**National Park Commission SAG Paper 2-1 – Possible changes to aims and powers of National Parks**

1 Following the initial discussion at the first meeting on the sort of national park we need, this paper considers in more detail some options for changes to the aims and powers that could deliver this. The paper has been prepared by NatureScot with input from Scottish Government and National Park staff.

**Context**

2 In developing its advice on National Parks in 1999, NatureScot commissioned a range of research on National Parks including [a review of models of National Parks](https://archive.org/details/modelsofnational98bish/page/108/mode/2up). While now dated, much of the analysis of this report remains valid. In particular, it identified a range of approaches to National Parks in Europe and globally, which included:

* small areas of strict protection and state ownership more akin to Scotland’s National Nature Reserves (e.g. Netherlands, Ireland, Sweden) – mainly IUCN category 2;
* larger areas including strictly controlled core zones for conservation and other zones that allow for a range of compatible recreation, land-use and economic development (e.g. France, Italy, Germany and Canada) – a mix of IUCN Category 2 and 5 with a difference in classification of National Parks even within countries;
* larger strongly “humanised” natural areas or cultural landscapes (e.g. England, Wales) with similar approaches found in French Regional Parks and other European Nature Parks– all IUCN Category 5.

While the primary purposes of National Parks were broadly similar (nature conservation, landscape conservation, public enjoyment and understanding), the range of approaches reflected the different emphasis on the protection of nature and the inclusion of social and economic considerations.

3 Perhaps not surprisingly given the commonality in land ownership, use and governance that we share, the Scottish model developed in the National Parks (Scotland) Act 2000 is closest to the English and Welsh approach to National Parks. However, there are a number of key differences including the stronger integration of cultural heritage into the legislative framework, the addition of specific sustainable land-use and social and economic aims, the flexibility over planning arrangements; and the inclusion of directly elected members from the community on Park boards. In being 100% funded by Scottish Ministers and run by non-departmental public bodies equivalent to NatureScot, the administration of Scotland’s National Parks is different and more akin to European practice.

**Possible changes to the aims and powers of National Parks**

4 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. The Minister has made it clear that she wants Scotland’s National Parks to be places that will actively demonstrate nature recovery and the transformational change needed in our approach, providing leadership and showcasing a just transition to net zero in Scotland.

5 Against this background, Table 1 outlines three broad options for changes to our National Parks to allow them to deliver these aspirations ranging from consolidation to evolution and radical change. An example of a national vision or strategy for National Parks suggested as part of these options is provided in Annex A. To inform discussion of the proposals for aims and powers, some of the key parts of the current National Park legislation are summarised in Annex B.

**Discussion**

6 The mix of aims and powers for any option is illustrative at this stage and will need to be refined further through discussion. Further consideration is needed on cultural heritage and to what extent (and how) this remains part of the approach to our National Parks going forward.

7 While the changes proposed may seem relatively modest compared to the other two, Option 1 would significantly strengthen the effectiveness of National Parks by providing stronger clarity and direction on the role of National Parks; refreshing the aims to reflect this, and increasing the role of the National Park Plan in directing change across the Park area.

8 Options 2 and 3 would move Scotland closer to the European and wider international approach to National Parks and would allow new Parks to contribute to meeting Scotland’s 30x30 targets (including strict protection for 10%). If enacted through primary legislation, both options would limit the flexibility of the current approach to tailor National Park approaches to local needs and circumstances. Both options may also result in less direct emphasis on the cultural heritage.

9 Option 3 would require radical changes to the existing legislation and would signal a fundamental change of approach to the management of both public and private land within National Parks. Given its focus on stricter protection of nature rather than integrated management, Option 3 would in practice probably require new National Parks to be much smaller in size. Its applicability to the existing National Parks would also need to be considered carefully.

10 In considering these models, a key question is the extent to which we want all our National Parks to be similar. It could be that both existing National Parks and any new ones should follow a similar model through legislative approaches in the National Parks (Scotland) Act 2000 (primary legislation). In addition, the Natural Environment Bill could present a means to update the primary legislation to reflect common aims and powers across all Parks, which are not catered for in the 2000 Act. Alternatively, different models could be developed though bespoke changes to individual Parks via existing or new designation orders (secondary legislation). As noted in previous discussion, a new National Park which involved a significant coastal and marine element would in practice need bespoke arrangements (as provided for by Section 31 of the Act).

