

The Natural Environment (Scotland) Bill (1) – National Parks and another opportunity lost

Description

Last week the Scottish Government published the fourth piece of legislation this Parliament ostensibly intended to improve how we use and manage land in the countryside, including National Parks – the Natural Environment (Scotland) Bill ([see here](#) for papers) This follows the Wildlife Management and Muirburn (Scotland) Act 2024, passed a year ago and now lying in tatters ([see here](#)), the Agriculture and Rural Communities (Scotland) Act 2024 and the Land Reform (Scotland) Bill currently being considered by the Scottish Parliament. The Nature Environment (Scotland) Bill, "the Bill", contains four sections: on biodiversity; Environmental Impact Assessments; National Parks and Deer. This post considers the provisions on National Parks.

As part of its commitment to create a new National Park in Scotland, the Scottish Government decided it should take the opportunity to modernise the National Parks (Scotland) Act 2000. It embarked on that process without any review of what difference Scotland's two existing National Parks had made and the reasons for this but apparently driven by preoccupations such as how to make "green" finance work.

The consequence was a rag bag of a consultation by their statutory advisers on National Parks, NatureScot, in 2022 unsupported by any evidence base ([see here](#)), ([here](#)) and ([here](#)). Hidden away in the consultation, however, was a paper to NatureScot's Stakeholder Advisory Group in August 2022 which outlined three broad options for change "minor", "significant" and "step change":

Table 1 - Options for change

Option	Aims	Powers/functions
A. Minor change – National Parks strengthened	A national vision of strategy for National Parks is developed by Scottish Government Rewording of existing aims to reflect the vision and current policy priorities	<ul style="list-style-type: none"> • Apply section 9(6) to all public bodies in the National Park or to at least all relevant public bodies. • Change the duty to 'have regard to' Parks Plans to a duty to 'support the implementation' of Parks Plans. • Simpler disposal of minor byelaw breaches through giving National Parks Fixed Penalty Notice powers for some offences. • Require greater coordination of management of the public estate in National Parks. • Build in National Parks to the priorities of SG funding schemes.
B. Significant Change – National Parks empowered	A national vision of strategy for National Parks is developed by Scottish Government Rewording of existing aims to reflect the national vision and current policy priorities Inclusion of an overarching purpose for National Parks to secure nature recovery and positive contributions to climate change adaptation and mitigation.	As above, plus <ul style="list-style-type: none"> • Designate strictly protected nature protection zone/s or nature recovery zones within National Parks (equivalent to IUCN Category 2). • Update approach to management rules in National Parks to provide a set of enforceable standards relevant to each Park in line with their Park Plan. • Require higher standards for all public land in National Park. • Use National Parks to manage and distribute SG funding schemes.
C. Step Change – National Parks rebooted	A national vision of strategy for National Parks is developed by Scottish Government Inclusion of an overarching purpose for National Parks to secure nature recovery and positive contributions to climate change adaptation and mitigation. Reduce aims to first one and change the other three aims "to have regard to" duties.	As above plus <ul style="list-style-type: none"> • Remove or simplify existing designations in National Parks. • Simplify management of public land within National Parks – for example by transferring more land to the National Park in the designated core areas. • Require land purchasers in advance of buying land in the Park to lodge a proposed management plan with the NPA for approval. • Create a dedicated integrated funding scheme for the implementation of National Park Plans.

Two and a half years after the initial talk about the need to modernise, the Scottish Government has basically gone for the “Minor Change” option, both in respect to Scotland’s National Park’s aims and their powers/functions.

The proposals to revise the aims of Scotland’s National Parks

In my view, there is nothing wrong with the four statutory aims of Scotland’s National Parks. The problem is those aims have never driven what the Cairngorms and Loch Lomond and Trossachs National Park Authorities actually do. Instead they operate according to the policies that apply everywhere else in Scotland. It should come as no surprise that as a result they have made no difference.

