

CURRENT SCOTTISH GOVERNMENT CONSULTATIONS: KEY POINTS RELATED TO THE ENVIRONMENT

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BIODIVERSITY STRATEGY TO 2045

Support

1. **Support for Scottish Government proposals:** refreshing statement of the reality and recent trends, laudable ambitions, desired objectives and outcomes plus promised legislation with statutory targets, delivery plans, investment plan and monitoring and reporting framework. Yes to “nature positive means...bending the curve of biodiversity loss”. This is the most comprehensive, challenging and far reaching Biodiversity Strategy ever published in Scotland and deserves widespread support to bring it to fulfilment. Of particular importance is the intent to “mainstream and integrate biodiversity across government”.
2. **Welcome wider definition of nature** as must look at whole systems not selected elements, such as species or habitats. Must ensure that this holistic and integrated approach is carried throughout the action plan and target setting. “Nature includes biodiversity, geodiversity and the natural elements of our landscapes and seascapes. It encompasses all the underpinning features and forces that have continued since the Earth was formed from summit to seabed including rocks, landforms, soils and processes like weather systems.”
3. Welcome **investment** in nature restoration and management through Peatland Action Programme and Nature Restoration Fund.

Key issues

4. Many strategies with similar rhetoric but at least now recognition **of scale and urgency of task** due to previous inability to turn round negative trends. Shortcomings are agreement and accountability of all those with a role, including owners and managers of the natural resources, unwieldy proposed governance structures, resources that are inadequate, lack of change in other policies and resource focus on monitoring and assessment rather than getting changes on land and water.
5. The most vital issue is to finally address fundamentally **perverse policies and funding mechanisms**. The strategy and the Agriculture and Rural Communities (Scotland) Bill and the way that the current Flood Risk management (Scotland) act 2009 is operated by local councils and their consultants, all fail to address the fundamental issue of distortions in the public support that get in the way of turning round biodiversity and wider nature losses. The four tier system for agricultural support is a retrogressive step and should be removed with a system based on whole farm plans, which is the farmers business unit, recognising that environmental measures, along with food and fibre production, are part of the integrated whole in farming operations. The focus on hard engineering solutions for flood protection rather than on whole catchment management remains the norm in schemes recently completed and those currently under construction and being developed. The approach needs to change through amendments in the Natural Environment Bill to recognise the need for catchment management solutions to deliver flood resilience, biodiversity gain and climate change mitigation.

6. Have regard to **biodiversity duty** in Nature Conservation (Scotland) Act 2004 is far too weak given the twin crises. It needs to be upgraded to ‘shall’ duty on all public bodies, meaning that they have no choice but to act positively in the public interest.
7. **Change the basis of the protected areas system** as it is not working due to a combination of ecologically static approach and perverse policies and subsidies for the land and sea activities. Change the fundamental basis from a feature and form focussed approach to one based on ecological dynamics and ecosystem functionality. This will allow new sites and areas to be designated and those which no longer have features or forms within their boundaries to be de-designated. Re-introducing Natural Heritage Areas can provide the basis for the proposed landscape scale approach can be implemented

Environmental ethics

8. **A Nature Charter for Scotland** should be placed in the Natural Environment (Scotland) Bill to complement the environmental elements of the Human Rights proposals. This can be based on The Earth Charter and the Digne Declaration of the Rights of the Memory of the Earth and linked to the National Performance Framework. It is needed to balance the anthropocentric human rights to nature etc provisions.
9. **Stewardship should be rewarded. The Principles of Land Rights and Responsibilities** are a crucial ethical and practical basis for a paradigm shift in the way natural resources are used and managed. It is therefore surprising that it is not mentioned in the Biodiversity Strategy paper. By implementing the principles and making them work in practice is a crucial way of improving natural capital management and reversing biodiversity trends. There are many issues and facets about the way the land is used and managed, but there is not a coherent whole. Should be a statutory basis in the proposed rights legislation with stipulations on no public money without agreement with and adherence to them. This should also be in the Natural Environment Bill and preferably in the Agriculture and Rural Communities (Scotland) Bill. Environmental Standards Scotland should be given the responsibility for driving this forward with continuing advice from the Scottish Land Commission.
10. Scotland is not good enough at learning lessons from the last. There is a need for a forensic **review of what worked and what did not work** to enable more foresight in planning for the future. The review should include consideration of unintended consequences of other policies and mechanisms, such as forestry policy and continuing public financial support for commercially viable tree planting.

