The Committee will meet at 2.00 pm at the Hub, Castle Hill, Edinburgh.

1. **National Parks (Scotland) Bill:** The Committee will consider evidence at Stage 1 on this Bill.

2. **Closure of Islay Creamery:** The Committee will consider a letter from the Argyll and Bute Council.

3. **Petitions:** The Committee will consider
   - **PE97** - Tom Gray - Agricultural Support
   - **PE113** - Campaign for Borders Rail (for possible comment to the Transport & Environment Committee)
   - **PE126** - Dunlop and Lugton Community Council - closure of post offices (referred for information by the Enterprise & Lifelong Learning Committee)

4. **Sea Fisheries (Shellfish) Amendment (Scotland) Bill:** (In Private) The Committee will consider a draft report on the general principles of this Bill.

The following papers are relevant to this meeting:

- Item 1: Copies of responses received
- Item 2: Letter received from Argyll and Bute Council
- Item 3: Petitions
- Item 4: Draft Report (private paper for members only)
Mr. Alex Johnstone MSP  
Chairman  
Rural Affairs Committee  
The Scottish Parliament  
Edinburgh EH99 1SP

Dear Mr. Johnstone

THE CREAMERY, ISLAY

At a meeting of the Council on 30 March 2000, the closure of Islay Creamery was discussed and the following motion was passed:

"The Council expresses its extreme concern at the closure of the Creamery on the island of Islay and calls on the Scottish Executive to fully examine the situation and to give every possible assistance to those affected. The Council also requests the Rural Affairs Committee to visit the island, as a matter of urgency, to assess the impact the closure will have on the local economy and the sustainability of the island."

I should be obliged if you would give urgent consideration to this and contact me with a view to arranging a visit as soon as possible.

Yours sincerely,

Alison J. Hay  
Leader
To: 0131-348-5600

Association Of Scottish Shellfish Growers

'Mountview'
Ardvasar
Isle of Skye
GB - IV45 8RU.

Tel/Fax: 01471 844324
Mobile: 07831 38 38 26
E-mail: DouglasMcLeod@cs.com

14 April 2000

National Parks Bill Consultation

With reference to the Rural Affairs Committee letter of 6 April on the above referenced issue, the ASSG wishes to raise the following points on the "two specific aspects of the Bill" mentioned:

# Appointments to the Boards of any National Park Authority should naturally reflect the variety of interests involved, however, their is a clear need to ensure that the economic needs of the local communities are considered paramount and therefore their representatives should reflect the balance of wealth creation activities and NOT be restricted to merely Local Authority nominees;

# With respect to Marine Parks, I believe that the implications of the delineation of such 'reserves' has not yet been adequately thought through. In contrast to terrestrial Parks, the marine environment is in a constant state of biological and geographical flux, and thus, if the objective is to maintain some areal status quo, the boundaries of the essential 'buffer zone' could be quite significant and lead to unintended impacts on adjacent areas. The shellfish cultivation sector has already suffered unnecessary constraints on its legitimate development from the imposition of terrestrial SSSIs on neighbouring land sites and potentially from SACs et al - the equivalent assault from the marine dimension would be totally unacceptable.

I trust these comments will assist the Committee in its deliberations.

Yours sincerely

D A McLeod; Chairman
Mr Richard Davies  
Clerk to the Rural Affairs Committee  
The Scottish Parliament  
Committee Chambers  
King George IV Bridge  
Edinburgh EH 99 1 SP

12 April 2000

Dear Mr Davies

CONSULTATION ON THE NATIONAL PARKS (SCOTLAND) BILL

Thank you for your letter of 6 April seeking the views of the Agency on the above Bill.

Having consulted within the Agency we have no comments to make.

Yours sincerely,

Philip Galbraith  
Enforcement Policy Manager.
Dear Mr Davies

CONSULTATION ON THE NATIONAL PARKS (SCOTLAND) BILL

Thank you for your letter of 6 April addressed to my colleague Ian Pritchard. Ian’s responsibilities are concerned with fish farming and, since the Bill touches more widely on the Crown Estate’s interests, I am replying.

I attach a copy of a letter which our Solicitor sent on our behalf to the Scottish Executive. This sets out the Crown Estate’s comments on the earlier version of the Bill. The more recent version clarifies in Section 30 that the Act binds the Crown, but it does not deal with the point about compulsory purchase and I also enclose a copy of my letter of 3 April on that subject (to which I have not yet received a reply).

You seek our views on two specific matters. First, on the appointment of members of the National Park Authorities and community involvement, the Crown Estate does not really have a view beyond endorsing the principle enshrined in Schedule 1 paragraph 4. It is desirable that the membership of an authority should reflect, inter alia, the views of those who live and work within the park.

As regards marine national parks, the Bill now contains a specific provision at Section 29. It is important that any proposal to designate a marine national park, and any modifications to the Act in terms of that section, should be fully discussed in advance with those bodies, including the Crown Estate, who have statutory responsibilities for the marine environment. We support the principle of marine national parks but, in the absence of any existing UK example of such a park, consider that a great deal of thought would be required regarding the purposes of a marine national park and the mechanisms for its management.

Yours sincerely

Michael Cunliffe

Web site: http://www.crownestate.co.uk
RECORDED DELIVERY
Marcus Houston, Esq.,
The Scottish Executive,
Rural Affairs Department,
Countryside and Natural Heritage Unit,
1-J South,
Victoria Quay,
Edinburgh,
EH6 6QQ

Dear Sir,

THE CROWN ESTATE COMMISSIONERS
CONSULTATION ON THE NATIONAL PARKS (SCOTLAND) BILL

On behalf of my Principals, The Crown Estate Commissioners, I submit the following comments on the Consultation Paper on the above Bill.

I do not require these comments are treated in confidence.

1. The Commissioners recognise the value of the natural and cultural heritage of Scotland and also recognise that preservation of this needs to be combined with the generation of economic prosperity for rural Scotland. The Commissioners, acting within the terms of the Crown Estate Act 1961, in relation to Crown property, actively encourage the generation of local business, whether the traditional farming, forestry, fishing and tourism industries, or where possible the diversification of land use to create local industries. At the same time the Commissioners seek to preserve the best of the natural assets and encourage responsible access to Crown land.

It is noted that the draft Bill containing the Consultation Paper comprises only Stage 1 (to provide the framework) of legislation for National Parks, and that each Park would be created under a designation order related to that particular National Park. I note that there are to be separate consultations regarding any detailed proposals.

Whilst the Crown Estate considers its current activities achieve and are intended to achieve a substantial part of the purposes and aims of the National Parks proposal the comments that follow are restricted to the terms of the draft Bill.
2. I note that the Bill contains no express statement as to whether or not the Act applies to the Crown and Crown property. In my view in the absence of any such statement the Act is not binding upon the Crown.

3. **Section 1(a)**

It appears the intent is that an “area” may include the sea and tidal rivers. The Crown is owner of virtually all of the seabed around Scotland. In connection with this and indeed other aspects of the Bill, it will be necessary to bear in mind that Crown property may not be compulsorily purchased. That is not acknowledged in terms of paragraph 5(1)(b) of Schedule 2. For the avoidance of doubt, it would be preferable to include express protection for the Crown interest in the Bill.

The Crown grants rights in relation to the use of seabed, e.g. in relation to oil pipelines, international telephone cables, mooring licences, fish farming leases and others. Any proposed restriction on any of these activities should be a matter for discussion and agreement between the National Park authority and the Commissioners. In particular the location of cables, pipes etc. is generally determined by a number of factors including geographic and/or geological considerations. I assume any existing arrangements would not be disturbed.

4. There is reference in various Sections of the Bill to “a public body”. There is no definition of the term. Please can you clarify what you mean by a public body and whether it would include the Crown Estate Commissioners.

5. **Section 9 of the Bill** provides for a designation order to confer on the National Park Authority the role of the planning authority. Sections 9(1)(a) and 9(1)(b) appear to be restricted to the terms of the Planning Acts but Section 9(1)(c) does not make reference to such functions being within the parameters of the Planning Acts. I assume this to be so as I do not imagine that the extent of “planning” can go beyond any planning legislation in force or else it would seem to fall outside the scope of “planning”. Please confirm this is the interpretation you intend, and in particular that designation orders will not be used as a mechanism to extend planning control beyond the low water mark. I would wish to see the reference to the Planning Acts included in Section 9(1)(c).

6. I note that **Section 16 of the Bill** allows the Scottish Ministers to delegate any functions save only those defined in Section 16(3) to the authority. The authority also has powers under paragraphs 5 to 10 of Schedule 2 to acquire land and create Bye Laws etc. I would wish to ensure that the delegation of such powers does not encroach on Crown assets or on the exercise of the powers and duties of the Commissioners under the Crown Estate Act 1961. I have not yet fully reviewed this and I simply identify it as a matter for consideration.
I would welcome your comments in response to this and an opportunity to consider further in light of your responses.

Yours faithfully,

Alan S. Menzies,
Crown Estate Solicitor (Scotland)
Dear Jane

NATIONAL PARKS (SCOTLAND) BILL

When we spoke on the telephone about 3 weeks ago, I sought your assurance that Crown land would be exempt from the Bill's compulsory purchase powers. You confirmed that this was the intention, although the Bill does not contain an explicit provision to this effect.

I would be grateful if you could let me know the legal basis through which this exemption is achieved. Does it rest on provisions already contained in the Scotland Act 1998; and if so, which ones?

