



For decision

Title: 'Tackling the nature emergency - Consultation on Scotland's Strategic Framework for Biodiversity'.

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Purpose

The Scottish Government is currently consulting on legislative changes affecting the future of the country's National Parks. The proposals present significant opportunities for the Cairngorms National Park Authority. They also advocate changes to the size and composition of the National Park Boards.

Given the significance of these proposals for the Cairngorms National Park Authority, this paper deals solely with this aspect of the consultation. The proposed changes are part of a wider consultation on biodiversity which will be the subject of a future paper.

Members are now invited to agree responses to the consultation which will enhance the Park Authority's ability to meet the challenges and opportunities ahead, while enabling it to further strengthen relationships with its communities and stakeholders.

Recommendations

The Board is asked to:

- a) Agree the 14 proposals outlined in this paper as the Park Authority responses to the questions outlined in the Scottish Government consultation.

Strategic context

1. The current consultation is part of a process in which the Cairngorms National Park Authority already expressed a series of preferences. These are now largely reflected in the Scottish Government proposals we are being asked to consider.
2. The Cairngorms National Park Authority agreed its response to the NatureScot 'Future of National Parks in Scotland' consultation on 25 November, 2022.



3. The responses and [advice from NatureScot](#) to this consultation have now informed a further consultation from the Scottish Government on '[Tackling the nature emergency - Consultation on Scotland's Strategic Framework for Biodiversity](#)'.
4. This consultation is split into two parts. The first is the Scottish Biodiversity Strategy Delivery Plan and the second is proposed legislative changes around National Parks and statutory biodiversity targets. These changes would form part of the Nature Environment Bill likely to be introduced in Autumn 2024. Any changes would be unlikely to be implemented before 2026.
5. As this paper is concerned with the proposed legislative changes relating to National Parks, it looks to reflect the previous position of the Board, with a proposed response below each question from the current consultation.

Strategic policy consideration

6. The National Park Authority is a non departmental public body. The relationship between the Park Authority and Scottish Government is set out in the Framework Agreement approved by Board in June 2023.
7. The Scottish Government through the proposed changes wants to highlight the important leadership role of National Parks in tackling the interlinked crises of climate change and biodiversity loss, whilst also welcoming visitors and supporting local communities and businesses.
8. The National Park Partnership Plan is the key document for the Cairngorms National Park and sets out ambitious targets for the next 5 years and out to 2045. Many of the proposals contained within this consultation will provide mechanisms to make delivery of that Plan easier in the future.
9. This is the start of a process with any changes proposed after the consultation having to be developed, put into draft legislation and then go through the parliamentary scrutiny process. Any changes are unlikely to be implemented before 2026.



Consultation Questions and Proposed Responses

Question 7a: Do you agree that the purpose of National Park authorities should be amended in order to emphasise the important leadership role that National Park authorities need to play in restoring nature and in mitigating and adapting to climate change?

This is broadly in line with the submission from the Park Authority to the previous consultation which included an overarching purpose relating to climate and nature. The previous response stated:

‘The Park Authority thinks that the overarching purpose does provide a clear direction to National Parks and ties in with the direction in the recently approved Cairngorms National Park Partnership Plan.’

The main difference from the previous board submission is that this would be in legislation rather than as guidance. Emphasising the important leadership role that National Park Authorities can play in restoring nature and mitigating and adapting to climate change in legislation alongside the collective achievement of the National Park aims provides a powerful statement of intent.

Proposal 1 - Support this amendment to the purpose of National Park Authorities.

Question 7b – 7e: Do you agree with the suggested change to the National Park aims?

This is broadly in line with the submission from the Park Authority to the previous consultation which stated:

‘The Park Authority think that the intent of the current aims should remain the same but that the language could be modernised and should include a reference to nature recovery and the climate crisis. The aims should embed the principles of a Just Transition and the importance of cultural heritage should continue to be recognised.’



The key element is that all the aims still have to be achieved collectively. The intent of the aims has not changed significantly, the language has been modernised and nature and climate have been reflected.

The first aim has been split into a natural heritage aim and a new cultural heritage second aim. This is a sensible approach as natural heritage and cultural heritage should be considered separately especially if there is a conflict between them. The importance of cultural heritage is also reflected in the fifth aim.

