



Wildlife and Natural Environment (Scotland) Bill Stage 1 written evidence

RSPB Scotland welcomes the introduction of this Bill. It includes long-awaited and valuable reforms or modernisations (eg game laws, INNS). It also brings forward a range of welcome 'tidying up' measures (eg SSSIs, species licensing). However, on deer management, it is less robust than is required. Its lack of an overall vision or action on issues such as wildlife crime or biodiversity mean that the bill is also a missed opportunity. Our evidence welcomes and supports the positive aspects of the bill, but also offers constructive suggestions for substantive improvements.

Overall vision

Scotland's wildlife and natural environment are outstanding assets, valuable in their own right, as part of our culture and identity and as a major contributor to our socio-economic well-being. It is welcome that the Government intervenes, in the public interest, to ensure its continued protection and enhancement. That said, **this bill has no overall narrative as to the Government's long-term objectives for the environment** – which would be required for an ecologically coherent policy.

It is now agreed that Scotland has failed to meet the 2010 targets for biodiversity conservation, and is making only modest progress towards the SBS objectives of restoring biodiversity. This bill could be a great opportunity to link together the individual measures with an overall vision. An improvement in the biodiversity provisions could ensure that public bodies make greater efforts to secure the overall objectives of the SBS, especially the restoration of biodiversity and the delivery of landscape-scale conservation management. We recommend that the Committee examine the nature of the Government's long-term objectives for wildlife and the natural environment, and consider how these might be expressed legislatively and provisions framed to underpin their delivery.

Deer management

Future deer management structures must be capable of delivering sustainable management as set out in *Scotland's Wild Deer; a National Approach*¹. This means that deer populations, with no remaining native predators, have to be managed in the public interest. However, Deer Management Groups (DMGs) do not have to report on their activities; only about half of the DMGs had a Deer Management Plan by 2005, and only 10% of the DMGs had a formalised process for setting and monitoring cull targets. **The current situation is ineffective**. As a result, excessive deer browsing causes damage to protected areas and other important habitats. We supported the original DCS recommendation, and proposal of the Scottish Government, to introduce a duty on landowners to manage deer sustainably. This idea has been dropped, due to ECHR compliance issues² - we understand this, but consider other means can be used to meet the same end.

RSPB Scotland considers that this revision of deer legislation will fail unless the concept behind this recommendation is embraced and the bill amended accordingly. This can be achieved by:

- **Introducing a clear duty on SNH, and relevant public bodies, to further the sustainable management of deer**³.
- **A statutory system of deer management planning - with plans produced by SNH with the full participation of all relevant private and public stakeholders.**
- Failing the above, there should be a **provision to allow SNH to produce deer management plans where voluntary DMGs fail to do so** - and, in such cases, to recover costs.

¹ The Scottish Government (2008). See <http://www.scotland.gov.uk/News/Releases/2008/11/11154040>

² <http://www.scottish.parliament.uk/s3/committees/rae/or-10/ru10-1702.htm#Col2924> - col 2949 *et seq.*

³ Clearer and stronger than the general purpose set out in s.1 of the Deer (Scotland) Act 1996, as amended.

- Such plans should set out clear deer management requirements that land managers should follow. In the event of non-compliance, Ministers should be empowered to make a Deer Management Order, requiring relevant actions to be taken – non-compliance with such an Order should be an offence.
- This entire process should be supported by a **Code of Practice** setting out the requirements of sustainable deer management.

Such an approach is not new. It mirrors the approach taken in the Nature Conservation (Scotland) Act 2004 in relation to SSSIs (eg Land Management Orders). It is also, in effect, a development of the principles already implicit in ss.7 & 8 of the Deer (Scotland) Act 1996. It also overcomes the ECHR issues as the general duty applies only to public bodies, while the new offence (non-compliance with Deer Management Orders) would be both sufficiently clear and can be made subject to appropriate safeguards for participation, appeals, etc. We commend such an approach to the Committee.

Failing the above, we believe that – at least – there should be further amendments considered to improve the practical effectiveness of ss.7 & 8 of the 1996 Act.