Yours sincerely

Michael Cunliffe
CONSULTATION ON NATIONAL PARKS (SCOTLAND) BILL

Thank you for your letter of 6 April 2000 regarding the above and for giving Highlands and Islands Enterprise (HIE) the opportunity to comment on specific aspects of the Bill.

By way background, HIE has been fully engaged in the development of the National Park. We have taken part in seminars and bi-lateral meeting with Scottish Natural Heritage and the Scottish Executive, and have produced full responses to the various consultation exercises. I enclose copies of HIE’s main consultation responses for the Committee’s information.

In your letter you ask for HIE’s views on two specific aspects of the Bill. Each of these is covered separately below:

1 Appointment of members of the National Park Authorities and related issues on Community Involvement

From HIE’s responses to the consultation exercises you will see that we are of the opinion that adequate local representation, including representation from the business community, is vital to the acceptance and success of National Parks in Scotland.

HIE accepts that the provisions in paragraph 4 of Schedule 1 are useful in terms of ensuring that local interests are adequately consulted in the process of appointing members to National Park Authorities (NPA). However, in the development of the Bill HIE has consistently advised that the Bill should go further and specifically state a minimum proportion of 75% the NPA membership...
that should live and work within the area. HIE has come to this view as it our experience that organisations that comprise of staff and board members that live and work locally are significantly more productive and sustainable in that they are inherently more able to capitalise sensitively on local opportunities. We believe the Local Enterprise Companies in the HIE Network are a good example of the benefits of this approach.

In HIE's response the Scottish Executive on the consultation on the Bill, we also expressed views regarding capacity building within communities. As already stated, consultation and involvement of local interests is vital. However, in order to fully engage communities in this manner, it is essential that communities be given the tools to perform these roles. Capacity building measures should, therefore, also be build into the Bill.

2 The creation of Marine National Parks

As a general principle, HIE would resist the early consideration of further areas for National Parks status until such time as the processes and structures associated with the identification, designation, and implementation for the two areas currently being proposed (e.g. Loch Lomond and the Trossachs, and Cairngorms) have had time to 'bed in'. This principle should apply to marine as well as terrestrial areas.

With respect to marine National Parks, HIE is aware that there are a number of other significant initiatives being developed regarding the sustainable management of marine areas. Examples include:

- the management planning of marine Special Areas of Conservation and Special Protection Areas under the EC Habitats and Species Directive and Birds Directive respectively
- the implementation of Integrated Coastal Zone Management
- the transfer of powers and duties from the Crown Estate to local authorities.

In our opinion it would be prudent to allow these developments (which in a sense are basic building blocks for the long-term and integrated management of marine areas) to be consolidated before introducing further management structures.

I hope these comments are helpful to the Rural Affairs Committee.
Dear Mr. Brooks,

NATIONAL PARKS IN SCOTLAND

Thank you for consulting Highlands and Islands Enterprise (HIE) on the above. The consultation paper was considered by the HIE Board on 16 November 1998 and we have the following comments to make:

1. People.
   Greater emphasis needs to be given to the contribution people have made and continue to make to these nationally important landscapes, and the role of people as central to the success of National Parks. People living within proposed National Parks are as much part of the valued heritage of these areas (e.g. Gaelic) as the natural environment.

   The intimate links between the natural heritage, the cultural heritage, and the importance that visitors attach to these links, are not sufficiently expressed.

2. Promoting social and economic development.
   The promotion of social and economic development of local communities is included in the statement of purposes. However, this is not adequately translated into action in the remainder of the document. It is vital to the success of any National Park that the designation is viewed as an accolade and as a major opportunity for wide socio-economic activity, rather than an imposition and something which will restrict such activity.

   The role of tourism within National Parks is downplayed in the consultation paper. Experience from National Parks elsewhere does not support the premise that visitors are the fundamental reason for environmental degradation, but rather that primary land uses (e.g. forestry practices, sporting management) can be the original and principal agent. Visitors can play an important role in reversing environmental degradation through promoting a good conservation ethic, as well as generating local employment and income opportunities. Tourism should therefore be promoted within National Parks...
and individual businesses persuaded (through conditions attached to public assistance where appropriate) to adopt environmental best practices on the grounds that this creates and maintains competitive advantage. This is the overall aim of the Green Tourism Business Scheme.

Tourism is, however, only one sector of the rural economy and the above approach should be applied to all development opportunities making National Parks centres of business excellence. National Parks should be areas where a diverse range of high quality developments is encouraged, rather than restricted, and supported through additional resources. The addition of a 'Developer' role in the Key Roles section would, therefore, be appropriate.

The socio-economic benefits derived from National Parks must be above and beyond those which are currently achieved through patterns of expenditure of existing agencies. The HIE Network is willing to use resources in partnership with others to realise additional benefits.

It is premature to identify specific presumptions against potential development activities within National Parks, in particular renewable energy and appropriately scaled mineral extraction.

Management Structures.
National Park Plans need to integrate with existing plans, such as LEC business plans. The key role for the Plan should be one of co-ordination and integration and the danger of producing yet another 'stand-alone' plan should be avoided. The consultation paper does not make it clear who would act as final arbiter in the event of conflicts on what should and should not be included in the plan.

Regarding Functions, Powers and Policies, the following points should be added:
- Control of access
- Relationships at the Park boundary
- Community development
- Environmental renewal
- Training and skills development
- Intervention in community land issues.

The general powers of the National Park Body will also need to be co-ordinated with those of the LECs. For example, many aspects mentioned in the basic portfolio of powers are already undertaken by LECs.

The success of the National Park will crucially depend on the Park Body being truly representative of all the stake-holders. Due to the pivotal role that LECs play in socio-economic development, it would be highly desirable for them to be represented on the Park Body. Furthermore, it is vitally important that the balance of power rests with local representation. HIE recommends that 75% of a National Park Board should be resident within the area.

HIE recommends that there should always be a strong presumption in favour of planning control remaining with the democratically elected local authority (as is proposed for the Cairngorms). We would resist any moves to transfer this power to an un-elected organisation (as proposed for Loch Lomond & Trossachs) unless it can be
demonstrated that such a move has unequivocal local support. Democratic accountability and the interests of local people should be the cornerstones of the governance of National Parks.

Clear local community support should be required at the designation stage of any National Park, as well as in subsequent planning and management.

Regarding potential boundaries, HIE supports SNH’s proposal for the Cairngorms, i.e. the geographical area should be smaller than the present Cairngorm Partnership area.

3. Land Management.
   To influence land management we advocate:
   • the production of catchment or watershed plans which consider these large tracts of land in an holistic manner. These plans would use zoning and buffer strips and demonstrate that an integrated approach to the management of land assets not only has environmental benefits, but also business benefits e.g. fisheries.
   • the application of an integrated and adequately resourced set of positive incentives to land managers to pursue management objectives which complement the Park Plan.

   Adequate resources need to be deployed in ensuring that the key issues are communicated to the different stakeholders and that dialogue between the stakeholders is managed in a professional manner. Such an approach can avoid conflict, confusion, mis-information and dis-empowerment and represent best value for money when attempting to achieve consensus.

   HIE supports the proposal that debate should be initiated on two or three new areas. However, until such time as the issues above have been satisfactorily addressed, we would resist the early consideration of further areas in the HIE area.

   We would hope the designation of National Parks would in no way result in a dilution of effort and resources elsewhere.

In conclusion, HIE emphasises the following points:
   • the central role of people, especially local people, in delivering successful National Parks
   • to ensure that National Parks are viewed as positive accolades and not restrictive impositions which might impede developments with good environmental credentials
   • for additional resources to be made available to capture the opportunities for making National Parks centres of business excellence
   • the importance of LEC and local resident representation on the Park Body
   • to maintain democratic accountability
   • to facilitate effective communication between the different stakeholders.

If you wish to discuss any of the above points, please could you liaise in the first instance with Ian Findlay, Enterprise and Environment Adviser, Tel. No. 01463 244448.
NATIONAL PARKS (SCOTLAND) BILL CONSULTATION

Thank you for consulting Highlands and Islands Enterprise on the above Bill. The HIE Board considered the consultation document on 22 February 2000.

Firstly, HIE welcomes the openness that the Scottish Parliament is bringing to the process of making legislation. Both the structure of the consultation document and the language used in the Bill itself are significant advances in this respect.

In commenting on the Bill we are very aware that this is the enabling legislation for the creation of National Parks in Scotland. As such it forms only a framework into which individual National Parks must fit. The real test, therefore, for the successful implementation of National Parks in Scotland, lies in ensuring that the integrated and inclusive messages in the Bill are translated into reality through the Designation Orders and implementation on the ground. The consultation exercises that SNH are currently leading on in Loch Lomond and the Trossachs and the Cairngorms are therefore vitally important elements in the process. In this context, the HIE Network offers its services as appropriate.

1. The Purposes/Aims of National Parks
Throughout the consultation process there has been a debate as to whether or not a socio-economic purpose should be included. In this context, HIE has consistently made the point that the environment must be seen as an asset or accolade and a key driver in terms of rural development and that it is highly appropriate for National Parks to have a socio-economic purpose. HIE, therefore, welcomes the aims and in particular the inclusion of a socio-economic purpose.

