



# The Future for National Parks in Scotland

## Agenda Item 9

### National Park Authority Board Meeting

12 December 2022

Paper for information

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#### **1. Purpose**

- 1.1. The purpose of this paper is to recommend the National Park Authority's responses to the current consultation by NatureScot on the advice it should provide to Scottish Ministers on the future of Scotland's National Parks. The paper highlights the purpose and scope of the consultation and those parts of the consultation that may have significant implications for the future role and priorities for the two existing National Parks in Scotland as well as any new ones. While the consultation ends on 30<sup>th</sup> November, it has been agreed that a response can be submitted following the Board meeting.

#### **2. Recommendation**

- 2.1. That the Board approve the content of this report as the National Park Authority's response to the Future for National Parks consultation.

#### **3. Contribution to National Park Partnership Plan and/or Our 5-year Plan**

- 3.1. The proposed consultation response is informed by the experiences gained from delivering our National Park Partnership Plan 2018-23 and Our 5-year Plan and their predecessor documents. The outcome of the consultation and the processes that follow will be closely monitored as we develop and consult on a new National Park Partnership Plan.

#### 4. Background

- 4.1. The Scottish Government has committed to establish at least one new National Park in Scotland by the end of this Parliamentary session in 2026, as part of the Bute House agreement with the Scottish Green Party and the Programme for Government.
- 4.2. Following this announcement, NatureScot has been commissioned to provide advice to Ministers on the criteria that should be used to select the preferred locations from nominated candidate areas. The consultation is also seeking views on whether the current role, functions and powers of existing National Parks could be strengthened to help achieve more on the climate and nature crises. At this stage, NatureScot is not seeking views on specific areas for new National Parks and it is expected opportunities to propose areas will follow during the next stages of work in 2023 when the Scottish Government will invite nominations.
- 4.3. The context for reviewing the current role of National Parks is reflected in Lorna Slater, Minister for Green Skills, Circular Economy and Biodiversity's statement that:

*'Scotland has ambitious targets and priorities to meet the challenges we face in tackling the climate and nature emergencies and we need to transform what we do, and how we do it, if we are to deliver them. Scottish Ministers wish to see Scotland's National Parks as places that will actively demonstrate nature recovery and the transformational change needed in our approach to land-use, providing leadership and showcasing a just transition to net zero in Scotland.'*

- 4.4. Comment: This consultation presents the first opportunity to review the role, purpose and functions of National Parks in Scotland since the passing of the National Parks (Scotland) Act in 2000 and the designation of Loch Lomond and The Trossachs and Cairngorms in 2002 and 2003 respectively. Given the experience accumulated over the last 20 years and the significantly changed context National Parks are now operating in, this review is to be

welcomed. At this point it is not yet clear if Ministers consider that changes should be made to the National Parks (Scotland) Act 2000 or what the timetable and process will be. Any proposed specific changes to the primary legislation would be the subject of further consultation and would have to be approved by the Scottish Parliament. It is possible that the forthcoming Environment Bill process in 2023 could be used to alter the National Parks Act. Given that the need to scale-up our efforts to restore nature and address climate change is a significant driver it is considered this forthcoming legislation could be an appropriate vehicle and context to discuss and debate such changes. It is also likely that any changes being contemplated for National Parks will be clearer by the time we are finalising our new National Park Partnership Plan for submission to Ministers in late 2023.

## 5. Recommended Consultation Responses

- 5.1. The Role of National Parks - Scotland has ambitious targets and priorities to meet the challenges we face in tackling the climate and nature emergencies. Scottish Ministers wish to see Scotland's National Parks as places that will actively demonstrate nature recovery and the transformational change needed in our approach to land-use, providing leadership and showcasing a just transition to Scotland becoming net zero nation. To build on this existing work and add greater emphasis to it, it is proposed by Naturescot that National Parks could be given a new overarching purpose "**to lead nature recovery and a just transition to net zero**". Key elements of leadership and action required in this role being suggested for National Parks include:
- Promoting the need to do things differently and at greater pace if we are to make the changes needed to address the climate and nature emergencies;
  - Recognising that change is inevitable, and that nature recovery should be inspired and informed by the past but not seek to simply replicate it;
  - Accelerating the transition in land and marine use needed to deliver climate mitigation and adaptation, and nature recovery;
  - Testing and embedding natural capital approaches to growing a well-being and a more sustainable economy;
  - Generating opportunities for greater private investment in natural capital
  - Realising the just transition by championing reskilling and new employment opportunities to help ensure that no local community in the Park area is left behind;
  - Leading on improving ways of design and placemaking that achieve optimum outcomes for people, nature and landscapes.

