Written submission from Scottish Natural Heritage

Context

We understand that the Rural Affairs, Climate Change and Environment (RACCE) Committee have agreed to scrutinise elements of the Bill at Stage 1, and report to the Economy, Energy and Tourism Committee.

We have been asked to give evidence on Part 1 of the Bill. In particular, Part 1 (Section 4) of the Bill:

1. In exercising its regulatory functions, each regulator must contribute to achieving sustainable economic growth, except to the extent that it would be inconsistent with the exercise of those functions to do so.

2. The Scottish Ministers may give guidance to regulators with respect to the carrying out of the duty imposed by subsection 25 (1).

3. Regulators must have regard to guidance given under subsection (2).

4. Subsection (1) does not apply to a regulator to the extent that the regulator is, by or under an enactment, already subject to a duty to the same effect as that mentioned in that subsection.

We also understand that the RACCE Committee has called for comment on Part 2 of the Bill and we have provided brief comment on this. We would be happy to provide further detail on this if requested.

Background and general comments

Scottish Natural Heritage (SNH) is the public agency established under the Natural Heritage (Scotland) Act 1991 with responsibility for securing the conservation and enhancement; understanding and enjoyment; and sustainable use and management of the natural heritage; and as the Government’s statutory adviser on these matters.

Our Corporate Strategy identifies four high-level outcomes:

- High quality nature and landscapes that are resilient to change and deliver greater public value.
- Nature and landscapes that make Scotland a better place in which to live, work and visit.
- More people experiencing, enjoying and valuing our nature and landscapes; and
- Nature and landscapes as assets contributing more to the Scottish economy.

We are pleased to have the opportunity to present evidence to the RACCE Committee. We welcome the overarching purpose of the Bill – to achieve a range of social, economic and environmental benefits by improving and aligning regulatory functions. In doing this, it will provide a framework for linking with other initiatives, such as Planning Reform, which have a bearing on the regulatory landscape.
From the consultation and policy memorandum we understand that the Bill is primarily about regulations that do not involve us. Given our purpose and role, our interpretation of the Bill is that we have regulatory functions under:

- Section 1 (5) (a) and (b). For example, we impose requirements, set standards and give guidance; and in terms of
  
- Section 1 (6) (a) and (b). For example, we provide an advisory service and employ staff in delivering that service.

Our primary regulatory functions are therefore:

- Licensing of management, research and development-related activities affecting wildlife.
- Determining Operations Requiring Consent on Sites of Special Scientific Interest (SSSI).
- Providing advice to Planning Authorities and Competent Authorities on the impact of proposals on the natural heritage.

In fulfilling these functions, we have, for some time, been shifting the focus of our effort towards engagement prior to receiving an application for a licence/consent or request for advice. We want to flag up opportunities and issues as early as possible and thereby influence proposals, and if possible resolve issues ‘upstream’, before a formal application is submitted, ensuring that our regulatory decision or advice does not come as a surprise to other parties.

**SNH comments on invited issues.**

**Section 4 (1).**

We see this in the context of the overarching Government purpose - “to make Scotland a more successful country, with opportunities for all to flourish, through increasing sustainable economic growth”. We currently exercise all our functions in a way that seeks to maximise our contribution to this through:

- Our Corporate Plan. This is directly aligned to the national outcomes and performance indicators, and outlines the importance of Scotland’s ‘natural capital’ for securing sustainable economic growth.

- Our licensing procedure takes account of requirements for ‘…preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature…’.

- We have statutory balancing duties. These require that, in exercising our functions, SNH takes appropriate account of a range of interests including; the needs of agriculture, fisheries and forestry; the need for social and economic development; and the interests of owners and occupiers of land.

Key to exercising these functions is our understanding of other interests and how our advice or decision is likely to impact on them. In order to take decisions or provide advice in a form and context that others can easily use, we are actively broadening
our understanding of wider interests. Building such ‘mutual understanding’ is integral to the ‘solutions’ orientated approach to influencing that we aspire to – to get win-win decisions.

The …extent that it would be inconsistent with the exercise of those functions to do so, relates to our role in assisting Scottish Ministers meet their European and international obligations through areas of our work that are excluded from application of our balancing duty, namely: proposing new Natura sites and their subsequent protection under the Habitats etc. Regulations; implementing the same Regulations in respect of European Protected Species; and notification of SSSI under the Nature Conservation (Scotland) Act 2004

Where these functions could override our balancing duty, we exercise them as proportionately as possible. For example, we ensure as far as we are able that mitigation is adequately explored in the early stages of developing a proposal in order to suggest solutions before formal regulation processes are initiated.

Section 4 (2)

This is normal practice for SNH. We receive annual guidance from Scottish Ministers through our annual Budget Allocation and Monitoring letter (which includes details of our strategic priorities agreed with Government for the year) and may at any time receive guidance or direction on specific matters. Ministers are also able to give such direction under the Public Service Reform (Scotland) Act 2010.

Section 4 (3)

SNH is comfortable with this proposal.

Section 4 (4)

It is not fully clear how far our existing balancing duties under Section 3 of the Natural Heritage (Scotland) Act 1991 meet this requirement. There would not appear to be a conflict in broadening these duties so as to ‘contribute to achieving sustainable economic growth’ alongside the need for social and economic development and the needs of agriculture, fisheries and forestry.

SNH comment on Part 2 of the Bill

Our understanding is that Part 2, Chapter 1 could encompass SNH’s functions. In this respect, we support the purpose of protecting and improving the environment and wider provisions for this in Chapter.

Further clarity to Section 9 could be provided by to including reference to landscape and public enjoyment of natural assets.