In terms of maintaining an appropriate balance between the aims, HIE notes the reference to the ‘Sandford principle’ and the point that National Park Authorities (NPAs) are required to carry out their functions having regard to the aims and that these should be pursued in ways which are mutually supportive. HIE objects to the inclusion of the ‘Sandford principle’ and the way in which it interpreted in the Bill on the grounds that all four aims should have equal status. In our opinion, the
careful selection of the NPA and the full involvement of all key interests in the development of the Park Plan should eliminate the need for the principle.

2. Local Representation.
In HIE’s consultation response to SNH, the importance of people and local interests, including the local business community, were emphasised. We are pleased to note, therefore, that the Bill provides at least a framework or the potential for adequately addressing issues relating to people and local interests. However, we believe there are insufficient safeguards in the Bill to ensure that the aspirations of community involvement (HIE’s definition of ‘community’ includes the business community) are realised in the planning and management of National Parks. In other words, there are not the safeguards to prevent Scottish National Parks assuming a more traditional, top-down model as found in England and Wales.
To avoid this scenario, HIE recommends the following provisions be included in the Bill:
• NPAs are given a duty to build capacity within communities that have an interest in the National Park
• Communities are fully consulted upon and involved in how they wish to be represented on the NPA and advisory group
• Sufficient time is allowed for in the designation, planning and management stages to permit structured involvement that includes the enabling and empowerment of communities.

Regarding membership of a NPA, we note that the Bill provides for half the members to be appointed by The Scottish Ministers and the other half by The Scottish Ministers but of people nominated by the relevant local authorities. In this context HIE re-iterates its recommendation from our consultation response to SNH that 75% of the Authority’s membership live and work within the area.

3. Functions and Duties of National Parks
HIE supports the general intention that National Parks should create opportunities through synergy and integration with other organisations’ functions and duties and hence avoid duplication. However, in this context we note that the Bill enables NPAs to pay grants and loans, for activities which will help to further the aims of the National Park. Furthermore, NPAs will also be able to create and run tourism and leisure facilities (e.g. camp sites, accommodation, meals and refreshments). Due to the wide ranging nature of the National Park’s aims there is a potential danger that the paying of grants and loan provision will create duplication and even confusion with existing public bodies which already have and use such powers, for example the LECs. Safeguards will, therefore, need to be incorporated to ensure that NPA activity in this context is complementary and adding value to existing arrangements. With respect to a NPA’s power to create and run businesses, there is a danger here of displacing activity from the private sector. HIE is of the opinion that such activity is more appropriately dealt with by the private sector in order to optimise socio-economic opportunities.

With respect to the specific duty to produce a National Park Plan, the Bill provides a framework for an inclusive and flexible approach. However, we again believe that there are insufficient safeguards in the Bill to prevent the development and implementation of the Plan being an essentially top-down process. A safeguard should be incorporated into the Bill that requires the NPA to adopt a ‘Planning for Real’ type approach.

Regarding powers under the town and country planning system, HIE reiterates its recommendation in its response to SNH that there should always be a strong presumption in favour of planning control remaining with the democratically elected local authority. In this context, it may be worth considering whether or not the term ‘Authority’ in the title of the body charged with the responsibility of running a National Park (i.e. the NPA) is the most appropriate term to use.
As a public body, HIE notes that the Bill requires all public bodies, including the Scottish Ministers and the NPA itself, to have regard to the National Park when exercising their functions in relation to the National Park and that NPAs will become statutory consultees under the Enterprise and New Towns (Scotland) Act 1990. HIE believes these provisions will be important if an integrated approach is going to be delivered.

4. Tourism
HIE notes with concern that the Minister’s foreword to the consultation document specifically mentions tourism as threatening to damage the natural and cultural heritage. In this context, HIE restates its comments made in its response to SNH. HIE does not support the implication that visitors are the fundamental reason for environmental degradation. There are a variety of other pressures which can contribute to this, including primary land uses such as over-grazing by sheep and deer, afforestation and others. Indeed, visitors can play an important role in reversing environmental degradation through promoting a good conservation ethic, as well as generating local employment and income opportunities. HIE, therefore, firmly believes that tourism should be promoted within National Parks and individual businesses persuaded (through conditions attached to public assistance where appropriate) to adopt environmental best practices on the grounds that this creates and maintains competitive advantage. This is the overall aim of the Green Tourism Business Scheme.

In conclusion, HIE generally welcomes the provisions in the National Parks (Scotland) Bill. In particular, we welcome the inclusion of a socio-economic purpose and the potential for ensuring that local interests are adequately represented. We object, however, to the inclusion and interpretation of the ‘Sandford principle’ on the grounds that all four aims should have equal status.

We recognise that this Bill is the enabling legislation for the creation of National Parks in Scotland and as such it forms only a framework into which individual National Parks must fit. This framework provides the potential for a new and innovative Scottish National Parks system, but with respect to community involvement (including the business community), in particular, there are insufficient safeguards within the Bill to prevent the planning and management of National Parks assuming a more traditional, top-down model as found in England and Wales. In this context, HIE has provided a number of recommendations, including a recommendation that 75% of the members of the National Park Authority must live and work within the area.

If you wish to discuss any of the above points, please liaise in the first instance with Ian Findlay, HIE’s Enterprise and Environment Adviser. Tel. No. 01463 244448.

[Signature]
Mr Richard Davies,
Ctee. Clerk: Rural Affairs
The Scottish Parliament
Edinburgh EH99 1SP

15 April 00

Dear Mr Davies,

I refer to your request, received through LINK, for comments on two aspects of the National Parks Bill. Council's comments are as follows:-

1. Appointment of Members and community involvement

Council approves the changes in the Draft Bill

2. Marine National Parks

Council was glad to see the inclusion of new Section 29 but doubts whether this would be adequate to enable Marine Parks to be set up. As discussed in SNH's comments, there are complex relationships between a possible Marine National Park and existing legislation on marine traffic, fishing, oil exploration and renewable energy installations. A Marine National Park would therefore require, in addition to powers to regulate recreational use of water, a statutory basis for influencing decisions on these other matters. Such a Park would also need terrestrial planning powers to coordinate on-shore aspects of all activities under these heads.

Yours faithfully,

Brian K. Parnell
FAX TRANSMISSION

For the attention of: Rural Affairs Committee

At: Scottish Parliament

Fax Number: 0131 348 5600

Number of pages: 4

From: Andrew Fairbairn, Development Officer Scotland

Date: 19/04/00

Message: I had great problems trying to e-mail our response last night to national.parks@scottish.parliament.uk. I discovered this morning that the e-mail had not been delivered. I hope you can accept our response despite being faxed after the deadline.

Andrew Fairbairn

If you do not receive all the pages or if any are illegible

please phone __________________________ on extension ____________
WOODLAND TRUST SCOTLAND

A RESPONSE TO THE NATIONAL PARKS (SCOTLAND) BILL
[AS INTRODUCED]

Introduction

The Woodland Trust Scotland welcomes the opportunity to comment upon this important Bill from the standpoint of safeguarding Scotland’s natural heritage. The comments which follow are delivered on behalf of the United Kingdom’s largest conservation organisation solely dedicated to the conservation and creation of native and broadleaved woodland.

The Woodland Trust achieves its purposes through a combination of acquiring woodland and sites for planting and regeneration and through wider advocacy of the importance of protecting ancient woodland, enhancing woodland biodiversity, expanding native woodland cover and increasing public enjoyment.

We have a significant land owning presence in Scotland, owning 76 properties covering 6,400 hectares (ha). We are currently engaged at our Glen Finglas site, which will fall within the proposed Loch Lomond and the Trossachs National Park area, in sustainable land management and what has the potential to become one of the largest native broadleaved woodland creation schemes in Scotland.

Sections 1-4 (National Park Proposal)

- We would like all the conditions set out in section 1(2) to be satisfied in order for a National Park to be designated. There is also, in our view, a need to add ‘recreational qualities’ into the definition.
  The importance of recreation as a function should not be underplayed. Fit for the Future, the Report of the National Parks Review Panel for England and Wales chaired by Professor Ron Edwards, stated in 1991: ‘Thus, in our view the essence of the concept of national parks lies in the striking quality and remoteness of much of this scenery, the harmony between man and nature it displays, and the opportunities it offers for suitable forms of recreation’.  

- To avoid ambiguity of the aims, section 1(2)(c) should refer to section 8(6) and the Sandford principle. Heritage conservation is the reason for National Park designation - see section 1(2) – and while we are supportive of the other aims, they could not be achieved through the designation process without conservation being the primary aim.

- We believe there to be a strong case for the inclusion of the protection of the natural and cultural heritage in section 1(3)(a). The clause would be further enhanced if a definition were supplied as to what is meant by ‘cultural heritage’ in 33 (1).
The collective aims outlined in section 1(3) should be prioritised. It is clear that to be designated a National Park, an area will have to demonstrate outstanding national importance due to its natural and/or cultural heritage. The overarching principle must be to sustain that heritage. Without it none of the other aims can be achieved. Conservation must, therefore, be the number one priority.

An open consultative process should be applied to section 2(6) rather than inspection. This would ensure an open approach to National Park management and enable the Bill to better reflect the principle of 'Community Involvement'.

Sections 5-7 (Creation of National Parks)

Legislation to enable the creation of National Parks with the consistent aims and objectives seems entirely appropriate. A secondary process will enable the differing qualities of each proposed site to be taken into account, provided there is an inclusive consultation process.