- 5.2. A national statement that sets out the Scottish “vision and mission” for National Parks is proposed to provide further clarity on the role of National Parks and to promote their work more widely.
- 5.3. The consultation questions ask if the proposed vision and mission is supported, what else a national statement on National Parks should cover and some supplementary questions about the potential role of National Parks in delivering green investment and a just transition for communities.
- 5.4. Recommended Response: Given that there is now the prospect of at least one more National Park being designated in Scotland it makes sense for there to be a clear unifying statement which encapsulates the national role and combined benefits that can be delivered by National Parks for Scotland. At present there are no national policy statements in National Parks apart from updated content in the revised draft National Planning Framework 4. A clear vision and any accompanying statement would help create more visibility on what National Parks are delivering and as a basis for communicating their combined contribution. That said, such statements should not unduly restrict the discretion of individual National Park Authorities in realising opportunities and innovating in their own specific areas. Each National Park’s Partnership Plan should be able to tailor responses and take a place-based approach to delivering the overarching vision.
- 5.5. The references to the potential role of National Parks in securing green investment are welcome. National Parks are already pioneering in this area through the Revere project facilitated by UK National Parks Partnerships. This is currently being developed as part of our Future Nature programme delivery plan and is an excellent example of testing new innovative approaches in National Parks as is being aspired to. The significant work to deliver outcomes with our communities over the last 20 years means that we can ensure a strong understanding of the social and economic transitions needed in our economy and identify where the opportunities are to fully capitalise on new green opportunities for National Park communities and young people.
- 5.6. National Park Statutory Aims: In the consultation, while NatureScot comments that the current approach set out in the National Parks (Scotland) Act has been seen as successful, it is suggested that a number of changes

to the statutory Aims could be considered to further strengthen the focus and contribution of National Parks

5.7. *The current National Park Aims are to:*

- *conserve and enhance the natural and cultural heritage of the area;*
- *promote the sustainable use of the natural resources of the area;*
- *promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area; and*
- *promote the sustainable social and economic development of the area's communities*

5.8. Some of the suggested options to strengthen the statutory aims include:

1. retaining the current status quo e.g. keeping the existing four Aims as currently worded;
2. keeping the policy intention of each Aim unchanged but rewording them to better reflect the new vision and mission in the proposed national statement;
3. keeping the four Aims but include a new overarching statutory purpose of National Parks to secure nature recovery and a just transition to net zero;
4. adding additional aims e.g. “to promote the just transition to net zero” or “to increase the accessibility of the areas for all”; and
5. reducing the Aims to the first one only and change the other three Aims to duties, thus giving the National Park a much stronger, single statutory focus on the protection and enhancement of the natural and cultural heritage.

5.9. *The consultation questions ask* if the current statutory Aims should be amended and for views on the options set out.

5.10. *Recommended Response:* The scope of the current National Park Aims has been an acknowledged strength for Scottish National Parks as they recognise the integrated and interdependent nature of these issues and the role of a National Park Authority in striking the right balance in its decision making and delivery of outcomes. However, 20 years on, the language does not sufficiently reflect the current and long-term challenges and opportunities, where National Parks can have a strong role. It is recommended that the aims are strengthened with wording along the following lines:

[ALTERNATIVE PARAGRAPH]

- The first aim should be redrafted to make more explicit reference to the role of National Parks in enabling nature recovery and healthy ecosystems
- The second aim should be redrafted to incorporate reference to the role of the National Park in mitigating and adapting to the effects of climate change

including through promoting the sustainable use of the natural resources of the area;

- The third aim should include reference to sustainable enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by people of all backgrounds; and
- The fourth aim should include reference to the cultural development and heritage of the area's communities

5.11. Currently Section 9(6) of the Act states that;

*In exercising its functions a National Park authority must act with a view to accomplishing the purpose set out in subsection (1); but if, in relation to any matter, it appears to the authority that there is a conflict between the National Park aim set out in section 1(a) and other National Park aims, the authority must give greater weight to the aim set out in section 1(a).*

5.12. This duty is often referred to as the 'Sandford Principle' In practice it is mainly used in relation to planning decisions where proposals are not considered to accord with the first statutory Aim. In effect this provision is used defensively to ensure that the negative impacts of proposals on natural or cultural heritage are avoided. Given the vision and aspirations of Ministers as currently being expressed, it is suggested that a more positive approach might be more appropriate, and that Section 9(6) might be replaced with a more expansive statement which reflects the vision for National Parks to deliver more for climate and nature.

