



Law Society
of Scotland

Consultation Response

Tackling the Nature Emergency: Consultation on Scotland's Strategic Framework for Biodiversity

December 2023



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful, and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Environmental Law and Rural Affairs sub-committees welcome the opportunity to consider and respond to the Scottish Government's consultation *Tackling the Nature Emergency: Consultation on Scotland's Strategic Framework for Biodiversity* (the "**Consultation**").¹ The sub-committee has the following comments to put forward for consideration.

General Remarks

We previously responded to the Scottish Government's Consultation on the Scottish Biodiversity Strategy in September 2022,² and welcome the opportunity to provide further comments on this area.

We note the wide-ranging nature of the Consultation, containing a mixture of proposals for legislation, direct action, policy, funding, guidance, information, management plans, best practice, investment mechanisms, monitoring, community participation, and mainstreaming.

As discussed below, there are areas where greater clarity on the proposals would be welcomed, in particular around deliverability, the mechanisms for implementation, and how these would operate in practice. Given the broad nature of the Consultation, we note that many points will overlap and require more detailed analysis on their interaction with other relevant policy areas across the legal framework. We consider there would be merit in subsequent consultations being held in such circumstances.

We generally highlight the ongoing and prospective legislative and policy reform within the wider legal landscape. For example, Bills which interact with aspects of the Consultation currently before the Parliament include the Wildlife Management and Muirburn (Scotland) Bill, the Circular Economy (Scotland) Bill, and the Agriculture and Rural Communities (Scotland) Bill. We also note prospective legislative change of potential relevance to the proposals, such as the introduction of a right to a healthy environment within a Scottish

¹ [Tackling the Nature Emergency: Consultation on Scotland's Strategic Framework for Biodiversity](#)

² Accessible [here](#).

Human Rights Bill, and the prospective Land Reform Bill.³ We highlight the importance of considering the legal interplay and overlap between such reforms to ensure a consistent and aligned approach, and ensuring that these do not contradict or conflict with one another.

We also highlight that many other wider, non-legal related factors, will impact on the operation and deliverability of the proposals, for example ensuring appropriate resourcing and capacity, expertise, and the availability of data.

In a recent response to the Scottish Government's *Review of the Effectiveness of Environmental Governance*,⁴ we highlighted the importance of appropriate resourcing and prioritisation in the context of effective monitoring and enforcement. This is likewise an important consideration in the context of the proposals within the Consultation.

PART A

Part A - Section Two: Scottish Biodiversity Delivery Plan - Chapter 2

2a. Have we captured the key actions needed to deliver the objective: accelerate restoration and regeneration?

Unsure

We note the reference at page 18 to the development of the “new Register of Ancient Woodlands”. Additional information on the operation of the register, the consequences and effect of there being a registration, and interaction with other relevant areas (e.g. the National Planning Framework 4) would be welcomed. Likewise the interplay between the proposals and other relevant areas of the law are also noted as areas where greater clarity would be welcomed – for example how Coastal Change Adaption Plans will link to planning policy.

We note the recent publication of the Scottish Government's Draft Planning Guidance on Biodiversity.⁵ We consider it important that a strategic approach is taken to ensure the national strategy links to the wider planning system, and to regional and local biodiversity strategies. There would be merit in the national strategic framework for biodiversity drawing on such areas of guidance, particularly where relevant to

³ As detailed in the Scottish Government's [Programme for Government 2023 to 2024](#).

⁴ Accessible [here](#).

⁵ [Scottish Government Draft Planning Guidance: Biodiversity](#)

strategic aspects of the proposals – noting, for example, the relevant passages in paragraphs 2.2, 2.7, and 2.8 of the Planning Guidance.

We highlight the practical importance of sufficient resources being made available to support the implementation of such proposals, for example in relation to increased inspections for the detection of priority INNS.

See also our comments below in relation to Nature Networks.

Questions 2b. – 2f.

We have no comments.

Part A - Section Two: Scottish Biodiversity Delivery Plan - Chapter 4

2g. Have we captured the key actions needed to deliver the objective: embed nature positive farming, fishing and forestry?