Sections 8-13 (Purposes and functions of National Park Authorities)

We wish to reiterate our concern with regard to the priority of the aims – section 8(6). We do not believe that the phrase 'greater weight' accords the necessary prominence to conservation which befits the principle of a National Park. The wording of the Bill should reflect the Sandford Principle by stating that the aim set out in 1(3)(a) should 'prevail'.

With regard to planning powers, our view is that in all but the most exceptional circumstances, the National Park Authority should be the planning authority, with local authorities playing the role of statutory consultee rather than vice versa. This would be consistent with recommendation 11.6 of Fit for the Future, the 1991 Report of the National Parks Review Panel for England and Wales chaired by Professor Ron Edwards. We agree with the conclusion that 'National Park authorities should be responsible for all aspects of the development control process. Applications should go direct to national park authorities and be processed and determined solely by them'.

Other public bodies, as referred to in section 10(b)(ii), must be given a duty to comply with the National Park Plan and the Park Authority the powers to control inappropriate activities.

A monitoring and review process is essential for any plan and should be built into section 11 of the legislation.

The wording in Section 12 should be changed to ensure that all bodies described have a duty to act in accordance with the National Park Plan. Any decision to over-ride the National Park Plan must then be taken at Ministerial level for reasons important at a national level.

Section 14 - 18 Directions and Guidance

One of the aims for the National Park is 'to promote sustainable use of the natural resources of the area', section 17 does not appear to reflect this aim.
• It is not clear who will monitor the delivery of the National Park Plan by the Authority. This function could be carried out by an Advisory Group (section 18), drawn up through consultation with stakeholders. If not, the legislation should make it clear who retains the monitoring function.

**Schedule 1 (Constitution of national Park Authorities)**

• It is not necessary to stipulate a maximum number members of a National Park Authority in the primary legislation, as per section 3(1). A description of the Authority make-up in the Designation Order would allow a degree of flexibility to be applied to each case.

• Given that the bodies are to be National Park Authorities, it is not clear from sections 3(3) and (4) how appointees to the Authority will reflect national interests. This should be included in the primary legislation.

• Similarly, section 3(4) may be interpreted as precluding those who live and work within the National Park.

• The role of the Planning Committee is especially crucial to ensuring that the aims of the National Parks are delivered, see section 14(1). The primary legislation should specify the number of elected members required on a planning committee and whether co-opted members could vote within the committee.

**Schedule 2 (General Powers of the National Park Authorities)**

• Vehicles for enforcement of new bye-laws by the National Park Authority are required in section 9.

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For further information please contact Andrew Fairbairn on 01764 662554, Email: AndrewFairbairn@woodland-trust.org.uk
Richard Davies Esq
Clerk to the Rural Affairs Committee
Scottish Parliament

National Parks Bill- Loch Lomond Sailing Club

Our vice commodore Dr Fergus Duncanson sent on 5th April to your Chairman a copy of the memorandum the LLSC submitted to the Executive on the consultation version of the above Bill, expressing our concern that none of the points we had made about the need for stronger reserve powers (as also asked for by SNH) for the better management of water areas in national parks areas seemed to have been accepted. Since then we have seen the summary of the responses to the consultations and the weak comment by the Executive that because some people were for stronger reserve powers and others were not, they had done nothing.

As well as having been a member of the Loch Lomond Sailing club for more than 20 years I was for many years a Scottish Office civil servant. Indeed I was responsible in 1982 for the consolidation and amendment of obsolete legislation from the 19th century (the Burgh Police Acts) which resulted in the Civic Government Act which the Executive proposes should be the enabling source for water management bye laws for the park authorities (under Schedule 2 para 8 of the Bill). So the Club has asked me to emphasise why we believe that the proposed reserve powers are inadequate for Loch Lomond, and by extension not sufficiently comprehensive to be adequate reserve powers for other candidate national parks, including maritime parks.

In particular we believe that the powers “to regulate” do not allow a Park authority to:

- Prohibit certain classes of craft from use of the water area [eg to exclude hovercraft or float planes- and these exist on Loch Lomond and Loch Earn- or other inappropriate (eg too large) and noisy vessels.]
- Set a limit on the number of craft permitted on a water area [as might for example be necessary in due course on the smaller water areas in the candidate park areas—eg Loch Ard, Loch Vennachar, Loch Morlich and Loch an Eilin]
- Control the number of commercial craft offering boat trips on a water area [
because the power in the CGA relates only to the control of pleasure craft - not defined)

- In maritime parks to control or regulate activities more than 1000 metres from shore line
  (because under section 123 of the CG Act the powers are available only inside that distance - which is too little for eg a maritime national parks in a sea loch more than 2kms (or 1 1/4 miles wide) or in a sensitive archipelago such as the Sound of Arisaig)

I emphasise our belief that these powers are not likely to be needed in many areas, but they need to be available for reserve use. We cannot anticipate the precise future needs of every park area or so but we do know from experience on Loch Lomond (where the Club has been for 101 years) that already some of the above issues needing to be tackled.

We do urge the Committee to examine these issues during its consideration of the Bill. What is needed now is a more general power for the Park authorities on Loch Lomond and elsewhere to manage the difficult issue of water borne recreation in a way which is compatible with their conservation objectives. We believe that the Bill at present does not allow that - hence the highly unusual position for a sailing club calling for powers to impose restrictions, some of which might well impinge on our own members. But we feel that this is a case where some restriction of individual freedoms is desirable in the wider interest of ensuring the proper conservation and quiet enjoyment of what will, by definition as National Parks, be areas of outstanding natural heritage importance.

If the Committee wishes to explore any of the points in this letter or our memorandum (a copy of which was sent to your Chairman on 5th April) I confirm that we would be delighted to give oral evidence. If the committee is so minded it might consider inviting us to give such evidence with the Friends of Loch Lomond, who also submitted evidence during the consultation stage, and who share many, if not all, of our concerns.

I am sending a copy of this letter to the Clerk to the Transport and Environment Committee.
RSPB Scotland fully supports the principle of establishing a system of national parks in Scotland. We also support the concept inherent in this Bill of creating an enabling power for Scottish Ministers, with the details (eg boundaries and powers of each individual Park) tailored to individual circumstances in secondary legislation.

However, we believe that the Scottish parliament should ensure that the system meets international standards. In our view, many of the accepted international standards will not be met by the Bill, as drafted. It would be a tragedy if, when seeking to join the family of countries with National Parks, Scotland misses the opportunity by creating a system that do not qualify (in the eyes of international observers) as a National Park system.

1. **Marine Areas**
   We welcome the Executive’s introduction of Clause 29. This is a welcome response to the many expressions of concern about marine areas during the consultation on the draft Bill.

   *The Committee should congratulate the Executive on the inclusion of Clause 29 on marine areas but might ask what steps it is taking to identify priority areas for inclusion in such Parks and whether it is conducting research on how this clause will be operated in practice.*

2. **Aims and Purposes**
   In general, RSPB Scotland is supportive of the philosophy outlined in the Bill, and welcomes the conclusion that the driving concept behind Scottish National Parks should be sustainability. We also welcome the intention to ensure that the “underlying reason for designating the National Park” (ie their natural heritage) is secured. We are concerned, however, that, the Bill as drafted will not secure this aim.

   The Explanatory Notes to the draft Bill suggested that it implemented the internationally recognised ‘Sandford Principle’. It did not - and neither does the Bill, as introduced. The Sandford Committee agreed that, where there is a conflict between environmental and other development in a National Park, then conservation “must prevail”. The Bill only gives conservation “greater weight” (Clause 8(6)) and this phrase is virtually meaningless in its legal applicability. To address this issue, the Bill could be amended in one of two ways:

   1. Clause 1(3) could be amended to give the first aim primacy, while retaining the other aims as important, additional aims - but aims to be achieved insofar as they are consistent with the first; or
   2. Clause 8(5) could be amended to properly reflect the “Sandford Principle” - ie to give “priority to” the conservation aim.

   *The Committee should recommend that the aims of the Parks, and/or the way in which these aims are met, be amended to ensure that the conservation of natural heritage prevails - allowing implementation of the “Sandford principle” and consistency with international (eg IUCN) standards.*

3. **Other Bodies Involvement with National Parks**
   It is important, that a National Park is able to influence the activities of [other] organisations - the local authorities, public bodies, owners, managers and users of land and water - to ensure [emphasis added] they are in line with National Park objectives”. We therefore welcome Clause 12 which places a duty on other public bodies to have regard to the National Park Plan.

   It is our view, however, that “to have regard to” may not be a sufficiently effective duty. Such a duty does not, in our view and experience, require compliance with the plan. This is not good enough, and could fatally undermine the effectiveness of a National Park and its Plan. We welcomed the Executive’s commitment (at the Rural Affairs committee, 29 Feb 2000) to consider this issue in the light of consultation responses but are disappointed that no amendments have been made as a result of this consideration.
As public bodies will be involved in the preparation of the Plan, and it will be approved by Scottish Ministers, RSPB Scotland believes that the Park Plans should be accorded greater weight. Indeed, we believe that there is a strong case for National Park Plans to be treated like other plans approved by Ministers (eg Structure Plans). In these cases, development has to be in accordance with the plans unless a strong case is made, and development contrary to the plan is subject to procedures to secure Ministerial approval. Such a system could be established for National Park Plans. To ensure that National Park Plans are properly implemented, and the intentions of Scottish Ministers in approving the Plans are advanced, RSPB Scotland recommends that Clause 12 be amended to accord National Park Plans similar weight to Structure Plans.