11 Further thinking is also needed on the implications for governance and administration of National Parks which would flow from a preferred approach selected. The consideration of these models also has implications for other protected area/landscape mechanisms more generally. We will consider both these topics further at the third meeting of the stakeholder group.

**Recommendation**

12 Stakeholder group members are asked to consider and discuss the strengths and weaknesses of the options presented in Table 1; and

* Identify any experience from other countries that may be relevant;
* Identify any issues with the changes to aims and powers being considered;
* Identify any further questions or gaps in the presentation of aims and powers which may need to be addressed in developing this advice; and
* Consider how much diversity in aims, powers and size we want to see between National Parks in Scotland.

**NatureScot**

**August 2022**

**Table 1 - Options for change**

|  |  |  |
| --- | --- | --- |
| **Option**  | **Aims** | **Powers/functions** |
| 1. Minor change – **National Parks strengthened**
 | A national vision of strategy for National Parks is developed by Scottish GovernmentRewording of existing aims to reflect the vision and current policy priorities | * Apply section 9(6) to all public bodies in the National Park or to at least all relevant public bodies.
* Change the duty to ‘have regard to’ Parks Plans to a duty to ‘support the implementation’ of Parks Plans.
* Simpler disposal of minor byelaw breaches through giving National Parks Fixed Penalty Notice powers for some offences.
* Require greater coordination of management of the public estate in National Parks.
* Build in National Parks to the priorities of SG funding schemes.
 |
| 1. Significant Change – **National Parks empowered**
 | A national vision of strategy for National Parks is developed by Scottish GovernmentRewording of existing aims to reflect the national vision and current policy prioritiesInclusion of an overarching purpose for National Parks to secure nature recovery and positive contributions to climate change adaptation and mitigation. | As above, plus * Designate strictly protected nature protection zone/s or nature recovery zones within National Parks (equivalent to IUCN Category 2).
* Update approach to management rules in National Parks to provide a set of enforceable standards relevant to each Park in line with their Park Plan.
* Require higher standards for all public land in National Park.
* Use National Parks to manage and distribute SG funding schemes.
 |
| 1. Step Change – **National Parks rebooted**
 | A national vision of strategy for National Parks is developed by Scottish GovernmentInclusion of an overarching purpose for National Parks to secure nature recovery and positive contributions to climate change adaptation and mitigation.Reduce aims to first one and change the other three aims “to have regard to” duties.  | As above plus * Remove or simplify existing designations in National Parks.
* Simplify management of public land within National Parks – for example by transferring more land to the National Park in the designated core areas.
* Require land purchasers in advance of buying land in the Park to lodge a proposed management plan with the NPA for approval.
* Create a dedicated integrated funding scheme for the implementation of National Park Plans.
 |

**Annex A – Example of a national vision for national parks – Austria 2020**

***Austria’s natural heritage in 2035***

*The typical natural and cultural landscapes of Austria, with their characteristic biological diversity and ecologically dynamic processes, are covered by a wide range of protection and support measures, as well as by differentiated sustainable management. National parks and wilderness areas play a crucial role in this as representative, large-scale and largely non-intervention protected areas and part of a country-wide ecological network.*

***Austria’s national parks in 2035***

*National parks represent the preservation of national natural heritage and are part of Austrian identity.*

*In politics and society, national parks have a very high value. All involved parties and the entire population identify with the national park idea.*

*All types of natural ecosystem are protected by national parks. The national park surroundings take into account national park objectives. In Austria, a coherent network of protected areas exists in which each national park acts as the centre of an ecological network and plays an active role. The national parks help to increase the long-term survival chances of species and ecological communities; they also help in achieving national biodiversity targets under the Austrian Biodiversity Strategy 2020+. National parks are a role model for modern protected area management.*

*The people living in national park regions are committed to nature conservation and benefit from it. Sustainable tourism development and the special image of regional products contribute significantly to regional value creation. National parks are recognized as places of education, experience and recreation for people throughout Austria.*