The good thing about the Scottish Government’s adoption of the “do as little as possible” approach is that the four existing aims of our National Parks have basically been retained. This means the proposals to create an overarching purpose for National Parks to tackle the climate and nature emergencies, which would have sidelined visitors and local communities, has gone:

Existing National Park aims:	National Park aims in the
1. To conserve and enhance the natural and cultural heritage of the area.	To conserve and enhance the area's natural and cultural h
2. To promote the sustainable use of the natural resources of the area.	To promote sustainable <u>management</u> and use of the natural resources
3. To promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public.	To promote public understand and enjoyment of the area's <u>and cultural heritage</u> .
4. To promote sustainable economic and social development of the area's communities.	To promote sustainable eco social and <u>cultural</u> developm the area's communities.
<p>default watermark</p> <p>Where is landscape? ➡</p>	Without limit to the generalit above, these aims include:
	<p>(a) restoring and regenerati biodiversity in the area,</p> <p>(b) mitigating and adapting t climate change,</p> <p>(c) supporting access to and the area,</p> <p>(d) encouraging recreation i area,</p> <p>(e) promoting sustainable to and visitor management, and</p> <p>(f) promoting sustainable development activity which i the health, wellbeing and pr of individuals and communit within the area.</p>

Proposed deletions on left, additions on right. The new section is intended to reflect what our Nation currently do.

Remnants of the Scottish Government's agenda, however, remain: *"The purpose of this new subsection is to ensure that the legislation accurately underpins the work being undertaken by the National Parks"*.

Any Parliament that incorporates a government's current priorities into legislation without considering the wider issues appears to me not just unwise also dangerous. What is left out of the new list – nothing is said about wise use of resources, such as soils, or landscape – is more significant than what is included.

“Special qualities” is the term used to explain and assess WHY landscapes are important and has a specific use in relation to National Scenic Areas (NSAs) and National Parks ([see here](#), for example, for a description of the special qualities of the Loch Lomond and Trossachs National Park (LLTNP) from 2010). The concept of “special qualities” plays a crucial role in the planning system. Ironically, no soon has NatureScot just published new guidance on this in partnership with our two National Park authorities ([see here](#)), than the Scottish Government is proposing to delete all reference to the Parks' special qualities from the legislation. Coupled with the omission of landscape from the new section explaining what those aims mean, it could open the door further to large scale developments like Flamingo Land or windfarms in and around our National Parks.

Debate is also required about the proposal to add the promotion of “cultural development” to the fourth aim. What does it mean for the culture wars between sporting estate interests and conservationists in the Cairngorms? Personally, I believe that culture is part of “social development” anyway and the emphasis on cultural development of the areas local communities is patronising as well as having slightly fascist overtones. There is a difference between promoting enjoyment and understanding of culture, as in the third aim, and promoting “cultural development”.

New public authority duties in respect National Park Aims and National Park Plans

The Scottish Government is proposing to tweak the existing legislation so that all other parts of government have a duty to have regard to the National Park statutory aims although this still has to be balanced against their primary remit. The example they give is that “*Transport Scotland as the trunk road authority operating in an area of a National Park will need to balance other considerations (such as road safety, traffic flow, congestion and accessibility) against the National Park aims.*” This is a good example as Transport Scotland has paid almost no regard to those aims when planning the proposed upgrades of the A82 along the shore of Loch Lomond ([see here](#)), refusing to consider other routes, or the impact of dualling the A9.

However, there is absolutely nothing in the existing legislation that has prevented Transport Scotland and our National Park Authorities working together for the last 20 years and it is doubtful whether turning an implicit duty “to have regard to” into an explicit duty to do so will make much difference. For other parts of government to do things differently in National Parks they would need the resources to do so and to be prepared to ditch their one size fits all approach across Scotland – often justified in the name of efficiency. The Scottish Government is the worst offender in this respect expecting policy guidance like the UK Forestry Standard to apply in National Parks like everywhere else.