The Committee should recommend that the Bill be amended to enhance the status of the National Park Plans to ensure that all public bodies act in accordance with them, unless exceptional circumstances (approved by Scottish Ministers) dictate.

4. **Clashes between reserved and devolved powers**

In discussions since the publication of the draft Bill, the issue of Ministers or public bodies carrying out ‘reserved’ functions has arisen. Many activities affecting the future National Parks (especially marine areas) are ‘reserved’ - that is, remain under the authority of the UK Parliament at Westminster. Does this mean that the Ministry of Defence, for example, will be fully subject to the Scottish Executive in respect of National Parks? The Committee should ask the Executive to confirm that this issue is being tackled and that, if necessary, appropriate agreements or concordats are being prepared with the relevant Westminster Ministers and/or UK public bodies.

5. **Financing the National Parks**

RSPB Scotland has consistently suggested that the effectiveness of National Parks will be dependant on the availability of adequate funds. We welcome the Minister for Transport and the Environment’s commitment (both at the launch of the draft Bill and in Parliament) that “the draft Bill provides for the Scottish Executive to meet all core funding” and that “those resources are additional and will not displace other environmental programmes”. The Committee should ask the Executive to confirm these commitments are met, and to ensure the new National Parks are adequately funded.

6. **Constituting the National Park Authorities**

RSPB Scotland welcomes and supports the proposed constitution of, and procedures for, National Park authorities. As the overall purpose of National Parks is to conserve and enhance the natural heritage of the area, which will be of national importance, we fully support the proposal for half the members to be appointees of Scottish Ministers. However, a significant proportion of these members, as well as having “knowledge and experience relevant to the functions” of the Park in general, must have “knowledge and experience” specific to the primary purpose of the Park. RSPB Scotland recommends that an additional paragraph be added, requiring Scottish Ministers to ensure that at least half of the directly appointed members have knowledge and experience related to the natural and cultural heritage of the Park.

We also support the proposal that the other half of the National Park authority be appointed from persons nominated by the relevant local authorities, but this should not necessarily mean that all should be Local Authority Councillors. While we believe there is a good reason for a significant proportion to be elected Councillors (to maintain democratic accountability), it is important also to ensure really local representation from those living and working in the Parks. Thus, we believe there is a case to require the Local Authority to nominate, and the Scottish Ministers to appoint, a combination of Local Authority Councillors and other local representatives (drawn perhaps from Community Councils, local crofting, farming, landowning organisations, local tourist operators, and others).

The Committee should recommend amendments to Schedule 1 to assure that, when appointing members to the National Park authority, Scottish Ministers are required to ensure that at least half have knowledge and experience of the Park’s primary conservation aim; and that in appointing nominated members, Ministers are required to ensure a balance between Local Authority Councillors and those who live and work in the Parks.

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For further information or a full copy of our response to the draft National Parks Bill, please contact:
Lloyd Austin, Head of Policy RSPB Scotland (Email: lloyd.austin@rspb.org.uk); or
Andy Myles, Parliamentary Officer, RSPB Scotland (E-mail: andy.myles@rspb.org.uk)

RSPB Scotland, 25 Ravelston Terrace, Edinburgh EH4 3TP Tel: 0131 311 6500 FAX: 0131 311 6569

Registered Charity Number: 207076 - April 2000
For the attention of Richard Davies

Dear Mr Davies

Your letter of 6 April 2000 addressed to Alasdair Fairbairn invited comment on the National Parks (Scotland Bill).

While the initial focus of the Bill is very much landward-oriented, (Loch Lomond and Cairngorm), paragraph 29 does allow for marine areas. However, there are no references to marine-oriented rights of tenure such as Several Fishing Orders or Regulating Orders. It is perhaps worth pointing out that these issues will need to be addressed.

Yours faithfully
Robert M Kennedy
(Development Director)
Hamish Morrison  
From: Hamish R. Morrison [hamish@sff.co.uk]  
Sent: 18 April 2000 12:57  
To: 'national.parks@scottish.parliament.uk'  
Subject: Consultation on the National Parks (Scotland) Bill

This reply to the consultation document sets out the preliminary views of the Scottish Fishermen's Federation pending a fuller discussion of the issues raised at a meeting of the Federation's Executive on Friday 21st April 2000.

The Federation has found some difficulty in obtaining information on what precisely a marine national park order would entail in the Scottish context. While a terrestrial national park including the seashore and tidal margins might comply with the objectives set out in the bill, it is difficult to conceive of how the conditions and objectives set out in the bill could be fulfilled in an area of open sea adjacent to Scotland. It would seem that such marine parks currently exist only in tropical latitudes.

The parliament should, in any case have regard to the plethora of designated areas which already exist covering parts of Scotland's territorial sea and the wider economic zone. The sea is divided into rectangles for purposes of quota management. Specific areas are designated for closure at various times for conservation purposes. Particular fishing access conditions apply in the six and twelve mile limits all the way around Scotland's coast. Various areas are designated for the purposes of regulating and several orders. Special Areas of Conservation have already been designated under existing legislation. There are other geographically based local regulations ranging from dumping grounds to military exercise areas. It will be appreciated that fishermen have no wish to see any increase in restrictive designations especially since no precise statement of intention has been made.

Hamish Morrison  
Chief Executive

V.A.T. Reg. No. 805 0897 48  
Members: Clyde Fishermen's Association; Exmouth & Charlestown Fishermen's Association; Fishermen's Association (Scotland) Limited; Midlothian & North-West Fishermen's Association; Orkney Fishermen's Association; Scottish Pelagic Fishermen's Association Limited; The Scottish White Fish Producers' Association Limited; Skye Fishermen's Association;
17 April 2000

Richard Davies
Clerk to the Rural Affairs Committee
The Scottish Parliament
Edinburgh
EH99 1SP

Dear Richard,

CONSULTATION ON THE NATIONAL PARKS (SCOTLAND) BILL

Thank you for your letter of 6 April inviting COSLA’s views to the Rural Affairs Committee on the question of the appointment of members of the National Parks Authorities and related issues on Community Involvement.

I attach our comments, which focus only on the issues outlined in you letter.

I also attach, for completeness, our comments to the Transport and Environment Committee which range over a variety of other aspects of the Bill.

I note that you will be in touch after Easter if the Committee wish us to give oral evidence.

Yours sincerely

Timothy Stone
Head of Policy Development
Encs

WHEN CALLING PLEASE ASK FOR: Timothy Stone (Tel 0131 474 9263)
Email: tim@cosa.gov.uk
NATIONAL PARKS (SCOTLAND) BILL
(As introduced)

COSLA COMMENTS TO THE RURAL AFFAIRS COMMITTEE
(18 April 2000)

General Comments

COSLA welcomes the Bill and agrees that it is appropriate that legislation is enacted to allow the establishment of National Parks. As requested, the comments that follow only concern Section 7 and Schedule 1 of the Bill. Other matters have been commented on to the Transport and the Environment committee. It can be assumed that where COSLA makes no comment we are content with the proposals.

It should be noted that COSLA will take a formal position on the matters discussed below on 28 April. The comments below are policy positions that will be recommended on that date.

Appointment of Members of National Park Authority (NPA)
(All references are to Schedule 1)

1. The proposed arrangements for appointing Council representatives to Scottish National Park Authorities differ significantly from those for England and Wales in that there the local authority members all require to be Councillors and are appointed by the relevant councils, not the minister. In England council appointees are in the majority (but not Wales where it is 50/50). However it is recognised that the financial arrangements for the Parks also differ in that all core funding in Scotland is proposed to come from central government whereas in England and Wales the NPA makes a levy on councils for some of its funding needs.

2. To date soundings from Councils suggest that there is a measure of content with the proposed maximum numbers (Section 3 (1)); balance of membership between Council nominated members and directly appointed members (Section 3 (2)); and with the arrangements for the appointment of Council nominated members (Section 3(2), 3(3), 5(3), 5(4) 5(5)). The flexibility to allow Councils to nominate persons who are not Councillors (implicit in 3(2) and 5(3)) has also not been the subject of comment to date although COSLA believes that, for the foreseeable future, Councils are only likely to nominate elected members.
3. COSLA welcomes the increased emphasis in the ‘as introduced’ version of the Bill on community council and other local interest groups involvement. However we believe that a specified proportion of all members of the NPA should be directly appointed local community representatives. We suggest that Section 5(2) of the schedule should be amended to include a new clause 5 (2) (b) to the effect that:-

“At least 20% of the total Park authority membership from persons who are directly involved in local community matters in the Park area.”

4. Whilst we understand that the Executive believe that the present Section 5 (2) (b) re-inforces the intention to give due regard to local interests, we are concerned that it gives undue weight to potentially narrow special interest groups. We believe that clause 5 (2) (a) adequately covers all relevant categories of potential membership and that this clause, which is a new addition to the previous draft bill should be deleted.

5. Finally, we believe that a clause should be inserted in section 6 to provide that Councillor members of NPAs shall only hold office from the time of appointment to the time they cease to be a member of the nominating council. Other than in exceptional circumstances this would mean that at present Councillors would demit membership every 3 years at the time of council elections. They would however be eligible under section 6(d) for re-appointment if nominated by the new Council. Such a clause is essential to ensure that Council representatives continue to have the support of their nominating councils.