*Cooperation between the national parks under the brand ‘Nationalparks Austria’ has been successful. Synergies are also used from an economic point of view. There has been intensive cooperation with selected protected areas in Austria, across Europe and beyond.*

*Nationalparks Austria is a partner in protected area networks at an international level and represents the interests of the Austrian national parks, e.g. in the field of quality standards. Austria sets international benchmarks for protected area management, capacity building for protected area administrations, and many other fields. Austrian national parks successfully contribute to the development of solutions for current challenges such as climate change, species loss, invasive species, fragmentation, and protection of the large predators, namely lynx, bear and wolf. National parks are innovative places to enable natural processes, preserve evolutionary potential, and maintain intact natural ecosystems and their services.*

*The development of national parks is never finished. National parks are subject to constant change and new challenges. Future generations should also be able to experience nature in this original form. National parks guarantee high quality nature conservation.*

<https://www.nationalparksaustria.at/files/NPA_Download/English/NPA_strategy_English_2020.pdf>

**Annex B – Summary of relevant parts of the National Parks (Scotland) Act 2000**

### ***The National Park aims***

The National Parks (Scotland) Act sets out the four aims of National Parks in Section 1, namely

*In this Act, references to the National Park aims are to the following aims in relation to an area—*

1. *to conserve and enhance the natural and cultural heritage of the area,*
2. *to promote sustainable use of the natural resources of the area,*
3. *to promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public, and*
4. *to promote sustainable economic and social development of the area’s communities.*

### ***General purpose and functions of National Park Authorities***

The general purposes and functions of a National Park Authority (NPA) are set out in Section 9, namely

*9(1) - The general purpose of a National Park authority is to ensure that the National Park aims are collectively achieved in relation to the National Park in a co-ordinated way.*

*9 (2) - A National Park authority has, in relation to the National Park—*

*(a) the general powers conferred by virtue of schedule 2,*

*(b) the functions conferred by virtue of schedule 3,*

*(c) such planning functions as may be conferred under section 10,*

*(d) such additional functions as the designation order may specify*

*(e) such other functions as are conferred by virtue of this Act.*

Point 9(d) means that changes to National Park powers can be carried out through amendments to the designation order rather than having to always change the primary legislation.

Section 9(6) of the Act sets out that the overarching role of National Park Authorities:

*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).*

This means that the NPA has to give greater weight if there is a conflict between aim one (natural and cultural heritage) and the other aims *however* it does not apply to any other public body operating in the National Park. There is also no definition of ‘greater weight’ in the primary legislation.

***Duty to have regard to the National Park Plan***

*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).*

***Byelaws and Management Rules***

NPAs have the powers to create byelaws (schedule 2, section 8) and to set up management rules (schedule 2, section 10).

*Byelaws*

*8 (1) A National Park authority may make byelaws for the National Park for the purposes of—*

*(a) protecting the natural and cultural heritage of the National Park,*

*(b) preventing damage to the land or anything in, on or under it,*

*(c) securing the public’s enjoyment of, and safety in, the National Park.*

*8 (2) In particular, a National Park authority may make byelaws under sub-paragraph (1)—*

*(a) to regulate or prohibit the lighting of fires,*

*(b) to prohibit the depositing of rubbish and the leaving of litter,*

*(c) for the prevention or suppression of nuisances,*

*(d) to regulate the use of vehicles (other than the use of vehicles on a road within the meaning of the Roads (Scotland) Act 1984 (c.50)),*

*(e) to regulate the exercise of recreational activities.*

*Management Rules*

*10 (1) Sections 112 to 118 (management rules) of the Civic Government (Scotland) Act 1982 (c.45) have effect as if references to a local authority and to the authority’s area included references to a National Park authority and the National Park.*

*10 (2) In the application of those sections to a National Park authority—*

*(a) the reference in section 112(9) to management rules being sealed with the common seal of an authority, and*

*(b) section 117(6) (disapplication of section 56(1) of Local Government (Scotland) Act 1973 (c.65)),*

*are omitted.*

However, byelaws are complicated and expensive to put in place while management rules, as currently constructed, are not considered to be a practical option.