Protected areas reform

11. It is essential as the strategy implies to up the scale of protection mechanisms from sites and areas to whole landscapes. **Natural Heritage Areas should be re-introduced.** Originally Section 6 of the Natural Heritage (Scotland) Act 1991, lack of foresight meant that it was repealed under Nature Conservation (Scotland) Act 2004. The basis of NHAs is to allow large scale nature focussed management of assets, meaning upping the scale from the site and small area approach and recognising environmental dynamics. It was devised originally for the Flow Country as the SSSI mechanism is inadequate to deal with large areas. Its introduction would enable Scotland to cope better with the effects of climate change on species and habitat changes and to prepare plans for large area dynamic conservation to turn round the biodiversity crisis.

12. **Adopt best international thinking and action** on Key Biodiversity Areas, and on Key Geoheritage Areas, and on large scale networks such as Yukon to Yellowstone in North America.
13. Make special provision in legislation for application of the **Biodiversity Net Gain** approach using the guidelines developed by the Chartered Institute of Ecology and Environmental Management.
14. Review **amount of territory, land and sea for nature**. Is 30% sufficient? What about adopting the international movement's targets of *Half for Nature*? What about making sure that everything that is done on land and water has a positive benefit for nature and natural environmental processes, i.e. 100% for Nature?

National Park legislative reform

15. The proposed provisions are an improvement on the present statutory basis. It is important to apply the new basis to the two existing national parks. Any new national parks will not meet the requirements of the overriding duty in Section 9 of the National Parks (Scotland) Act unless all public authorities, in addition to the national park authority, have a clearly defined statutory role. The 'have regard to' duty proposed in para 7g of the consultation is quite inadequate and all authorities should be given the responsibility in the form of 'shall' to adhere to Section 9. But the mechanism for ensuring this occurs needs to be clear. Past experience with the existing national parks demonstrates that it cannot be left to the National Park Authority, as at present, rather Environmental Standards Scotland should be given a specific role in monitoring compliance on this responsibility.
16. The proposed restated first aim is a step forward, but needs to recognise all natural assets as in the definition of 'nature' in the Biodiversity Strategy, in other words to include the abiotic assets such as soil, rocks and landforms and their processes.
17. If Scotland wishes to meet the international standards on national parks, based on the *IUCN Protected Area Management Categories*, two changes are required. First, it will be necessary to make conservation of nature the primary purpose with the other 3 purposes secondary. This is also supported by current practice as too often the existing national parks consider that economic and rural community development should have primacy and that is also the stance taken by some proponents of new NPs, such as the Galloway NP. That is surely the role and responsibility of the three enterprise agencies and local councils. Second, the nature conservation duties need to be given primacy if Scotland wishes to join the international family of full national park status under Category II of the IUCN Guidelines.

Proposed key actions

18. The categorisation of the habitats and the listing of action is clear and is supported. The main concerns are who is accountable for carrying out the actions, the lead and partners, how are the tasks allocated, how are they monitored for progress, what sanctions if any are proposed for non-compliance or failure to meet targets, and what resources of the necessary people skills, organisational capability and financial assistance are going to be available? These are not documented. Unless this level of specificity is provided in the Delivery Plan to follow then these actions will be another repeat of the wish lists of the past without achieving the necessary delivery on the ground.