COSLA
18 April 2000
PL/14/2

Contact Officers  Timothy Stone  0131 474 9263  Email tim@cosla.gov.uk
                Bob Christie  0131 474 9269  Email bob@cosla.gov.uk
NATIONAL PARKS (SCOTLAND) BILL
(As introduced)

COSLA COMMENTS TO THE TRANSPORT AND THE ENVIRONMENT COMMITTEE
(18 April 2000)

1. General Comments

1.1 COSLA welcomes the Bill and agrees that it is appropriate that legislation is enacted to allow the establishment of National Parks. The comments that follow only identify matters of concern or clarification. It can be assumed that where COSLA makes no comment we are content with the proposals.

1.2 COSLA has been particularly invited to comment on five aspects of the Bill and this response summarises our position on those five aspects first before giving section by section comment.

2. Purposes and Aims of National Parks

2.1 The four aims of National Parks set out in Section 1(3) are supported as is the attempt in the ‘as introduced’ bill to give greater emphasis to the collective achievement of social/economic as well as environmental/cultural objectives. However we believe that despite the new wording there is still a danger that unqualified application of the ‘Sandford Test’ through section 8(6) could upset the co-ordinated delivery of all the aims. We believe that the Bill should make a closer link to the paramount position of the National Park Plan in determining the appropriate co-ordinated balancing of all objectives, taking the Park as a whole, rather than each location. This could perhaps be done by adding at the end of Section 1(2) [c] the words “through the preparation and implementation of a national park plan”.

2.2 We agree the Park Plan should be able, in appropriate cases to identify areas for which there is a general presumption in favour of (or against) social and economic development in the context of a balanced achievement of all aims. The National park Plan will require to be the subject of extensive consultation and ministerial approval and is in our view the appropriate vehicle for determining the balance between the four aims across the National Park.

3. Consultation over National Park Designation

We believe that the chosen route of general enabling legislation and affirmative procedures for individual parks is appropriate. The consultation process proposed in the Bill is extensive whether or not the Minister calls for a report and should give the Parliament the scope and time to judge the merits of a proposed designation prior to the affirmative procedures. If every proposed Park required new primary legislation there would be a danger that desired parks would be delayed by lack of parliamentary time. (Below we do however suggest one extension to the consultation process at section 5 of the bill).
4. Powers of the National Park Authority

4.1 We believe the NPA should have the scope to take powers over speed boats and other powered navigation on water. It is not clear to us however that these powers are not available through proposed bylaw powers. Control over land based activity is a complex matter, linking in part to planning powers and to bylaw powers. NPA direct powers, as distinct from those exercised through influencing planning processes should depend on the circumstances of each park.

4.2 Powers over UK public Bodies such as Crown Estates, MOD and the Forestry Commission are clearly currently limited. In the first instance, controls can and should be built up through concordats negotiated through the Scottish Executive with National Authorities, complemented by negotiations between the NPA and national bodies on voluntary compliance with NPA objectives.

5 Planning Matters

5.1 We believe it is entirely appropriate that NPA planning powers should be determined on a park by park basis. No two parks will be the same and we do not believe that there is some minimum level of planning powers that should be pre-set to ensure that Parks operate effectively.

6 National park Plans

6.1 We believe that the provisions in Section 12 and Schedule 5 (15) give National Park Plans (NPP) the necessary status to effectively influence planning matters affecting NP areas (even in those cases where that NPA is not given any planning functions under section 10.) However we believe that in Schedule 5 (15) the requirement should be that the National Park Plan shall be a material consideration rather than requiring special attention. The former is the established language used in Planning Legislation and is well understood. ‘Special attention’ would introduce a new untried and unnecessary additional category in an already complex field.

6.2 The effectiveness of the duty on public bodies to ‘have regard to’ the NPP will in part depend on the willingness of ministers - and the Parliament - to ensure that public bodies do indeed have due regard. In part it will also depend on the success in developing the concordats/voluntary agreements with GB national bodies referred to above. We believe the ‘have regard to’ principle is the appropriate starting point.

6.3 We believe that it would be appropriate for the Executive to prepared guidance – perhaps through a NPPG - on the preparation of National Park Plans. However this is not a matter that we believe needs to be put into the legislation. We also believe that it would be appropriate to include in the legislation a requirement for five yearly reviews on National Park Plans.

7 OTHER COMMENTS

Sections 1 to 4 National Park Proposals

Section 1 (2) (c) Add at end “through the preparation and implementation of a national park plan” (See above ‘Purposes and Aims’ for reasons)
Section 1 (4) functions
Currently requires (‘must set out/should exercise’) the minister to specify the proposed NPA should exercise. There should be flexibility to allow the minister to focus on section 1 (1) – (3) matters and leave consequential function requirements to the reporter to report on, if a report is proposed.

Section 5
Although the minister is required to wait six weeks after a report/statement/inquiry before acting, he/she is not required to give time for comment by interested Parties on a proposed designation order prior to laying it before Parliament. COSLA believes that six weeks more should elapse between the publication of a proposed designation order and its laying before Parliament for affirmative procedures and that the Minister should prepare a summary of any comments made to the Minister during those six weeks for the information of the Parliament. As currently drafted the Bill would allow the Minister to make an order that could differ from the terms of a previous report, statement or inquiry without further scope for public comment other than through Parliamentary affirmative procedures. We do not believe this is appropriate and the proposed six week interval would in our view be reasonable.

Section 6 (2)
We believe that it is essential that the Order identifies by a deposited map the area to be designated. Interested parties will wish to be clear where the boundary runs. Without a map there is the potential for the Boundary to be described in terms that are unclear to all but the expert. The third word should be changed from ‘may’ to ‘must’

Section 11
A new clause should be added at 7(e) - review it (the plan) not less than every five years

Section 13 (1) add “and water” after ‘land” in the second line. (To ensure that if marine national parks are proposed it is clear that NPAs have such powers)

Section 19
COSLA is unclear whether NPAs will be liable for VAT. COSLA believes that NPAs should be given the same VAT status as Councils.

Section 33 (1)
No interpretation of ‘cultural heritage’ is given although this ranks along with natural heritage (which is defined in aim 1 (3) (a) which is given special prominence by section 8 (6). We believe it should be defined and that the definition developed by SNH is appropriate.

Schedule 5 (15)
The new clause is supported but we believe it should be reworded as:-
“In the exercise, with respect to any land in a National Park of any power under the Planning Acts, the National Park Plan as adopted under section 11(7)(a) of the national Parks (Scotland) Act 2000 (asp 00) shall be a material consideration”.

(‘Special attention’ is not a current Scottish planning term. ‘Material Consideration’ is. See comments above under ‘National Park Plans’ for details)

COSLA
18 April 2000
NA004171TS
Contact Officers  Timothy Stone  0131 474 9263  Email tim@cosla.gov.uk
               Bob Christie  0131 474 9269  Email bob@cosla.gov.uk
Mr Richard Davies  
Clerk to the Rural Affairs Committee  
Scottish Parliament  
Committee Office  
EDINBURGH  
EH99 1SP

17 April 2000

Rural Affairs Committee Consultation on National Parks (Scotland) Bill

In response to your letter of the 6 April to Roger Crofts, please find attached as requested the views of SNH in the following areas:

- Appointment of members of National Park Authorities
- Community Involvement

Also attached for information is our response on other matters requested by the Transport & Environment Committee.

We are happy to provide further oral evidence at the Committee's convenience and look forward to hearing further details if this is required.

Ian Jardine  
Director of Strategy and Operations (East)
Rural Affairs Committee Consultation on National Parks (Scotland) Bill – Submission of Scottish Natural Heritage

Appointments to the National Park Authorities (NPAs)

In its advice to Government on National Parks, SNH set out the following principles that should inform the composition of National Park Authorities (NPAs).

• The size of the Board should be restricted to 20 members to ensure for its effective operation and to encourage a more collective approach among its members.

• The need for significant representation from local interests. These local interests could be chosen in various ways, including from democratically strengthened community councils or through direct elections. Despite the difficulties in ensuring that all interests are adequately represented, sectoral representation of certain key groups should also be considered (e.g. owners and managers of land, tourism, business and voluntary sectors)

• The need for significant representation from local authority appointees, but not necessarily a clear majority of local authority representatives in every case. We also proposed that such appointees should be drawn primarily from ward councillors within or close to the area, provided that this approach did not undermine the local authority commitment to the National Park.

• The need for national appointees (chosen by the Scottish Ministers) with appropriate backgrounds in conservation, recreation, education, agriculture, forestry, tourism, and business. Wherever possible, such appointees should have links with, or be particularly knowledgeable about the National park and its wider region.

• Each member of the committee should represent the wider interests of the National Park, rather than specific interests of the constituency from which they are chosen.

In addition, we proposed a number of measures to ensure wider representation, including a formal National Park Advisory Panel, together with the use of area or topic based fora.

We consider that these principles are effectively reflected in the Bill, although one further option would be for the legislation to place a specific duty on local authorities and the Scottish Ministers to ensure when making nominations that people who live and work in the area are directly represented. However, we would urge against further specification which may unduly limit the opportunity for the detailed consideration of this critical matter as part of the process of drawing up the designation order. For example, National Park
areas wholly within one local authority area may require a different approach than those within several, or which include significant marine areas.

However, we have been asked to undertake further consultation on the issue of representation on the park authority and must therefore retain open minds on these issues. We shall not be asking our Board for further views on the matter until we have consulted further.

