

Scottish Countryside Alliance Response to Draft Nature Conservation (Scotland) Bill

Introduction

The Scottish Countryside Alliance promotes the interest of all those who live in, work in, use and enjoy the countryside.

To this effect the Scottish Countryside Alliance (SCA) supports any legislation or policy that will revitalise the rural economy, support the rural communities and maintain a diverse and sustainable landscape. Our first priority is to help the people in rural communities to survive and prosper. Without people our landscape cannot be managed for the economic, social, environmental and cultural good of Scotland.

General Points

- The SCA is deeply concerned at the lack of acknowledgement for the existing good work of those currently managing Scotland's landscape, and for those who are presently conserving and enhancing Scotland's biodiversity. Our major concern with this draft legislation is that it singularly fails to recognise the importance of individual effort and responsibility in maintaining and enhancing Scotland's nature.
- It is precisely those individuals currently managing Scotland's land who are such important sources of information and intelligence. These land managers are experts in conservation and it is unreasonable to suggest that an outside body, with no intimate knowledge of that area, should be given powers over and above that land manager, in order to dictate how that land should be managed. Rather than managing their land for them, and confiscating it if there is some irreconcilable difference of opinion, we would like to see officials working with land managers. To this end, the SCA is completely opposed to the compulsory purchase by Scottish Natural Heritage (SNH) of individual property.
- This draft legislation continually refers to nature conservation, natural heritage policy, the bigger picture, holistic measures and overarching visions. We are concerned that these grandiose phrases mask the underlying intention, which is to give SNH and the Scottish Ministers, overall control of every part of Scotland's countryside. This would fundamentally undermine the right to private property, an individual's freedom to manage their own land and most importantly, the good practices that are currently employed all over Scotland which currently conserve and enhance Scotland's biodiversity.
- Scotland's landscapes are different and diverse and cannot be managed as a 'one size fits all' policy. In order to promote true biodiversity, we must allow people to have control over their own land and work with the land to foster its strengths, not be forced into a manufactured stereotype.
- Our other major concern is that this draft legislation seems to go far beyond the original scope. While we commend the three key themes of this specific

draft legislation; to improve protection for Sites of Special Scientific Interest (SSSIs) to effectively tackle wildlife crime and to conserve biodiversity, we fail to see how these distinct aims suddenly become an overarching vision for the benefit of future generations, or why the remit of SNH has grown to encompass the opportunity to address socio-economic issues. We feel this extension of the themes stated produces several grey areas concerning the implementation of this legislation and extends the remit of the public bodies concerned to far beyond their current remit, with no consultation.

- The need to improve protection for SSSIs and further conserve biodiversity does not seem to be justified within the text. The SCA would be very interested to know why such improved protection and further conservation is needed. What are the current, increased, threats to the SSSIs and to what extent is our biodiversity being eroded so that it needs enhancement in this manner?
- This draft legislation requires land managers to perform certain functions and places restrictions on other activities. For such requirements to be placed on already regulated and hard-working managers, the SCA would like to know exactly what purpose the draft legislation is designed to perform? What is the need for these new requirements and what are they intended to achieve?
- This draft legislation puts considerable burdens on certain public bodies. The SCA would like to know what justification there is for giving new powers to the relevant bodies, and what expertise and experience these bodies have in these areas.
- There are many phrases and terms used in this draft document that are vague and ill defined, which, if left as they are, are open to interpretation. This is wide open to abuse, as the organisations will implement these duties in accordance with their own remits and prejudice.
- For too long individual and community interests have been side-lined for the bigger picture. We do not feel that these interests are mutually exclusive. There should, at all times, be a supposition that the established practices of land managing and conservation and the individual manager involved, take priority over any other interest unless it can be proved that they have been breaking the law.

Specific Areas of Concern

A9

- The SCA appreciates that there are often competing interests but surely these must be reconciled for the benefit of people and the local community. The “wider public good” is in many cases a subjective decision and rides roughshod over the needs and interests of the individuals involved. The SCA would like to see a definition of what the wider public good actually is, in the context of this bill. We would like to see, in cases where there are competing

interests, that it should be the interests of the individual and the community that are paramount.

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- This is obviously a commendable sentiment but who decides what is practicable and realistic? If a land manager expresses an opinion that the measures he is being forced to carry out are not practicable will his concerns be acted upon or will his land be compulsorily purchased? The principle of transparency has been found wanting in many of SNH's dealings with the public. What assurances do we now have that SNH will operate in a fully transparent manner, and indeed, in a practical manner?

Fundamental Principles and Overall Vision

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- The SCA accepts that a dual approach to conservation is needed; however in the case of species protection, there is some disagreement over exactly what species should be protected at what level, for fear that the natural balance of other species may be distorted. This should be looked at, particularly with relevance to birds of prey, and some flexibility built into what can only be described as a rigid and inflexible system at the moment.
- This demonstrates one of our major concerns, which is that the accepted wisdom is implemented to the detriment of any other. We are concerned that there is little scope for alternative opinion, and more importantly that this single opinion may be significantly damaging the good conservation practices that many land managers are promoting. These opinions must be taken into consideration, particularly if these regulations are to be strengthened.

