



THE MOUNTAINEERING COUNCIL OF SCOTLAND

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Wildlife and Natural Environment Bill Team
Landscapes and Habitats
The Scottish Government
Edinburgh

Dear Sir / Madam

MCofS Response to the Draft Wildlife and Natural Environment Bill

The MCofS wholly supports the modernisation of the current legislation to assist the delivery of the Scottish Government's Greener strategic objective and its contribution to the National Outcome "We value and enjoy our built and natural environment and will protect and enhance it for future generations." A quality natural environment will also support the Healthier objective through enjoyable places to take part in recreation, and the Wealthier objective through the attendant tourism and environmental services.

Deer

Q1A. What is your view on the proposal that the right to take or kill deer should be balanced by a statutory responsibility on landowners to manage them sustainably?

The MCofS agrees with statement on page 12 that "where voluntary deer management structures fail, there must be a credible and effective statutory backstop to ensure deer are managed in the public interest." The W&NE Act must put right the problem noted on page 11 that control schemes "are generally viewed as being overly complex, open to challenge from owners and occupiers, and therefore difficult to apply." The rights must encompass the responsibilities advised in the Scottish Outdoor Access Code as access to Scotland's uplands is a vital aspect of economic sustainability in rural areas for tourism, also for a very popular recreation indulged in by almost 400,000 people at least monthly. The stalking season is an important time of year for these activities, and it has been shown that stalking and access can function simultaneously with proactive communication (where felt necessary) and a positive attitude to the other party from both sides. Organisations such as MCofS from within the mountaineering community are working hard to promote responsible access and respect for land management and other recreations such as commercial stalking, and we would urge that any Code of Practice similarly promote responsible consideration of recreational activities in relation to deer management. Many deer managers are very responsible in this respect, but there are issues within collaborative deer areas where conflict arises/exists due to some managers attempting to shift the perceived problem of access users onto the land of other deer managers, and hence dissuading access users from exercising their rights responsibly. The proposed Code could assist in resolving this issue.

Q1B. Is there a better way in which landowners' responsibility to manage deer might be framed?

No comment

Q2. What is your view on whether collaborative deer management structures should continue to be voluntary in the first instance?

Yes, but there must be a realistic useable, and enforceable if necessary, control mechanism should this approach not achieve the desired outcomes.

Q3. Do you consider that there is a need to ensure there is wider (e.g. community) engagement in deer management? If so, how?

Representatives of interests such as community safety and public access could be part of DMGs or their updated equivalent. This could mirror Local Access Forums that include land manager, recreation and community representatives.

Q4. What is your view on the proposal that land managers should be required to prepare and implement a statutory Deer Management Plan where voluntary deer management structures are failing to deliver in the public interest?

There would be merit in trialling and evaluating the outcome of this approach.

Q5. What is your view on the proposal that failure to comply with a statutory Deer Management Plan should be an offence, and that DCS should be able to recover costs from landowners or occupiers where it has to take action to enforce the plan?

This provision should exist as a hopefully rarely used back-up to the voluntary system that should remain the primary mechanism. As noted on p11 control agreements have not been used because of their complexity and the ease of challenge. There must be a credible and robust back-up.

Q6. What is your view on the proposal that DCS' existing powers to constitute Deer Panels should be extended to enable DCS to require the Deer Panel to prepare and implement a Deer Management Plan, where a particular local deer management issue arises?

Agree

Q7. What is your view on the proposal that DCS' current powers to intervene in deer management should be extended to a wider range of circumstances (set out above) than is currently the case?

Agree. It would be hoped that use of these powers would not be necessary, but their existence may act as a useful preventative tool.

Q14. What is your view on whether, consequential to effective local deer management structures being in place and a requirement for those who shoot deer to demonstrate skills and knowledge, the female Close Season could be reduced to cover the period of greatest risk to dependent juveniles?

In many areas across Scotland, public access and stalking occur simultaneously without the provision of information about where stalking is occurring and requests for access users to avoid certain areas. This is possible as the vast majority of access users take predictable routes well known to deer managers. Unfortunately, in some areas, public access is severely curtailed during the open season. At a number of locations, visitors are made to feel very unwelcome both through unwelcoming signs or confrontation, without the provision of any information about where stalking is actually occurring. This means that their access is not only curtailed in the limited area where

stalking is occurring, but across a much wider area. Any change in the season must be accompanied by a recognition that this does not mean an opportunity to further curtail responsible access, and where a problem is perceived, a requirement to provide correct information about where and when stalking is happening so access disruption can be kept to a minimum area and time. The MCofS recognises that this is difficult for some deer managers due to the geography and access routes frequented on their estates, but this will be the only way to ensure that access is not severely compromised across many areas of Scotland, potentially year round depending on the interplay with open seasons for the deer sexes. This provision would allow access users to continue to exercise their rights responsibly. Continued responsible access, and continued associated rural economic activity at a similar level at present, is only possible with provision of this information, or where deer managers feel they can work around access users' movements. The MCofS supports the latter approach which has proved efficient and effective across many areas of Scotland and should be encouraged to minimise disruption to access and a positive experience for visitors.