Community Involvement

SNH’s various reviews of National Parks in other countries highlighted the fundamental importance of involving local communities in the identification, governance and management of National Parks, and this principle informed SNH’s vision for Scotland’s National Parks as places where:

- local communities share in decision making and the day-to-day management of the Park, thus engendering trust between national and local interests in the delivery of conservation and community interests; and which

- pioneered new techniques for achieving sustainable development, trialing new approaches to community involvement and social and economic development

The correct legislative framework is clearly essential to achieve this vision, as is effective management.

Against this background, we believe that the proposed legislation provides an appropriate framework for community involvement in National Parks. In particular, we strongly support its provision:

- of a social and economic aim of National Parks;
- for local community involvement in the development of National Park proposals and the development of the National Park Plan;
- for the representation of local interests directly on the Park Board; and
- of other means for communities to be involved (e.g. through sub-committees, and the proposed National Park Advisory Group).

One further option which could be considered to further emphasise the importance of community involvement in National Parks would be for the legislation to place a specific duty on NPAs to ensure that local communities are involved in the management and governance of the Park.

Scottish Natural Heritage
April 2000
Ms Lynn Tullis
Clerk to the Transport and Environment Committee
Scottish Parliament
Committee Office
EDINBURGH
EH99 1SP

27 April 2000

TRANSPORT AND THE ENVIRONMENT COMMITTEE CONSULTATION ON NATIONAL PARKS (SCOTLAND) BILL

In response to your letter of the 7 April to Roger Crofts, please find attached as requested the views of SNH in the following areas:

- Purposes and Aims of National Parks
- Consultation over National Park designation
- Powers for the National Park Authority
- Planning Matters
- National Park Plans
- Funding for National Parks
- Marine National Parks

In some sections we have set out a short preamble followed by specific comments on the points identified in your letter of 7 April.

SNH is happy to provide additional oral evidence to support this submission. We look forward to hearing further details if that is required.

Ian Jardine
Director of Strategy and Operations (East)
Transport and the Environment Committee Consultation on National Parks (Scotland) Bill – Submission of Scottish Natural Heritage

Purposes and Aims of National Parks

SNH strongly welcomes the inclusion in the National Parks (Scotland) Bill of the four aims which we recommended in our advice to Government, and the provision they make for conservation, recreation, sustainable use and social and economic development. However, we have suggested that there is merit in the social and economic purpose being linked more clearly to local needs e.g. ‘to promote the social and economic development of its communities’.

- The effect of the increase in emphasis on collective achievement of all aims (Sections 1&2)

We welcome the emphasis on collective achievement of the aims. We consider that this is fundamental to achieving environmentally sustainable development in National Parks which is in keeping with the special qualities of the area. While we welcome the provision for this in Section 1(2)(c), we consider that this overarching consideration would be better directly attached to the four aims of Section 1(3). Without this change, we are concerned that the ‘added-value’ of National Parks as a tool for policy integration, to complement existing designations, may not be fully achieved.

- The effect of the requirement for National Park Authorities to actively seek to meet all aims wherever possible

Given the safeguard provided by the second part of Section 8 (6) (the revised ‘Sandford principle’), we think that it is right for the NPA to be required to actively seek - either through its own activities or through the co-ordination of others through the Park Plan – to meet all the proposed aims wherever possible. However, in line with the 1995 Environment Act, we consider that this safeguard should be applied more generally to all ‘relevant bodies’ rather than just the NPA, and should be directly linked to the aims for the area set out in Section 1(3). Given that this approach is already established in existing UK legislation, we do not see why Scottish legislation cannot similarly modify the operation of the remits of other relevant bodies within the framework of the Scotland Act, with the Government exploring other means to ensure that reserved bodies also follow this approach.

Consultation over National Park designation

While the language of these sections is perhaps less accessible than other parts of the Bill we believe that the process proposed for defining National Park boundaries is fair and inclusive. A further safeguard could be provided by setting out either in statute or policy a role for the relevant Parliamentary Committee to consider the designation order prepared following the statutory process of consultation set out in Sections 1-4 of the Bill.

- The appropriateness of separate primary legislation for each National Park v designation through secondary legislation which will be subject to affirmative procedures
We proposed a two-step process of legislation for the following reasons:

- the establishment of a common basis for National Parks in primary legislation would reduce uncertainty when detailed consultations began with local communities and other interests over specific Park proposals. People would know what, in general terms at least, they were accepting or rejecting;

- the two-step approach has advantages in providing for tailored arrangements for each National Park – while the need for this is perhaps less obvious for the first two proposed areas, future National Park areas (for example, one which is wholly within one local authority area or contains a substantial marine component) may have very different legislative requirements; and

- the establishment of a common framework for National Parks could help to avoid the creation of a number of different designations and approaches serving different purposes, thus adding to the apparent complexity of designated areas within Scotland.

Powers for the NPA

Provided that they have the means to influence the general activities of local authorities, public bodies, and the owners and managers of land and water, we remain of the view that a NPA need not have extensive powers in order to be effective. We consider that the proposed legislation provides for this, with one or two exceptions set out below.

- The powers of the NPA over speed boats, navigation on water bodies and skiing etc.

We believe the provision in the Bill in respect to these matters is inadequate, given the acknowledged weakness of the Civic Government (Scotland) Act 1982 for controlling these activities. In terms of the specific ability of a future Loch Lomond & Trossachs National Park, we therefore believe that it would be appropriate for the Park Authority to given new powers which would allow it to regulate how the right of access or navigation on water can be exercised. This could be achieved by adding the following subsections to Schedule 2, para 8: (1)(d) managing the recreational use of land and water in the National Park area; and (2)(e) to regulate the right of access or navigation within specified areas for the safe and orderly exercise of recreation on water.

- The powers of the NPA to ensure the protection of the environment in the National Park

We consider that the proposed powers of a NPA in this respect are generally adequate, although we would particularly draw the Committee's attention to one area of our advice which has not found its way into the Bill: a last resort power for the NPA ‘to stop, restrict or otherwise manage activities when these threaten the special qualities of the area’. While it could take a number of
forms, we consider that such a power may be required to guard against: poor stewardship in the management of land; and/or damaging forms of recreational use or other activities. While likely to be rarely if ever used, we consider it would be wise to have such a power in reserve for extreme cases of intransigent behaviour leading to significant damage, or risk of damage, to the natural and cultural heritage. We recognise that such a power would need to be exercised with considerable caution, and with proper checks and balances in place.

- The powers over UK public bodies such as the Crown Estates and MOD

We note that this question touches on reserved matters. We recognise that it will be up to the Scottish Executive to ensure that adequate measures are in place to allow for Scottish NPAs to build up the same relationships with these UK bodies as do the existing Park authorities in England and Wales.

In addition to UK public bodies, there is also a number of private statutory undertakers such as the electricity companies, water authorities and telecommunication operators whose operations can have significant implications for the natural heritage, but which generally lie outwith normal planning regulation. While we note the consultee arrangements provided for in Schedule 5 of the Bill, we would like to see legislation clarify further the influence that NPAs would have over these bodies.

Planning Matters

- The appropriateness of planning control to be determined via individual National Park designation orders

During the course of the last three years, SNH has considered this question at great length. We recognise that the planning function will be of considerable importance in many areas of Scotland which might be considered for designation as National Parks. However, we do not think it follows that a single approach to the operation of the planning function in these National Parks is necessary, but should instead be part of the detailed consideration of the issues in the process of drawing up the designation order. In our view, the desirability of our approach was confirmed when we began to consider this matter in the two proposed areas as part of our advice to Government. In Loch Lomond & the Trossachs, which has very strong similarities with many Parks in England and Wales in terms of visitor and development pressures, we proposed that the NPA should have responsibility for preparing a local plan for its area and for taking development control decisions based on that plan. In the Cairngorms, these similarities are less strong, and the work of the NPA is much more likely to be focused on land management issues. In terms of the planning function, we therefore proposed that it should be a statutory consultee on all planning matters, with powers of referral to the Scottish Ministers on development control decisions taken by the local authority to which it objects. Scotland's third National Park - if there is to be one - could be wholly part of one local authority area rather than at
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the edge of several, or encompass a significant marine element. It may therefore again require a different planning arrangement.

National Park Plans

- **The status of the National Park Plan in respect of statutory planning procedures**

This is an area that the Bill does not seek to clarify, and could perhaps be left to policy guidance. SNH’s advice, for example, proposed a National Planning Policy Guideline (NPPG) on National Parks, although the current revision of NPPG 1 which sets out policy on material considerations provides another option.

In future, both the structure planning framework for the area and the National Park Plan will also be approved by Scottish Ministers, thus providing a further check on potential conflicts at the policy level before they feed down into the detailed development control decisions.

- **The effectiveness of the duty on public bodies ‘to have regard to’ the National Park Plan**

A cornerstone of SNH’s advice was our proposal for a strong duty on others to support the purposes of National Parks, as set out in statute and expanded upon in the Park Plan. While recognising its legal standing, we are concerned that the ‘have regard to’ wording used in Section 12 will not necessarily secure positive action by other public bodies. We would therefore strongly urge the Committee to consider a strengthening of this clause to require relevant public bodies to ensure that, as far as possible, their activities further the purposes of National Parks. Without such a strengthening of this duty, the great potential for National Parks to integrate the work of existing bodies may not be realised. In our response to the Government consultation, we therefore proposed the following wording: [a public body]... must ensure that the exercise of its functions in relation to the National Park is consistent with, and where possible, promotes the aims of National Parks, and implemented through the Park Plan. We note that support for strengthening of this clause was given by many of the local authorities in both the potential Park areas.