The wording of the aims in the consultation document is not the final wording that will be in the Bill so it is not proposed to comment on individual phraseology. There is some clunky wording, such as, historic environment assets but the intent is in line with previous board discussions.

Proposal 2 – Support the proposed changes to the National Park aims and consider the final proposed wording of the aims as an Authority when the Bill is drafted.

Question 7f: Do you agree that the National Park 'principle' set out in section 9(6) of the 2000 Act should be retained? This would mean that, if there is a conflict between the National Park aims, greater weight should be given to the first aim which would seek to protect, restore and enhance the natural assets, biodiversity and ecosystems within the National Park.

It is important that the aims are achieved collectively but it is also important that this principle is retained. Without this backstop it would be difficult to make the case that it is different from an area that is not a National Park. Ultimately being a National Park means that if there is a conflict more weight should be given to nature. This is achieved through producing a National Park Partnership Plan that takes that 'principle' into account and through referencing the 'principle' on individual decisions made by board on the rare occasions when the aims are in conflict.

The application of the National Park 'principle' to the new first aim is in line with the importance of the nature crisis and climate emergency.

It should be noted that without the National Park 'principle' it is unlikely to meet the test to be a Category V protected area under International Union for Conservation of Nature guidelines.



Proposal 3 – Support the retention of the National Park ‘principle’ as key backstop for National Park management and it applying to the new first aim.

Question 7g: Do you agree that public bodies operating within the National Park should have regard to the proposed National Park aims?

This is a change from the current approach and would strengthen the aims of the Park as it would not just be the responsibility of the Authority to take account of them in their work. This would increase the accountability of public sector partners to helping achieve the aims. This would be a real strengthening of the Act and will allow the Board more clearly to hold other public bodies to account for achieving the aims in the Park.

Proposal 4 – Support public bodies having regard to the aims.

Question 7h: Do you agree that public bodies operating within the National Park should have regard to the National Park principle?

This is in line with the submission from the Park Authority to the previous consultation which stated:

‘The Park Authority thinks that the need to provide “greater weight” to the first aim if the aims are in conflict should apply to all relevant public bodies operating in the Park and not just the Park Authority.’

There is also a need to ensure that having regard to the National Park principle applies to the Scottish Government's Planning and Environmental Appeals Division and Scottish Ministers when it is dealing with any planning appeals.¹ The current approach means a different outcome can be found at appeal not necessarily reflecting the considerations placed on the Board by the current Act.

Proposal 5 – Support public bodies operating within the National Park having regard to the National Park ‘principle’ and request that this is applied to the Scottish Government's Planning and Environmental Appeals Division and Scottish Ministers when it is dealing with any planning appeals.

¹ OPINION OF LORD TURNBULL in the cause DALFABER ACTION GROUP 2007 – ‘In my opinion, the effect of the 2007 Act is that the aims of the National Park are material considerations to which the reporter may give whatever weight he deems appropriate in the exercise of his planning judgement.’



Question 7i: Do you agree that the duty on public bodies operating within National Parks should be strengthened so they have an obligation to support and contribute to the implementation of National Park Plans rather than having regard to these plans?

This is in line with the submission from the Park Authority to the previous consultation which stated:

'The legislative phrase 'have regard to' is not strong nor definable. It would be better if the phrase in the legislation was more active e.g., 'public bodies have a duty to implement the National Park Partnership Plan in the work they undertake in Parks.'

This is a key part of the changes proposed to the legislation and will be a very helpful change for delivering the National Park Partnership Plan.

Proposal 6 – Strongly support the duty on other public bodies operating within the National Park being strengthened so they have an obligation to support and contribute to the implementation of National Park Plans rather than having regard to these plans.

Question 7j: Do you agree with the proposal that National Park Authorities should be able to enforce byelaw breaches within National Parks by issuing fixed penalty notices rather than referring them to local Procurators Fiscal?

The ability to have fixed penalty notices for byelaws will make implementation and enforcement of byelaws by Park Authorities much more efficient. This change is crucial if the Park Authority wishes to take forward a fire management byelaw in the Park (or any other form of byelaw in the future).

Proposal 7 – Support that National Park Authorities should be able to enforce byelaw breaches within National Parks by issuing fixed penalty notices rather than referring them to local Procurators Fiscal.