Resources

19. Refocussing government resources is needed to ensure that its key objectives on climate change and biodiversity and improved value for money are achieved. The resources required for implementation of key actions will be substantial. There is mention of potential private sector investment but there needs to be greater reassurance that this will materialise at the levels necessary and talked about by NatureScot officials. Also what consideration is being given to the resources available, amounting to over £1bn (£620m agricultural support, £74m forestry support, £378m support through the 3 enterprise agencies, and the £190m through environmental programmes), to support the delivery of the key actions? These need to be addressed through the powers of Direction available to Scottish Ministers and in letters of grant aid from the Scottish Government's Accountable Officers to the CEOs/Accountable Officers in the agencies and NDPBs. Alongside this is to ensure that mandates and mechanisms reflect policy aspirations throughout government. The mandates of all government agencies and NDPBs dealing with the natural environment should be updated to deliver integrated approaches and respect the principles and best practices of nature management for the future.
20. Compliance audits of all new policies and legislative proposals are required to ensure that they meet the key environmental objectives. The audits should embrace natural capital, climate change and bio/geodiversity across all policies. The role of Environmental Standards Scotland should be extended to allow it to monitor compliance with the new rules and responsibilities through a surveillance and monitoring scheme and the reporting of malpractice. Improved means of measuring carbon loss and sequestration on land not separate modes.

Governance

21. The governance proposals are too prescriptive and too complex. They will generate an industry in committees and working groups without necessarily delivering improved action on the ground. There needs to be a clearer redefinition of the roles of the three key statutory bodies: Scottish Nature Heritage, SEPA and Environmental Standards Scotland, rather than establishing more committees.
22. Introduction of more collaborative approaches in keeping with shared responsibilities approach used internationally as a good governance model is a way forward. Shared governance and governance by local communities rather than always top down central government controlled is an important mental change that is justified, sought by local interests and enable local knowledge and experience to be used rather than assuming that centrally based experts have all of the knowledge and experience. This is particularly relevant given the Scottish Government policy to encourage further community ownership of land and the trials of Regional Land Use Strategies and concerns by communities that representations they make, for example on consultation of forestry planting proposals. The UK and Scotland perform unfavourably in the adherence to the requirements of the Aarhus Convention and the Scottish Government needs to set out its plans for substantially improving performance particularly in relation community collaboration, for example on land use change, forestry planting and renewable energy schemes and flood resilience schemes.

Perverse policies and mechanisms

23. In addition to the agriculture support scheme and the aspects noted above under resources, there are other policies and support mechanisms which needed to be re-aligned to the Biodiversity Strategy. Two of them are of particular relevance given the way the systems currently operate either by largely ignoring biodiversity objectives, flood risk schemes, or making them more difficult to achieve, forestry grant schemes.

(1) Forestry grant schemes

24. The current Forestry Grant Scheme is subject to review following a consultation earlier this year. There is no longer any justification for reasons of market failure, necessity of state support for commercial operations and import substitution to provide grant aid for commercial forestry planting in Scotland. There is a financially viable market. Hence money can be redirected into support for climate change, including carbon sequestration and reduction in carbon loss, and biodiversity gain through planting of native trees and improved management and restoration of existing native woodlands, especially Caledonian pine and mid latitude rain forest ecosystems.

25. All forestry operations, whether grant aided or not, should be subject to strict adherence to the Land Rights and Responsibilities Principles and also to the Codes of Practice for Forestry. This means that more effort will be required in Scottish Forestry for enforcement of conditions and adherence to guidelines.

26. One specific point relates to the classification of tree species used in commercial forestry planting as INNS. Their spread beyond the plantations should be regarded as INNS as there are many examples beyond current plantations of the spread of Sitka spruce, Norway spruce, Lodgepole pine and other INNS onto surrounding natural and semi-natural habitats, such as wet and dry heaths, and no means available for their removal.