Q15. What is your view on whether, consequential to effective local deer management structures being in place and a requirement for those who shoot deer to demonstrate skills and knowledge, the national male Close Season could, over time, be removed?

See answer to Q14 which applies equally to this question. This answer is even more applicable to stags as often hinds are taken by estate stalkers who find it much easier to work around access use when they do not have paying clients, and paying clients have a greater interest in stags than hinds. Any change to the close season must not impact negatively upon access users, and hence attendant economic benefits that support many remote areas of rural Scotland. The MCofS would suggest that if there was to be a increase in length of the stag stalking season, then this may better be done through licence with attendant conditions to safeguard responsible access without depending on the unpredictable, costly approach of court cases to assert the Land Reform (Scotland) Act 2003 many potential cases of which are pending in the background due to the fear of costs and staff resources that may face access authorities.

Q16. Do you have a view on whether, consequential to effective local deer management structures being in place and requirement for those who shoot deer to demonstrate skills and knowledge, there could be flexibility to have male Close Seasons set at a local level?

Safeguards for continued public access must be put in place, and this needs to be done centrally to avoid local variation. Some very localised areas have a deserved reputation of dissuading access users, and these difficulties would only increase with shortening of the Close Season.

Q20. Should cull returns be provided by owners/occupiers or by individuals who are on the proposed register of competence?

Cull returns should be as comprehensive as possible, hence the preferred mechanism would depend on relative comprehensiveness of the lists of owner/occupiers versus that of the register of competence.

Muirburn

Q69A. What are your views on the proposal that Scottish Ministers be given powers to vary the permissible dates for muirburn for reasons other than to adapt to climate change?

These powers must be accompanied by stronger safeguards to ensure good practice e.g. dependence on adherence to Muirburn Code. It would also be appropriate to consider extension of s25 by creation of an offence covering a wider breadth of damage e.g. peat soil.

Q70. Would varying the permitted dates to allow prescribed burning in September be beneficial? Please explain your answer.

Unfortunately, there are regular incidents of inappropriate burning despite the Muirburn Code. This issue needs to be addressed and resolved before opening the possibility of increase in problems due to a longer muirburn season into periods where it is even more crucial that the Code be adhered to e.g. earlier autumn burns when the vegetation and soil are likely to be drier than mid-winter. The Hill Farming Act 1946, s25 creates the offence of “Causing damage to *any* woodland.” Carbon storage in peat (deep and shallow) and wet areas is an important resource for achievement of carbon storage targets, hence it should be considered whether an equivalent section to the woodland damage section should be inserted to protect carbon release through inappropriate muirburn practices.

Many upland species are already under pressure from climate change as they have a disjunct range and low competitive ability hence nowhere to migrate to, and are very slow to re-establish, if at all, after disturbance. Upland species are already under threat from climate change. Unfortunately, burns do not always follow the Muirburn Code. Any extension of the muirburn season into more marginally appropriate periods needs to be balanced by a strengthening of the Code. This may be applicable in terms of the type of ground on which burns are carried out, also the size of burns.

Burning peat soils can cause damage especially to peat through reducing formation, promoting erosion and release of carbon. Peat soils are an important storage for greenhouse gases that can contribute to climate change if released. It is therefore important to strengthen the avoidance of peat areas, including shallow as well as deep peat.

The size of burn area is important for minimising damage to animal and plant species that inhabit the area. Small burn areas are more likely to allow temporary migration and easier recolonisation. Encouraging smaller individual areas would help to redress the balance of pressure these species are likely to be experiencing due to climate change in their range.

Q71. If a power to vary the muirburn season is created, what are your views on the proposal that Scottish Ministers should be able to vary the permissible dates on a geographical basis to take account of regional variation?

Agree. Climate change is likely to affect different regions of Scotland differently.

Q72. In order to reduce impacts on nesting birds, should it be specified that muirburn is not permitted (unless under licence) after 30th April? Please explain your answer.

Yes, agree. The Muirburn Code should also state that spring burn areas should be searched for nests immediately before burning, and the burn not carried out if nests are present.

Q75. What are your views on the proposal that Scottish Ministers be given powers to restrict certain types of burning practice which risk soil exposure and erosion?

Yes, agree. Burning peat soils can cause damage especially to peat through reducing formation, promoting erosion and release of carbon. Peat soils are an important storage for greenhouse gases that can contribute to climate change if released. It is therefore important to strengthen the avoidance of peat areas, including shallow as well as deep peat.

Q76A. What are your views on the need to review the Muirburn Code, or the associated supplement on best practice?