A15

- The SCA supports any attempt to tackle wildlife crime; however whenever the word biodiversity is used we must remember that people are a part of that biodiversity. The bigger picture must involve people and whatever is detrimental to their interests – jobs, housing – is not in the interests of the bigger picture.

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- While these are worthy sentiments they should be nothing more. We applaud the emphasis but stress that it must not be at the cost of development or progress or indeed established practice.

A17

- The SCA wholeheartedly endorses the comment that, "We want to see a countryside in which biodiversity thrives alongside the economic and recreational activities which sustain our rural communities": however the SCA

would go further to say that our biodiversity will thrive only as long as our economic and recreational activities do. It is misleading to then state that the “protection of Scotland’s nature is too important to be left simply to the traditional policies of site protection and wildlife crime initiatives”.

- Scotland’s nature is currently protected by each and every person managing the land in Scotland, from ghillies, to gamekeepers, to farmers, to crofters. All these people are managing Scotland’s nature and the landscape’s sustainability so that there is no contradiction between economic growth and biodiversity. These men and women show that only through a living, working countryside can we maintain true biodiversity.

Section B

Biodiversity

- The SCA welcomes the Scottish Executive’s commitment to biodiversity; however we are concerned that when the Scottish public bodies and office holders are carrying out their duty to further biodiversity they will only be informed about how to do this by one ‘expert’ organisation. As this is a very subjective area, we would like the public bodies to take a wide range of opinion from a wide range of organisations.
- The SCA is concerned that this duty may cause considerable bureaucracy and would like a reassurance that the duty to further biodiversity will not be pursued at the cost of the function of that public body.
- It seems a little illogical that the Scottish Biodiversity Strategy is currently out to consultation when this is a very large part of what the public bodies and office holders will be asked to refer to.

Enhanced Protection for SSSIs and Related Reforms

- As stated earlier the SCA is unsure of the need for enhanced protection for SSSIs. It seems that in recent years there has been a significant increase in the number of SSSIs and these have been maintained, without too many problems or threats.
- The SCA is concerned that when determining whether a site is of special interest, there is no longer reference to “scientific” importance, just natural heritage. This allows public bodies the scope for many interpretations, and is therefore wide open to abuse.
- We agree that there should be greater transparency and access to new dispute resolution processes; however the provisions in this Bill do not do that, but hand SNH increased power and control over the designation and management of SSSIs, and reduce the input and control of the land managers over their own property. We consider this shift unacceptable.

- We consider the increased powers to SNH unacceptable, specifically we do not understand when the remit of SNH grew to encompass the opportunity to address socio-economic issues. SNH will have the power to decide SSSIs, draw up site management statements which go far beyond conservation, and impose land management orders that will be enforceable by law. These will not simply prevent damaging activity but impose the undertaking of specific activity on that land, and will take land managers to court if they are unwilling to undertake these orders. This is an unacceptable amount of power for one public body to hold.
- We are unsure of the process of consultation that will decide where an SSSI is imposed, and there seems very little recourse for the land manager should they disagree with this decision. In addition, the inclusion of wider stakeholders could very well drown out the single voice of the land manager, as the person with the most knowledge and history with the land in question.
- We are not heartened by the fact that the Executive feels that only a few compensatory agreements are currently needed nor that compulsory purchase should not be needed in many situations. Those who are being denied the proper use of their own land, which they have maintained for generations in both their own and the wider public interest, have a justifiable complaint. It is irrelevant that there may be only a few of them.
- We are completely opposed to SNH having the right to compulsorily purchase land which they feel is not being managed according their criteria. This fundamentally undermines the right to private property, and gives SNH far too great a power.
- The bureaucratic and regulatory load will be greatly increased on land managers as a result of this draft legislation. This is unacceptable given the present climate in which land managers have to operate. We also feel that the spectre of the imposition of land management orders and the power of SNH to change the management of the land regardless of the feeling of the land manager will impede on property prices.
- The SCA is in favour of conserving and enhancing our biodiversity; but we feel that this section of the draft legislation provides SNH with too much power and ordinary land managers with too little. Most of all, it forces land managers to justify their practices and imposes on them the opinions, perhaps biased, of a public body. We feel this is an unjustifiable imposition and we would like to see SNH work with land managers, not force them to carry out unproven conservation techniques at the whim of current science.

Improved Measures to Tackle Wildlife Crime

- The SCA applauds any measures that will tackle wildlife crime. We feel that the term “recklessness” may be difficult to prove but accept that this is a robust and well understood concept in Scots law.

Conclusion

- While the SCA is broadly supportive of the aims of this draft legislation, we are not convinced of the need for it. We are also deeply concerned that many rights are being taken away from land managers in favour of public bodies, and that far too much unconstrained power is being given to SNH. We are particularly concerned that individual freedoms are being eroded to serve the wider public interest and feel that perhaps the individual actions currently taking place on much of Scotland's land today do serve the wider public interest, despite not fitting any strict definition of such.