildlife and Natural Environment (Scotland) Act 2011 improved the statutory framework for managing non-native species, making the release of any species outside its native range an offence - internationally leading legislation. However, this Act also introduced an explicit exemption from regulation for releases of Common Pheasant and Red-legged Partridge on the face of the Act.

Therefore, the releases of these species in Scotland are almost entirely unregulated. Both Common Pheasant and Red-legged Partridge are non-native to Scotland, and both have proven impacts on native wildlife, meaning they qualify as INNS under the UN Convention on Biological Diversity definition. Each September the biomass of non-native gamebirds in Britain exceeds the biomass of all other wild birds combined, with the established wild breeding population boosted by the release of tens of millions of new birds, many imported as eggs or chicks from the continent.

Impacts on habitats and through disease transfer to native species are well documented. In recent years, Highly Pathogenic Avian Influenza (HPAI) has been detected at scale in gamebird rearing and release operations in Scotland. In 2022/23 over 31,000 gamebirds at six infected gamebird premises in Scotland died from or were culled due to HPAI infections in Scotland. Of these birds, 12,000 were Red-legged Partridges. All of these birds had access to and free movement within the Scottish environment (see Colin Smyth's Parliamentary Questions 2023 - S6W-22251 *et seq*).

The Wildlife and Natural Environment Act game bird exemption resulted in Ministers having inadequate powers to deliver effective biosecurity in a situation where native wild birds were at significant risk of HPAI infection from gamebirds. We are aware that currently Red-legged Partridges are being reared in Shetland for release later this summer. The species is not native to and has never previously been present in Shetland. Islands are the most vulnerable ecosystems to INNS impacts, and Shetland is to date the worst hit region of Scotland regarding HPAI impacts on wildlife. We have informed NatureScot about this specific situation. Their response (from NatureScot Head of Operations North) shares our concerns about the risks of environmental damage and HPAI transfer to wildlife on the archipelago but says that the WaNE Act exemption "*Does limit the extent of NatureScot's regulatory powers in this particular case."* The HPAI Risk for Wild Birds in GB is currently classed as High.

We therefore believe that there is a clear need for primary legislation giving Ministers powers to regulate gamebird releases where environmental damage or disease transfer is occurring or is likely to occur.

Applying the Polluter Pays Principle to self-seeding saplings from commercial forestry plantations.

Across Scotland non-native commercial conifer species are invasively seeding from plantations into neighbouring habitats, notably peatlands and native woodlands. The new trees fundamentally alter native habitats – changing their structure, competing with native species and risking drying out peatlands and releasing stored carbon. NatureScot estimates that 779,000 ha of peatlands are at risk of colonisation and, of those, 267,000 ha of peatland are at high risk (within 200m of the forest edge). Sitka Spruce has shown the most significant seeding range increase of any plant species recorded in Britain.

Remedial action – removing the non-natives from invaded habitats - is expensive, with estimates varying between £1000 - £3000 per ha. This threatens to consume limited nature conservation budgets far into the future, undermining national efforts to halt and reverse biodiversity loss and to restore our peatlands.

The Polluter Pays Principle applies to Invasive Non-native Species in Scotland via The Invasive Non-native Species (EU Exit) (Scotland) (Amendment etc.) Regulations 2020. Under current legislation, however, tree species used in commercial forestry receive an exemption from INNS regulations via a Ministerial order, and the Polluter Pays principle does not apply as it does to other INNS (via the transposition of the European Union Invasive Alien Species Regulation to Scots Law). The burden of managing the invasive spread of Sitka and other non-native commercial species currently falls on the public purse and environmental organisations, placing considerable strain on limited nature conservation budgets.

The current exemption by Order was put in place to ensure that certain non-native tree species can legally be planted in Scotland. We do not oppose that intention here but believe the Order should be adjusted or revised to ensure that commercial forestry operators, including state-owned Forestry and Land Scotland (FLS), fully shoulder responsibility for environmental harms that are generated by their operations.

The Natural Environment Bill

Delivering on the above proposals will, we believe, be essential if Scotland is to effectively tackle key drivers of biodiversity loss and achieve the objectives of the Scottish Biodiversity Strategy and the Natural Environment Bill. We maintain that there are no policy-based approaches that would suffice and urge the Scottish Government to consider these as amendments at Stage 2. We have more detailed proposals regarding legislative specifics and would be very happy to discuss them further.

Yours sincerely,
Deborah Long

Chief Officer
Scottish Environment LINK