5.13. At present the Act only sets out that the National Park Authority is responsible for the collective and co-ordinated achievement of the National Park aims and also for exercising Section 9(6) (the Sandford Principle). The only current obligation on other public bodies exercising their functions within in a National Park is to 'have regard' to the National Park Plan. Given that many partners are responsible for exercising significant functions and powers and manage significant assets in National Parks, it is suggested that the duty to achieve National Park statutory aims should extend to other public bodies in the same way. This would strengthen the context for significant functions delivered by others such as forest planning, public infrastructure improvements, catchment management, managing designated sites and regulating water quality.

5.14. Duties on other public bodies: Other public bodies are only affected by the statutory Aims when they are exercising functions within a National Park

through the duty on them “to have regard” to the Park Plan as set out in the National Parks (Scotland) Act 2000

*Section 14 - The Scottish Ministers, a National Park authority, a local authority and any other public body or office-holder must, in exercising functions so far as affecting a National Park, have regard to the National Park Plan as adopted under section 12(7)(a).*

- 5.15. The consultation questions ask if there should be changes to Section 14 of the Act to strengthen the role public bodies could play.
- 5.16. Recommended Response: It is considered that the current ‘have regard’ wording is too weak and does not place a significant enough duty on public bodies to give sufficient priority to delivering National Park Plans. While there are excellent examples of partnership working that can be highlighted, it can be the case that some partners are reluctant or feel unable to vary their approach to help address important issues in the National Park from that which they routinely operate beyond National Park boundaries. Partner national organisations will have nationally set priorities and targets they are working to that can also fit with National Park priorities, but on occasions they may not. It would be helpful to encourage innovation in delivering better placed-based approaches and send a stronger signal that national public bodies must recognise the special needs of National Parks. Examples would include more responsive approaches to land use outcomes or how visitor sites and facilities are operated in a more co-ordinated way. To address this, it is suggested that there may be a need to strengthen the effect of this duty so that public bodies exercising functions within a National Park are required to positively support delivery of National Parks Plans.
- 5.17. It would help deliver important outcomes for the National Park if the Scottish Government ensured that National Park Plans are used more often as decision-making tools when administering important funding streams in the National Park such as agricultural payments and forest grants. Applicants should be required to demonstrate how proposals support National Park Plan outcomes.
- 5.18. Powers and Functions of National Park Authorities: At present, the Act provides the following powers and functions to all National Park Authorities These include:

- general powers of non-departmental government bodies (charges, advice, research, grant-aid; land acquisition and compulsory purchase etc.);
  - natural heritage functions of local authorities and NatureScot (for example for countryside management, ranger provision, nature reserves, compulsory purchase and grants etc.); and the
  - planning and access authority functions of local authorities.
- 5.19. Through the designation order, these powers and functions can be further specified to meet the needs and circumstances of the area. All National Park Authorities also have general powers to make bylaws and management rules in relation to the achievement of the National Park aims. While not yet used, the legislation also contains unique powers for Scottish Ministers and public bodies to transfer their functions and powers to a Park Authority and vice versa.
- 5.20. To take forward a refreshed 'vision and mission', it is suggested that National Park Authorities may require strengthened or new powers and functions in relation to the following areas
- Improving protection, enhancement and enjoyment of nature
  - Delivering Net Zero
  - Better management of land or sea
  - Funding
  - Community well-being and development
- 5.21. *The consultation questions ask* if there is a need to strengthen the powers of National Parks and if so, in what areas? They also ask whether a tailored approach to different National Parks is appropriate and whether there is a need to review governance arrangements.
- 5.22. *Recommended Response:* The strengthening of the duty on other public bodies to deliver National Park statutory aims and the National Park Partnership plan should in theory lessen the need to confer more powers on the National Park Authority itself. Similarly, if the National Park Partnership Plan has a stronger role in influencing funding priorities this will also help. That said, there are issues that are anticipated to be so fundamental to addressing important issues for the future of the National Park that the exercise of some powers could be approached differently. Examples of these include;
- A stronger role for the National Park Authority in how the publicly-owned estate is managed e.g. the National Forest Estate, NatureScot sites, Scottish Water
  - A stronger role in relation to NatureScot's powers to manage unsustainable deer numbers and invasive non-native species control



- As part of the process of designating 30% of Scotland's land for protecting nature, consider whether parts of the National Park core areas not currently under designation should be protected for nature recovery (designation as a National Park does not automatically count towards the 30%)
- More direct powers of enforcement in relation to byelaws made by National park Authorities to allow simpler disposal of minor byelaw breaches through giving National Parks Fixed Penalty Notice powers for some offences rather than all breaches being referred to procurator Fiscals.
- In the [2022-2023 Programme for Government](#), the Scottish Government committed to introduce legislation to give local authorities the power to apply a visitor levy – often called a tourist tax. The Bill will create a discretionary power for local authorities to apply a levy on overnight visitor stays in accommodation, applying in all or part of their area, to help fund relevant local activities and services. It is understood that National Park Authorities would not be eligible to apply a levy and therefore a mechanism to ensure visitor services in National Parks benefit equitably from funds raised will require to be found.