Unsure

We highlight the importance of a clear and consistent legal and policy approach across the various relevant areas affecting this sector – which is particularly important in the context of agricultural measures, given the nature of agricultural practices being planned for and operated often on a long-term basis.

Questions 2h. – 2l.

We have no comments.

Part A - Section Two: Scottish Biodiversity Delivery Plan - Chapter 6

2m. Have we captured the key actions needed to deliver the objective: invest in nature?

Unsure

We note the proposals regarding the establishment of a “values-led, high-integrity market for responsible private investment in natural capital”. Further information and discussion on this would be welcomed, for example in relation to the proposed financial vehicles and legal structures envisaged.

Questions 2n. – 2o.

We have no comments.

Part A - Section Two: Scottish Biodiversity Delivery Plan - Chapter 7

2p. Have we captured the key actions needed to deliver the objective: take action on the indirect drivers of biodiversity loss?

Unsure

We note the discussion in relation to the commitment to “Mainstream and integrate biodiversity policy across government and address unsustainable supply and demand to reduce biodiversity impacts”. We consider that reference and consideration would be welcomed in this context to the existing Biodiversity Duty and the duties contained in the European Union (Scotland) (Continuity) Act 2021 which require Scottish Ministers and other public authorities to have due regard to the guiding principles on the environment.

Questions 2q. – 2r.

We have no comments.

Part A - Section Three: Nature Networks Policy Framework

3a. Do you have any comments on the Nature Networks Framework?

We note the discussion of Nature Networks framework, including at pages 24 and 52-53 of the Consultation. This would merit further information and discussion on the proposed legal framework supporting this, such as whether there will be specific legal powers (and consequences for non-compliance) introduced, as opposed to connecting the use of existing mechanisms and voluntary action.

Part A - Section Four: 30 by 30 Policy Framework

4a. Do you have any comments on the 30 by 30 Framework?

We note the discussion within the “Guiding Principles to Deliver 30 by 30 in Scotland” section in respect of collaboration, including that “Those responsible for the management of Scotland’s land will be empowered to work collaboratively”. Greater detail would be welcomed within the proposals on whether this will extend to mandating collaborative actions where this is necessary for wider action across a landscape (for example noting in this context existing legislative provisions in relation to deer control). If so, discussion of how and when such measures would be used would also be welcomed.

We also note the proposals for site selection and designation, and consider greater clarity would be welcomed on what legal designations and other arrangements will count towards the 30% for these purposes.

Part A - Section Five: Impact Assessments

Questions 5a. – 5n.

We have no comments.

PART B

Part B – Section Six: Statutory Targets for Nature Restoration

6a. Placing Targets on a Statutory Footing – Do you agree with this approach to placing targets on a statutory footing?

Unsure

We would welcome more detail on the governance and accountability aspects of the proposals to “place targets on a statutory footing”, such as the consequences should the targets be missed, and the practical impact or change made by these targets being statutory in nature.

This is an area that would merit additional consultation and engagement once further detail on the proposals is confirmed.

Questions 6b. – 6i.

We have no comments.

6j. Independent Review Body – Do you agree that an Independent Review Body is needed to report on Government’s progress in meeting the statutory targets?

Unsure

We also note the discussion in the Consultation of the designation of an Independent Review Body to have the function of reporting on Scottish Government’s progress in meeting the statutory targets. Further information would be welcomed as to the Scottish Government’s proposals for which body would be appropriate for this role.

Part B – Section Seven: National Parks

7a. – 7h.

We have no comments.

7i. Duty on public bodies to support implementation of National Park Plans – 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?

Don't know

We note the proposals in the Consultation regarding public bodies operating within National Parks having an obligation to support and contribute to the implementation of National Park Plans. We would welcome further information on the interaction of such a duty with others which such public bodies are also subject to.

7j. General powers of National Park Authorities – 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?

Don't know

In respect of the proposed scheme for enforcement powers, we consider that there would be merit in this taking advantage of or be directly aligned with other existing ones for imposing penalties, so that we do not see a fragmentation with lots of broadly similar schemes but with minor differences in detail which can cause confusion and uncertainty.

Questions 7k. – 7m.

We have no comments.

Part B – Section Eight: Impact Assessments

We have no comments.

For further information, please contact:

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