Game Acts reform, and wildlife crime

RSPB Scotland accepts that the current game licence system has effectively fallen into disuse, such that it cannot be revived as a practical regulation tool. However, we do not accept that total and absolute deregulation of the game shooting industry, as proposed in the bill, is justified or appropriate. Evidence suggests that most significant wildlife crime incidents are associated with the game rearing and/or shooting industries - albeit the representative bodies and many of those involved act responsibly and within the law. RSPB Scotland welcomes actions taken by the Scottish Government and others to address wildlife crime. Nevertheless it remains clear that, to date, these have had limited success, especially in addressing the illegal killing of birds of prey. **We are surprised that this bill has taken few, if any, steps to further address this.**

The recent “thematic review” of wildlife crime⁴ recommended that the Scottish Government examine the possibility of making employers/land managers in some way liable when those under their control commit wildlife offences (so called “vicarious liability”). This recommendation has not been pursued, and the absence of any such provision in this bill is a missed opportunity. Two amendments could ensure the spirit of this recommendation is implemented. These are:-

1. An amendment that, subject to checks and balances to ensure fairness, extended responsibility for criminal acts committed by employees in carrying out their work to their employers/managers; and
2. An amendment that disestablishes the right to shoot, to an extent (that is, area affected or time period) proportionate to the circumstances, from shooting enterprises where a wildlife offence is committed and that enterprise has taken insufficient steps to prevent its occurrence.

Neither of these approaches imposes any burden on law-abiding, responsible citizens but both offer a strong deterrent to those contemplating any illegal practice. Indeed, they mirror corporate offences associated with both Health and Safety and anti-corruption legislation. We recommend that the Committee seriously consider whether measures such as these would be appropriate.

Other issues that would also assist the fight against crime might include:

- Completing Schedules A1 & 1A of the Wildlife and Countryside Act 1981, together with an amendment to that part of the Act that establishes the schedule to allow the inclusion of seriously threatened species (e.g. hen harrier) on Schedule A1.
- Amending the 1981 Act to make it offence to “cause or permit” offences under e.g. ss.1, 6 etc., in the same way as existing “cause or permit” provisions for ss.5(1), 11(1) & 11(2) (illegal methods of killing).
- A reconsideration of admissibility issues – to ensure that any evidence of wildlife crime is accorded sufficient weight to permit prosecution and that, for instance, the civil wrong or irregularity of trespass (without damage) does not, unnecessarily, prohibit prosecutions.

⁴ *Natural Justice: A Joint Thematic Inspection of the Arrangements in Scotland for Preventing, Investigating and Prosecuting Wildlife Crime*. HMIC and IPS (2008). See recommendation 10.

- The extension of provisions (those ‘imported’ into this bill from the various Game Acts, and one in the 1981 Act) on the acceptance of single witness evidence to other (appropriate) wildlife offences.
- Extending the existing 1981 Act provisions on the misuse of pesticides to include an offence of “being concerned in the use of” such chemicals. As with the Misuse of Drugs Act 1971, such a provision would assist the authorities when involved in wildlife crime cases involving complex forensics.

The bill retains, as legitimate quarry, a number of native wild birds whose conservation status is less than robust. RSPB Scotland is not seeking removal of these species from the quarry list. However, a system should exist for the levels of hunting to be monitored, with compulsory reporting, particularly if an adaptive management approach is to be applied to species such as wild geese. Without such a system, the Government may breach its obligation under Arts 7.1 & 7.4 of the EU ‘Birds’ Directive. As it is traditional practice to maintain bag records, this does not pose a significant increase in regulatory burden.

Invasive non-native species (INNS)

We strongly support the proposal for a ‘general no-release approach’ to non-native species regulation. We remain concerned, however, that these proposals are insufficient to ensure effective responses to this growing threat in terms of lines of responsibility. The most cost-effective response is to act at the earliest invasion stage possible. Without clear, pre-determined lines of responsibility, costly delays ensue. **The determination of these lines of responsibility should be made obligatory under the new legislation.** This could be done through a duty on the relevant public bodies, or through the inclusion of a clause in s.14B specifying that Scottish ministers must publish an INNS Implementation Plan for priority species. Sub-clauses should specify that these plans must identify which public body takes a lead coordinating role in response action; which actions that will be the responsibility of named bodies; and that all public bodies shall carry out the duties assigned to them in the Plan. The Priority INNS species must be specified by ministers, informed by the GB INNS Risk Assessment process and Scottish INNS Working Group, and should comprise those species that pose the greatest ecological or socio-economic threat.

The Bill allows Scottish Ministers the flexibility to regulate the release in Scotland of every species of animal and plant in the world – except two, the pheasant and the red-legged partridge. This is inconsistent and inappropriate. In 2009, over 5 million of these birds were recorded in Scotland on the poultry register – an underestimate of the number eventually released. **We urge the inclusion in the Bill a capacity for ministers to regulate, in locally defined areas and/or at specified times, the release of non-native gamebirds** should environmental damage be manifest or deemed likely as a result of future releases. This should, at present, lead to an order allowing the continued release of these species for legitimate sporting purposes. We caution against the ‘fossilisation’ of arrangements allowing the release of these birds with no capacity to regulate beyond designated areas, even if this becomes necessary.