5.23. The current National Parks (Scotland) Act 2000 allows for flexibility over what powers each National Park Authority may have, including what Planning powers and it is suggested that this continues to be an appropriate approach. The principle that the approach to conferring powers on National Park Authorities should be tailored to the needs of each area supported, however, it is suggested that as a minimum a National Park Authority should have some formal role in the planning system and managing access.

5.24. In respect of the question of whether Governance arrangements should be reviewed the current approach does ensure that National Park Boards have a balance of local accountability and knowledge as well as national perspectives and experience in topics of relevance to National Park management issues. However, an issue that should be considered for review is whether the current approach to Board appointments and elections is fit for purpose in securing more diversity on our Boards. Members will be aware that significant effort has gone in to encouraging as diverse a range of candidates as possible to put themselves forward to be Board members. The National Park Authority has provided promotional material and held drop-in events to encourage people from a wide range of backgrounds to consider standing in the direct elections. A similar approach is taken to encouraging applicants for Minister-appointed Board places. The outcome is that the current three processes that we have for electing and appointing Board

members is not delivering the equality, diversity and inclusion outcomes that are being aspired to in Scottish public life. The National Park Authority has supported various Board shadowing initiatives to give experience to under-represented groups but this only goes so far in addressing this issue. It is recommended that NatureScot highlight this issue to the Scottish Government as part of preparing their advice on future arrangements for National Parks.

5.25. Criteria for Selecting New National Parks: The consultation considers the issues that need to be addressed in selecting new National Parks. While NatureScot has been asked to provide advice on how it should be done and what it should comprise, the Scottish Government will lead the development of the evaluation framework and the nomination process itself. The consultation sets out considerations for;

- Developing a nomination process for new National Parks
- Criteria for nomination and evaluation

5.26. Possible criteria that could be included in the Evaluation Framework being suggested by NatureScot are;

1. What are the special qualities of the area that merits its designation as a National Park? (“Outstanding national value”)
2. Does the area proposed make sense as a National Park? (“Size and coherence”)
3. How would establishing a new Park help deliver nature recovery and a just transition to net zero in this area? (“Need or added value”)
4. Is the investment in creating a new National Park Authority for this area justified in terms of these outcomes, or are existing approaches sufficient? (“Need or added value”)
5. Is there sufficient evidence of local support for this proposal to be considered further? (“Degree of support”)
6. Would the designation of the area increase the impact of Scotland’s National Parks as a whole? (“Strategic contribution”)

5.27. The consultation questions ask for views on the suggested criteria for evaluation candidate areas for consideration as new National Parks.

5.28. Recommended Response: The criteria for selecting new National Parks seem reasonable and it is not envisaged that the National Park Authority would take a view on the selection process or the merits of candidate areas that may come forward. However, if one or more new National Parks are designated there does seem to be growing emphasis on the collective national impact and contribution that these areas can make together. If the proposed national vision and mission for all National Parks is to be realised

then it would appear that criteria 6 (Strategic Contribution) will be an important consideration.

## 6. Conclusion and next steps

- 6.1. If approved, these responses will contribute to NatureScot’s thinking on the advice it gives to our Minister on the process for designation new National ParkPark(s) and whether any changes to how National Parks operate are recommended. The next steps of the process are;

Milestone	Timescale (indicative)
<b>Development of Evaluation Framework and consideration of any legislative changes to aims, powers and functions of National Parks</b> (including public consultation)	Winter 2022 – Summer 2023
<b>Nominations and Assessment</b> of proposals for New National Park(s)	Summer 2023 – Winter 2023/Spring 2024
<b>Reporter Investigation</b> (including public consultation on proposals for new National Park(s) and advice to Minister)	Spring 2024 – Winter 2024/Spring 2025
<b>Designation Order(s)</b> (including public consultation, parliamentary scrutiny and order coming into effect to designate the new National Park(s))	Winter 2024/Spring 2025 – Spring 2026

- 6.2. NatureScot’s analysis report and advice for Ministers is expected by the end of January 2023. This advice will inform the development of an Evaluation Framework that will help the Scottish Government to evaluate nominations fairly and transparently in order to identify the next area, or areas, to take forward for designation as National Parks. The process to take forward any changes to how National Parks operate is not currently set out. As referred to in this report, one approach could be to use the forthcoming Environment Bill to propose any changes to the National Parks (Scotland) Act 2000 or any relevant secondary legislation. In the meantime, the National Park Authority is represented at CEO level on various advisory groups and it is expected that there will be further formal opportunities to comment as these processes progress.

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