(2) Flood risk management schemes

27. One aspect of fragmentation of action and funding is the current practice on flood protection schemes. The Flood Risk Management (Scotland) Act 2009 places responsibility on local councils to consider Natural Flood Management. In practice, however, most schemes are developed by civil engineers and too little account is taken of whole catchment management approaches, and certainly virtually nothing about addressing the twin climate and biodiversity crises, and what Nature based Solutions could contribute to all three issues. The work by Sniffer for the Scottish Government Review of Flood Resilience Strategy is seeking to take a different and welcome wider approach arguing the need for a *paradigm shift* - collaboration and whole catchment management. This is excellent if followed through by government into implementation of all schemes.

28. However, many schemes are being developed under a traditional approach, described recently by the SEPA CEO as “no hard engineering solutions are infallible” and by an eminent river scientist stating that “My personal view is that hybrid schemes in which nature-based solutions are combined with lowered engineered protection together with property flood resilience measures for households at risk (ideally funded by local authorities where appropriate) is the best way forward”. Given the need to reduce public expenditure and to address multiple policy goals, it is strongly recommended that schemes currently under development are forced to retrofit to meet the Scottish Government’s wider policy objectives. In addition, the 2009 Act should be updated for

the climate change and biodiversity crises and public expenditure shortfalls as part of the forthcoming Natural Environment (Scotland) Bill. And SEPA should be encouraged to take a more proactive role in flood development and implementation schemes.

Schools education curriculum reform

29. Place understanding of the natural world at the heart of revised CfE. Reform of the Curriculum for Excellence (CfE) especially at Broad General Education S1-S3 to ensure that environmental knowledge is taught to all students by those qualified to do so and that options for higher study of the natural environment at S4 to S6 are mandatory in all schools. Advisers in the new education NDPB to ensure this is followed through and accessible to all students.
30. A greater focus on *Outdoor Learning* to give students real world experiences and to introduce them to nature on their doorstep is required. This means better guidance which is available from outdoor education experts.

AGRICULTURE AND RURAL COMMUNITIES (SCOTLAND) BILL

Support for the policy intentions

1. Bringing forward a framework bill and allowing more detail to be added through secondary legislation or other means is supported. As is the proposal to focus on outcomes as the basis for support, rather than activities.
2. The Bill sets out clear overarching objectives and desired outcomes of high quality food production, climate mitigation and adaptation, nature restoration and wider rural development...‘every effort must be made to mitigate the nature crisis’. The requirement placed on the Scottish Government to produce a Rural Development Plan and revise it every 5 years and new Code of Practice on Sustainable and Regenerative Agriculture are steps forward. Schedule 1 of the Bill sets out activities that are eligible for support, including agriculture, food and drink, forestry and environmental measures; this is also a step forward. For example, assistance to promote, protect or improve soil health and quality and the natural environment, preserve, protect, improve or restore biodiversity.

Issues requiring clarification

3. It is not clear whether the present system of payments to farmers on a unit area payment basis is to be continued. It is retrogressive if that is the case as it favours larger scale operations whereas the real issue is to support defined outcomes, in accordance with ongoing EU agricultural policy, which Scotland wishes to continue to be aligned with, and overall Scottish agricultural vision.
4. There is surprisingly no reference in the draft Bill or in the Explanatory Memorandum of the implementation of the Scottish Land Rights & Responsibilities Statement of Principles. Maybe the intent is to include this in the Code of Practice on Sustainable and Regenerative Agriculture. This should be based on a Stewardship reward system of payments: public money for production of public goods and services. What is required to ensure that the Principles are implemented is the following:
 - Apply to all owners, tenants & managers as Stewards of land