Question 7k: Do you think that any other changes should be made to the general powers of National Park authorities?



The submission from the Park Authority to the previous consultation highlighted two further areas to consider:

1. 'Access – As an Access Authority powers over access issues currently reserved to Ministers or NatureScot or Local Authorities (with respect to Rights of Way) could be delegated to National Park Authorities.'
2. 'Management Rules – The existing management rules in the legislation are dated and apply only to certain areas of land. These could potentially be updated to provide NPAs with the potential to have management rules on all land within the Park to help manage visitor pressure or behaviour. Updated legislation would be enabling and the power to take forward such an approach would reside with individual National Park Authorities.'

Proposal 8 – The Park Authority supports powers associated with rights of way being transferred from Local Authorities to Park Authorities. This would be in line with the Park Authority being the Access Authority for the area.

Proposal 9 – The Park Authority supports revisions to Management Rules within the current legislation to update them and potentially allow a comprehensive suite of management rules to be adapted by each individual National Park Authority to suit the circumstances in the local area.

Question 7i: Do you agree with the proposed changes to the governance of National Parks?

The submission to the previous consultation from the Park Authority stated:

'There needs to be governance for each National Park Authority based on local circumstances. For example, the number of Local Authorities that cover a National Park, the size of the National Park or the population within a National Park. Boards do need to continue to provide a balance between local and national views. This is a strength of National Park Authorities. The funding for National Parks comes from the national taxpayer and there is a need to deliver on national priorities and at the same time there is a need to take account of local views and bring these together.'

'The Park Authority Board is strongly of the view that the current governance structure for the Cairngorms National Park is fit for purpose.'



'The Park Authority Board believes that it is important that the Convener and Deputy Convener remain elected by the Board given that some of the powers the Park Authority exercises would normally be exercised by democratically elected councillors and without local accountability a democratic deficit could be created.'

'The Park Authority Board believes the Board mix of appointment methods is beneficial. In particular, the Board feels the role of directly elected members is important and needs to be kept.'

Considerations that members may wish to think about is the size of the Board and whether this is optimum for providing strategic direction and/or whether the balance between the different categories of appointments to the Board is optimum.

In line with the submission from the Park Authority to the previous consultation the following proposals reflect previous board discussions:

Proposal 10 – The Park Authority Board supports the existing governance arrangement for the Cairngorms National Park Authority. The Board believes the current structure and size provides a comprehensive approach covering both local and national interests and is right for the Cairngorms National Park.

Proposal 11 – The Park Authority Board does not support a reduction in the size of the Board nor a change in the split of the proportions from the different appointment processes.

Proposal 12 - The Park Authority Board supports the election of the Convener and Deputy Convener by the Board.

Question 7m: Do you have any other comments that you would like to make about the aims, powers and governance of National Parks?

There are two further areas that the Park Authority suggested in its response to the previous consultation that would be beneficial to flag up again.

1. 'Public Land – what is the role of Park Authorities in the management of publicly owned or managed estates in the Park? The opportunity should be taken through this work to consider how publicly owned and managed estates (Forest & Land



Scotland, Crown Estate Scotland, NatureScot, & Highlands and Islands Enterprise in the Cairngorms) are more coherently managed as a whole to deliver the agreed National Park Partnership Plan.'

2. 'Core Area – Within National Parks consideration should be given to potentially identifying core areas of land for nature recovery that could be given additional protection that contributes to the 30x30 targets and the 10% highly protected targets. As an example, this could mean areas designated as category II National Parks within a wider category V National Park, larger National Nature Reserves or a Nature Recovery Zone. Work would need to be taken forward to look at the potential advantages and disadvantages of such an approach.'

Proposal 13 – The Park Authority would like to see a stronger role and governance oversight for the Park Authority Board regarding public land within the National Park. This would allow for greater coherence of approach by the public sector within this internationally recognised area.

Proposal 14 – The Park Authority would like to see the power devolved to the Park Authority to potentially implement a core area approach in the National Park (potentially an OECM – Other Effective Area-based Conservation Measures approach) that would help to deliver on nature and climate targets. This would tie in with the policies and objectives of the National Park Partnership Plan.

Next steps

1. The agreed responses to each of the questions will be submitted to Scottish Government as a consultation response from the National Park Authority.