Q76B. Which aspects need to be reviewed and why?

See answers to Q72

SSSI and Protected Areas Revisions

Q78. What are your views on the proposal that SNH, or Scottish Ministers on receipt of advice from SNH, be granted additional powers to issue Restoration Notices to require the restoration of damaged SSSI natural features such that prosecution need only be pursued should there be a failure to comply with such a Notice?

The consultation document notes, “SNH’s priority is to secure the restoration of any damaged natural features” (p72). The mechanism chosen to achieve this must also be considered in the context of case law and as a deterrent to other potential future perpetrators. This is important for the conservation of the protected area suite as a whole. Also the efficiency of the approach must be taken into account, hence there are potential financial implications if Restoration Notices were regularly pursued, but then often failed to be complied with, leading to costs to the Scottish Government of the two-stage approach. This scenario would also introduce a significant delay in restoration works. This may increase the damage due to e.g. erosion caused by unconsented works. This has been the situation in a current case in Highland Council area where the planning authority has supported a perpetrator over several years since serious damage to an SSSI/SAC. Due to the several years that have elapsed since report, signs of erosion have already begun to exacerbate the problem the original damage caused. Should Restoration Notices powers be introduced, it is vital that powers of repeat entry (Q79) also be introduced. Whether or not it is concluded that additional powers to issue Restoration Notices be granted, the option of prosecution must remain available. But review this response in line with answer to Parliamentary questions

Q79. What are your views on the proposal to broaden SNH’s powers of entry under section 44 of the Nature Conservation (Scotland) Act 2004 to allow SNH to authorise repeated entry on to land, without a warrant, to investigate offences on SSSIs and Natura 2000 sites and monitor restoration works (being carried out voluntarily or under a Restoration Notice)?

These powers are absolutely essential to ensure the security of SSSIs and Natura 2000 sites.

Q80. What are your views on the proposal that SNH be granted powers to merge SSSIs (without requiring to seek representation from interested parties) by extending existing SSSIs to incorporate other existing SSSIs (thereby subsuming their natural features), on the basis that “new” merged SSSIs have no greater extent than that of the former sites; and in so doing de-notify one (or more as may be necessary) of the former existing SSSIs?

Yes, MCoS agrees with the proposal.

Q81. What are your views on the proposal to extend SNH’s powers to de-notify an SSSI (either in whole or part) without provision for representations from interested parties in situations where SNH considers part of an SSSI no longer to be of special interest as the result of an operation permitted by a planning authority or other designated regulatory authority?

There must be a safeguard to support SNH in making potentially serious decisions that may lead to damage that leads to de-notification of a SSSI. SNH should be given these powers to de-notify in the specified circumstances, but only with an earlier safeguard of wide consultation on the proposed development. SSSIs are of national importance and hence these decisions should be nationally consulted upon. A recent example on Ben Nevis illustrates this point where SNH was supporting a

development and consulted the planning authority on the need for planning consent, and the planning authority referred it back to SNH regarding the need for planning consent as the development was on an SSSI / SAC. This internal circularity must be avoided, particularly if the development would lead to a de-notification.

Q82. What are your views on the proposal to clarify the wording of section 13(1) of the Nature Conservation (Scotland) Act 2004 so that a public body owner or occupier would have to apply to SNH for consent before allowing any damaging operation to take place on their land, whether this is being carried out by themselves or a third party?

The wording should be altered as proposed such that public bodies should apply for consent from SNH.

Q83. What are your views on the proposal that the list of situations in which SSSI consent is not required from SNH be extended to include operations being carried out in fulfilment of a contract with a government department, agency or NDPB (with the proviso that that organisation consults SNH in compliance with section 15 of the 2004 Act) ?

The wording should be altered as proposed.

Q84. On the basis that the protective provisions afforded by this designation are now largely duplicated by other provisions, what are your views on the proposal that Scottish Ministers should annul the eight extant Orders for this designation in Scotland and/or repeal section 3 of the 1981 Act?

The annulment should be altered as proposed.

Other Comments

This would be the ideal opportunity to update the Permitted Development Rights as in the Town and Country Planning (General Permitted Development) (Scotland) Order 1992. The recommendations for rural developments should be addressed in order to achieve, the Scottish Government's Greener strategic objective and will contribute to the National Outcome "We value and enjoy our built and natural environment and will protect and enhance it for future generations" (p5). The weaknesses of the Order should be tightened in line with the recommendations in the commissioned report by Heriot-Watt University available at www.scotland.gov.uk/Publications/2007/03/29102736/0. This is essential in order to, "modernise outdated statute, address anomalies and weaknesses in current provision and enhance the sustainable management of the natural environment for the public interest" (p4). The MCoFS strongly recommends that these recommendations are included in this context.

Please do not hesitate to contact me to discuss these issues further.

Yours sincerely

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Access & Conservation Officer