Species licensing

The proposed devolution of species licensing to local authorities does not achieve anything useful and risks inconsistencies. This would represent a return to a situation similar to that which existed before the Protection of Birds Act 1954, which was changed exactly because of the inconsistencies that resulted. Moreover, we note that few local authorities appear to support such a change. In addition, we consider that “any other social, economic or environmental purpose” is far too wide and open-ended for the licensing of, for instance, the killing of Schedule 5 animals or the use of self-locking snares. For consistency, these purposes should be similar to those already applying to birds and plants.

In addition, we believe that the current 1981 Act definition of livestock is too wide and that, in relation to gamebirds reared for the improvement of shooting, it should be limited to circumstances where these animals are fully confined. S.27 of the 1981 Act should be amended to make this clear.

Muirburn

Muirburn can, where well-managed, have benefits for some wildlife. However, huge damage can arise from poorly-managed muirburn, or burning in inappropriate sites. The current Hill Farming (Scotland) Act 1946 provisions require updating in line with modern land management needs and evidence about the

timing of breeding in moorland birds. Many moorland birds will have begun egg-laying within the current muirburn season. A good number of these species are in “unfavourable conservation status”. There is also evidence that climate change is causing earlier breeding.

We support as a minimum measure changes to the muirburn season to 1 October to 15 April, with the extension period of 30 April. The current muirburn dates allow burning up until 15 May in defined circumstances. **We are opposed to any changes to allow muirburn beyond the end of April when many birds are nesting.** We support amendments to allow Scottish Ministers to vary the muirburn season for environmental purposes, as well as those for muirburn licences for these purposes and for research.

SSSIs

Ss 29 & 30 make sensible changes to the 2004 Act that will result in more efficient procedures for SNH, without weakening SSSI protection or imposing new burdens on land managers. S.31 makes practical changes to procedures for Operations Requiring Consent. We support all these proposals.

We welcome and support s.32 – providing for restoration of damage to SSSIs according to the “polluter pays” principle. In addition, we would welcome a requirement for damage to SSSIs (and steps taken to restore damage) to be recorded and published. The bill should also require SSSIs to be maintained at or restored to favourable conservation status (possibly by amending ss.3 & 12 of the 2004 Act). A new offence of attempting to damage a SSSI (similar to s.18 of the 1981 Act) would also be welcome.

ASPs

RSPB Scotland agrees that alternative measures exist to deliver the protection currently afforded by ASPs. However, these measures have to be specifically activated by SNH or by Scottish Ministers. We disagree with SNH that there is no need for ASP measures at any of the existing sites. We are of the strong opinion that steps must be taken, under the modern legislation, to replace the protection currently afforded to the Loch Garten ASP, before it is safe to repeal s.3 of the 1981 Act. Therefore, **we oppose abolition of ASPs as currently proposed under s.4 of this bill - until and unless measures are taken to deliver similar levels of protection at Loch Garten under the alternative legislation.**

Other

RSPB Scotland strongly supports the ‘vision’ set out in the SBS. However, Scotland has failed to meet its biodiversity targets for 2010, and has set new targets for 2020. To meet these new targets, it will be necessary to redouble efforts and revitalise the processes needed to deliver biodiversity restoration and large-scale conservation. This bill offers an opportunity, missed to date, to review the effectiveness of Part 1 of the 2004 Act and introduce amendments to re-invigorate the efforts to deliver biodiversity conservation. Strengthening the duty (s.1, 2004 Act) and introducing a statutory basis for all public bodies to be assigned (and carry out) actions to s.2 would ensure greater certainty of action and delivery.

Some, but not all, schedules to the 1981 Act have to be reviewed periodically, informed by advice from SNH. This results in an inconsistent approach. For example, schedule 1, relating to birds, has not been significantly updated since 1982. Schedule 5, on the other hand, dealing with other animals, has been regularly amended to keep it fit for purpose. All schedules should be subject to the same formal periodic review, against objective criteria, to ensure that they remain relevant to their purposes.

Finally, this bill is, at least, the 11th amendment to the 1981 Act, Part 1, as applicable in Scotland. It is well overdue for consolidation. To ensure that it is well understood by all concerned, we would urge that **the Committee recommends that a consolidation be undertaken early in the next Parliament.**

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