- No public money is provided unless potential recipients adhere to the Principles
 - Contracts for delivery are used over the longer term
 - The Responsibilities are strictly monitored and enforced.
5. The redistribution of c£620m resources from agriculture to reward good stewardship is an essential step in the implementation process. This should be supported with an enhanced on the ground Farm Advisory Service.
 6. Following consultation whole farm plans were rejected. Surely this is a mistake from the farmers perspective given that it is the business unit under which they operate their land holding. Whole farm plans provide an overview of the whole operation and provides the context for measures of importance to nature and environment, and it enables recognition that different parts of the operational unit can contribute in different ways to the variety of policy objectives. It would also considerably simplify the engagement of farmers with the various parts of the government machine and reduce the burden of bureaucracy on farmers.
 7. There is a need to rigorously customer test the support schemes as the system is too complex with tiers and supplements and too siloed by sector.
 8. The tiered payments system has been around for a long time, but it is unlikely that the 4 tier proposed payment system can be changed following strong support during the earlier consultation phase of the Scottish Government's proposals. However, how that system is designed in detail is vitally important to achieve the multiple objectives of policy stated in the Bill. There are concerns that there is insufficient focus on biodiversity gain, natural capital gain and climate change action in tiers 1 & 2 and that most resources will be given to Tiers 1 and 2. Tier 4 is a rag bag that is difficult to justify except as the tier where everything else is dumped: hardly a justification. Specifically, why is tree planting and woodland management, and peatland restoration and maintenance not in Tier 3? The biggest weakness seems to be that there is no indication of the likely resources available and the likely allocation between the four tiers. The danger is that is Tiers 1 and 2 will be heavily financed leaving very little for Tiers 3 and 4.
 9. The forestry aspects in the bill are a step forward. The issues will be in the delivery as there is more need to focus resources on helping farmers plant trees as part of livestock management (which is not the aspect identified in Schedule 1) and carbon sequestration, and more for management of existing and encouragement of new native trees and woodlands. There is also an argument for, at least, substantially reducing or even ending grant payments for commercial non-native conifer planting. Although this is an issue for Scottish Forestry, there remains an urgent need for a proper planting plan rather than the market led *ad hoc* approach experienced for decades. One aspect that should be considered in such a plan are the benefits of planting woodlands upstream of drought areas as is obvious from international science and practice.
 10. There is a glaring omission of any mention of Local and Regional Land Use Strategies to develop land use change opportunities involving the relevant communities of interest, including owners and managers of and and local communities. Schedule 1 Clause 9 mentions Integrated Land Management, but this seems to be more about encouraging adjacent owners to cooperate rather than addressing the bigger issue of how major land use change, such as switch from upland livestock farming to afforestation and renewable energy, is to be addressed other than the cop out approach of leaving it to market forces. Localising plan making for productive land and nature with active encouragement of and support for Land Use Strategies, involving all stakeholders and rights holders, is a way forward. This can be

facilitated by resource provision and policy adjustment to allow regional variation recognising the natural and cultural diversity of Scotland.

11. Checking on compliance with conditions is catered for by spot checks, but this seems to be a *laissez faire* approach. There is no mention of how enforcement of breaches of conditions will be undertaken. Surely a more formal system of compliance checks is justified given the substantial sums of public money likely to be given out. Cross compliance is mentioned, but it has been around for a long time and has not been thoroughly addressed in the past. Now is the time to do that. Surely there should be a formal contract between the SG and the farmer for the payments and scrutiny by independent assessors of the farm outcomes.
12. Schedule 1 mentions the role of agricultural land in increasing flood resilience downstream, but there are no specific proposals given as to how this valuable approach would be implemented. The outcome of the ongoing review of Flood Resilience strategy outcome has to be, in words of Sniffer (the consultancy leading the review on behalf of the Scottish Government), a paradigm shift on two fronts - collaboration rather than solely hard engineering win and whole catchment management rather than just flood prevention. Given the role of owners and managers of land in catchments where there is a flood risk or actual flooding, it is suggested that the Scottish Government do not approve the precise allocation of capital to local council schemes until the refreshed policy is in place and pipeline projects have retrofitted their schemes to meet Scottish Government wider objectives biodiversity and climate change and specifying the role of and support for owners and managers of land in the delivery.

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