National Park Plans were intended to provide the mechanisms that ensured all parts of government worked together in National Parks. That hasn't happened and renaming them “National Park Partnership Plans” has not made any difference. Interestingly, the Scottish Government is not

proposing to enshrine that name change in law but is now proposing to change the duty for government to have “have regard to” the National Park Plans to a duty to “facilitate their implementation”.

Again they could have been doing that for the last 20 years. Unless the Scottish Government addresses the wider issues that result in different parts of government working in silos nothing is likely to change. Unfortunately the Scottish Government appears to have no appreciation of its own responsibility, or that of previous governments, for this problem, something that would become apparent if there had been a proper review of National Parks. For example the decision of Scottish Ministers to cease chairing the annual reviews of National Park Plans has made it even easier for “delivery partners” to opt out.

Without, however, addressing the almost unfettered power of landowners to trade, use and manage land in our National Parks as they wish, nothing is going to change. There is not a mention by the Scottish Government of extending the duty to have regard to the National Park aims and help implement National Park Plans to private landowners. Since apart from Forest and Land Scotland in the LLTNP, private landowners control what happens on most of the land in our National Parks, the proposed changes to the legislation will make very little difference. King Charles ([see here](#)) and other sporting estate landowners ([see here](#)) will be able to continue to do what they like in the National Park, overgrazing and burning the land to bits whatever the damage to nature or implications for climate change. Among a long list of omissions from the legislation there is no requirement for anyone wanting to purchase large areas of land in the National Park to be vetted, hence in part the BrewDog ([see here](#)) and Ayr ([see here](#)) disasters, or for existing landowners to produce plans for approval by the National Park Authority.

Fixed penalty notices to enforce byelaws

The final “significant” change proposed in the legislation is to create new powers for National Park Authorities to issue Fixed Penalty Notices to enforce byelaws. While that might sound perfectly sensible, it relies on both the byelaws and their enforcement being fair and proportionate.

Neither the camping byelaws in the LLTNP, which ended up being applied to campers but not campervanners as originally intended ([see here](#)), nor the proposed byelaws for fires in the Cairngorms ([see here](#)) are fair or proportionate. Moreover, the two sets of byelaws contain completely very different provisions in respect to fire and, although the LLTNPA’s are badly drafted in this respect ([see here](#)), they are more proportionate. The experience of byelaw enforcement in the LLTNP to date, whether on land or water, has also been anything but fair ([see here](#) and [here](#) for example). Giving new powers to the National Park Authorities therefore to enforce byelaws is likely to compound those problems and seal the conversion of their Ranger Services into a quasi police force. Is this really what the Scottish Parliament wants?

Perhaps the Bill will be an opportunity for the Scottish Parliament to consider the LLTNP camping byelaws, which are due to be considered this year, instead of leaving decisions about whether to renew them to Scottish Ministers?

When will Scotland get real National Parks?

There is no justification for the Scottish Government creating a new National Park in Galloway until it has considered what has gone wrong with our existing National Parks, what needs to change and what amendments to the legislation would enable that to be achieved. In my view far more extensive change is needed than what is proposed in the Natural Environment (Scotland) Bill, not just in respect of landownership but creating powers to zone our National Parks to create core areas for nature where stricter rules apply, allowing National Park Authorities to create stronger planning policies than those contained in National Planning Framework 4 etc etc..

In relation to the proposed Galloway National Park, for example, much of the land and economy is dominated by commercial sitka forestry plantations. A National Park, to be worth anything, needs the powers to change that. The LLTNP, however, is similarly dominated by the sitka economy and very little has changed there over the last 20 years, providing a cautionary tale. Indeed the LLTNPA has made matters worse by officially adopting the UK Forestry Standard ([see here](#)) – which promotes environmentally damaging practices like 7m wide forestry roads – by setting a benchmark deer density of 10 per square km, far too high for natural regeneration, and endorsing tree planting with little or no consideration for soil carbon. Why would anyone, apart from the owners and senior managers of the forest industry, want to repeat that experience in Galloway?

Category

1. Cairngorms
2. Loch Lomond and Trossachs
3. National Parks

Tags

1. Deer
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