- **The lack of specific guidance on the content and preparation of the National Park Plan**

While undoubtedly important, we accept that this is more a matter for guidance than legislation, not least because legislative guidance could quickly become very complicated (for example in relation to the relationship to the planning function, or in terms of the type of zoning used) and unnecessarily limiting on the type of Park Plans produced. Interestingly, a recent review commissioned by SNH of the experience of National Park Management Plans in England and Wales has demonstrated the diversity of approaches that already exists and is likely to be further added to by Scottish Parks.
• **No statutory provision for the review of National Park Plans**

We consider this an omission, although we recommend a general duty to keep plans up-to-date rather than a specific timescale imposed.

• **Requirements on land managers to implement the National Park Plan – the effect of no statutory duty on private land-owners**

While a statutory duty on land managers to implement the National Park Plan was part of SNH’s original advice, we are content that the Bill makes no provision in this regard. We believe that the best approach is through incentives coupled, as noted above, with a last resort power for use in extreme cases of intransigent behaviour leading to significant damage, or risk of damage, to the natural and cultural heritage.

**Funding for National Parks**

• **The funding requirements of National Parks and how this funding is best disbursed**

SNH’s advice, published in February 1999, contained estimates of the overall costs of the National Parks in Loch Lomond & the Trossachs and the Cairngorms. These estimates were based on the proposed scope of the NPA in these areas, and sized against equivalent figures for National Parks in England and Wales, and Regional parks in Scotland. We consider these estimates are in the right order of magnitude for these areas but accept that they are still only estimate made in advance of the exact powers of any Park Authority having been determined. Further consideration is needed as to what proportion of these total costs needs to be genuinely ‘new money’, rather than a reallocation of money from existing public bodies.

In terms of how the funding is best disbursed, our advice proposed at least 75% national funding of National Parks by Government, and also consideration of increasing Government support for local authorities (as currently happens in England and Wales) to allow them to contribute the remainder without loss of funding for other services. Against this background, we welcome the Government’s more pragmatic approach of directly providing 100% funding for National Parks.

• **The scope to redirect resources or otherwise spent on other national schemes (e.g. agri-environment schemes) to National Park objectives and the impact of this**

The re-direction or focusing of resources spent on other national schemes toward National Park objectives was an essential component of SNH’s advice. In particular, we proposed the development of a support scheme specifically designed to meet the needs of the Park which combined agri-environment measures with other measures under the Rural Development Regulation. Such a scheme could build on the existing ESA schemes and the
support they provide for farming practices that enhance biodiversity and landscape interests. It could also be extended to provide support for better management of public access; and to support the sustainable development of farm businesses through, for example, the marketing of local produce or diversification into native forestry. We believe that such a scheme could create a variety of new opportunities for local employment, as well as significant benefits for the natural heritage. The additional funding necessary to develop such an approach could come from current proposals for modulation of commodity support payments. We recognise that this approach would be experimental in nature, and may therefore not be simple or easy in administrative terms. However, if Scotland is to have world class National Parks that can pioneer new approaches to sustainable land management, we consider it important that the future agri-environment and rural development measures provide greater flexibility and are tailored to meet national park objectives.

Marine National Parks

In Scotland, there is growing recognition of the value of our marine environment and the need to manage its use more effectively. Much of Scotland’s marine natural heritage is of international value. In terms of wildlife and habitats our islands, archipelagos and sheltered sea lochs are highly valued, and this is reflected in the inclusion of some of these features in the Natura 2000 Network currently being established in Scotland under the EC Habitats and Birds Directives. Similarly, the inclusion of a maritime component in 24 of the current suite of 40 National Scenic Areas indicates the outstanding importance of the scenic qualities of many of our coastal areas. Scotland’s marine environment is also of growing recreational value. Sport fishing and scuba diving are established activities in coastal waters attracting an increasing number of participants and positively contributing to the economic vitality of many of Scotland’s smaller ports and harbours. Scotland’s western seaboard and sea are also given very high national value by Sportscotland for the challenging nature of the sailing opportunities they provide within a highly scenic setting, while dolphin and whale watching has become an important part of the tourism industry in parts of Scotland.

Against this background, SNH recommended that Scotland’s National Park system should in principle be able to extend into Scotland’s marine environment.

• The appropriateness of Section 29 in the Bill and adequacy of the reference to and provision for marine National parks

In our advice, we recognised that a distinctive approach would be needed for the management of the marine areas of National Parks, which took account of the different activities and interests in the marine environment, the existing regulatory framework of our coastal waters, and the coastal communities whose traditions and livelihoods are drawn from the sea.
Provided that Section 8 (2) d) of the Bill provides for the provision of a range of powers that might be required, we are content with Section 29. If not, our recent response to the SE consultation on the Bill highlights a number of areas where further change may be necessary including:

- The further development of the consultation arrangements set out in Schedule 5 of the Bill in terms of the 85 Acts of marine legislation which may be relevant to marine National Parks;
- The provision of bylaw powers to allow for the effective management of the recreational use of the sea (N.B. reliance on the Civic Government (Scotland) Act 1982 is again inadequate – for example, it only provides for the use of powers within 1000m of the coast);
- The provision of powers derived from Section 34 to 36 of the Conservation (natural habitats &c) Regulations 1994, suitably modified, to provide for a NPA to establish management schemes, to make bylaws and to request Scottish Ministers to make orders under inshore fisheries legislation.

As on land, we note that the active involvement of the users of the environment, such as fishermen, will be essential if the National Park is to be successful. Through the Park Plan, the NPA will therefore need to ensure that the use of any of its powers would complement rather than conflict with several and regulating order powers provided for under fisheries legislation.

Scottish Natural Heritage
April 2000
Dear Richard

Thank you for your letter concerning the consultation on the National Parks Bill. You asked for my further comments on the involvement of communities, unfortunately I am currently working in a remote area of Nepal so although I can send emails I can not download the report you refer to.

The community involvement in the management of the future National Parks should be appropriate for the particular National Park, my interests are naturally for the proposed Loch Lomond and the Trossachs Park and so these comments refer to that management body. We consider that there is an excellent range of skills in the community which the National Park management could benefit from. These skills are in all aspects of the management from the land owners/hill farmers to small business people in the tourist industry to business people who work in industry or government out of the area - and most particularly are range of young people who are interested and keen in being involved. For the National Park main body there should be one third representing the communities. These people should be elected by the communities in the park and a formal process of consulting with the communities should be established. These people would be different to the elected local councillors who, for the main reason, are representatives of political parties. The community representatives do not have to be Community Councillors but the Community Councils demonstrate the way in which people can be represented without the political agenda or any other bias. The other consideration must be the fees paid to these people. To obtain the best people on a board they need to be paid a reasonable expense rate which compensates them for time lost at work as well as their travel expenses - in this way we aren't just a “bunch of retired country folk”.

In addition to the main board there should also be representation at all management levels. This is for the same reasons as above.

I hope this helps, if you need any more detail then please email me on this address. Also note that if you want further oral evidence then only the 9th May will be convenient for me.

Sincerely

Richard Johnson
Chairman
Association of Community Councils LLTT National Park Area
PETITION TO THE SCOTTISH PARLIAMENT

ACTION TOWARD MAINTENANCE OF RURAL COMMUNITIES IN SCOTLAND

I, the undersigned, declare that loss of opportunity, and consequent demise of communities in rural Scotland are direct consequences of unlimited support being paid to individuals and companies toward the farming of unlimited numbers of farming units, irrespective of need or scale of enterprise.

I therefore request that the Scottish Parliament seeks, by whatever powers are available to the Parliament for the allocation of discretionary support measures by individual member states of the European Union, to limit agricultural support to one farm per farmer, resident and working thereon, and, to have all future EU support to the farming industry similarly applied forthwith.

Thomas William Gray

28 January 2000
To the Scottish Parliament

CAMPAIGN FOR THE RE-INSTATEMENT OF BORDERS RAILWAY

We, the undersigned declare that the re-instatement of a railway into and through the Borders is vital for the area’s future well being. In particular it will assist:

- The creation of a more cohesive society
- Foster economic prosperity
- Actively promote sustainability

The Petitioners therefore request that the Scottish Parliament consider ways of translating this aspiration into reality through:

1. Initiating debate in Parliament
2. Examination of the issues before the Social Inclusion and the Transport & Environment Committees
3. Securing the release of public finance to fund the scheme

Please find attached signed petition forms, collected over a three months period throughout the Scottish Borders and beyond, totalling over 17,200 signatures.

Further details are available from:
Petra Biberbach
Chairperson of CBR
Kilmeny
Highroad
Galashiels
TD1 2BQ
Tel: 01896 757917
To the Scottish Parliament.

Petition against the proposed Closure and Changes to Sub Post Offices.

We, the undersigned, declare that Government proposals to pay benefits through bank accounts will make many sub Post Offices unviable, forcing them to close. In rural communities the Post Office is an important public service.

The Petitioners therefore request that the Scottish Parliament takes whatever it considers to be the most appropriate action to relay these concerns to Westminster.

Carolyn Blyth
Dunlop and Lugton Community Council.
Low Borland
Dunlop
Ayrshire
KA3 4BU
01560 484846

1st March 2000
We noted this petition and left it to Rural Affairs to say if they had anything more substantial.

Stephen Imrie
Clerk to the European Committee