

## **Briefing for the Citizen Participation and Public Petitions Committee on petition PE2050: Prohibit the use of recreational drones on national nature reserves without a permit from NatureScot**

### **Brief overview of issues raised by the petition**

- The petitioner is calling on the Scottish Parliament to urge the Scottish Government to amend the current guidance on flying recreational drones on national nature reserves (NNRs) so that:
  - use is prohibited without a permit
  - permits include a flight time, date and agreed flight path
  - operation is in accordance with the drone code
  - advice on the legal status of the wildlife and habitats is provided
- The petitioner raises concerns that drones can be used both intentionally and unintentionally to cause disturbance to wildlife and can have a significant impact on the wellbeing of many species on NNRs, in particular raising concerns about impacts on nesting birds and seal colonies.

### **Regulation of drones and the Drone and Model Aircraft Code**

Aviation is a reserved matter. As such, aviation legislation, including drone-specific legislation, is the responsibility of the UK Parliament. Drone pilots operating drones that meet certain criteria must have a flyer ID and operator ID, both issued by the Civil Aviation Authority. The IDs required depend on the weight of the drone or model aircraft, whether it is a toy, and whether it has a camera. Operators are required to operate within the rules set out in [the Drone and Model Aircraft Code](#). The code states:

#### **“Animals and wildlife**

Do not fly where you’ll disturb or endanger animals and wildlife.

#### **Sites of Special Scientific Interest (SSSI)**

Flying may be restricted at some Sites of Special Scientific Interest (SSSI) where that flight may disturb animals or wildlife.

Check on the web for byelaws or look out for local signs and then follow any restrictions that apply.”

## National Nature Reserves (NNRs)

National Nature Reserves (NNRs) are described by NatureScot as “areas of land set aside for nature” and as an ‘accolade’ given to Scotland’s best wildlife sites which are managed as nature reserves. It is a statutory designation made by NatureScot (Scotland’s statutory nature agency) using powers in the [Wildlife and Countryside Act 1981](#) and the [National Parks and Access to the Countryside Act 1949](#).

[Scotland has 43 NNRs](#) which together cover just under 2% of Scotland’s land area. Sites are selected based on an [agreed set of selection criteria and standards](#) and may be managed by NatureScot, by a body approved by NatureScot or through an agreement with them.

NNRs are owned and managed by public, private, community and voluntary organisations. The following organisations manage NNRs in Scotland:

- [Forestry and Land Scotland](#) - 5 NNRs
- [National Trust for Scotland](#) - 8 NNRs
- [Royal Society for the Protection of Birds Scotland](#) - 5 NNRs
- [NatureScot](#) - 29 NNRs
- [Scottish Wildlife Trust](#) - 1 NNR
- [South Lanarkshire Council](#) - 1 NNR
- [Woodland Trust Scotland](#) - 1 NNR

More information can be found on [Scotland’s NNR website](#).

NatureScot states that most NNRs are also [Sites of Special Scientific Interest](#) (SSSIs) and many are [European sites](#) – previously known as ‘Natura sites’ i.e. [Special Areas of Conservation](#) and [Special Protection Areas](#). This means they are subject to the associated statutory protections, depending on the designation and the features for which they are designated. There are no specific restrictions on the use of drones under these designations, however their potential relevance in relation to laws on disturbance of protected species (or legal features of designated sites) is set out further below.

### Byelaw making powers for NNRs

NatureScot has powers to make and enforce byelaws for NNRs under the [Wildlife and Countryside Act 1981](#) for the protection of the reserve. Sections 20 (2) and (3) and 106 of [the National Parks and Access to the Countryside Act 1949](#) apply to the making of such byelaws, and set out that they may be used for example to (amongst other things):

- provide for prohibiting or restricting the entry into, or movement within, nature reserves of persons, vehicles, boats and animals
- prohibit or restrict the killing, taking, molesting or disturbance of living creatures of any description in a nature reserve

In correspondence with SPICe, NatureScot confirmed that there are currently no byelaws on NNRs in Scotland relating specifically to drones.

## **Wildlife law regarding disturbance of species**

- The disturbance of a species by a drone could, in some circumstances, be considered a wildlife crime under the existing law in Scotland. Wildlife legislation is a devolved area.
- Section 117 of the Marine (Scotland) Act 2010 makes it an offence to intentionally or recklessly harass seals at haul-out sites [designated as such by Order by Scottish Ministers](#).
- Both native seal species in Scotland, grey seals and common or harbour seals, are protected species under Annex II of the EC Habitats Directive 1992 ([retained law via the Habitats Regulations, as amended](#)), meaning their conservation requires the designation of Special Areas of Conservation (SACs).
- There are 15 SACs with seals as features. In relation to marine SACs, [NatureScot are required to advise other relevant authorities](#) of the conservation objectives and any operations which may cause deterioration of the habitats of the seal species or disturbance of seals of the species for which the site has been designated.
- The [Wildlife and Countryside Act 1981 makes it an offence to intentionally or recklessly](#):
  - disturb any wild bird listed on Schedule 1 of that Act whilst it is building a nest or is in, on, or near a nest containing eggs or young, or whilst lekking;
  - disturb the dependent young of any wild bird listed on Schedule 1.
  - damage, destroy or interfere with any nest habitually used by any wild bird included in Schedule A1; or
  - at any time harass any wild bird included in Schedule 1A.
- It is also an offence under regulation 39 of the [Conservation \(Natural Habitat\) Regulations 1994](#) (as amended) to disturb or harass a [European Protected Species](#). It could also be argued that continued use of a drone could, in some circumstances, cause damage (via disturbance) to a notified natural feature (such as breeding bird feature) of a SSSI under S19 of the [Nature Conservation \(Scotland\) Act 2004](#).

## **Concerns about disturbance of wildlife by drones**

- [NatureScot and the Partnership for Action Against Wildlife Crime in Scotland \(PAW Scotland\) have previously raised concerns about wildlife disturbance by drones](#), in particular in relation to nesting birds of prey and seals at designated haul-out sites. NatureScot stated in 2018: “There have been several incidents involving drones disturbing seals at designated haul-out sites. Likewise, there have been anecdotal reports of drones being used to film sea bird colonies and raptors. While the footage from drones in these circumstances can be very spectacular, the operator must be mindful of the effect on wildlife. Birds of prey in particular can see

drones as a threat and act aggressively towards them, causing both injury to themselves and damage to the drone.“

- Also in 2018, [it was reported in the media that RSPB Scotland had banned use of drones at seabird nesting sites](#) on its Aberdeenshire Fowlsheugh reserve, in response to concerns about disturbance of breeding birds.
- It is unclear if there have been any incidences of individuals being prosecuted for wildlife crimes in Scotland related to drone use, although in correspondence with SPICe, NatureScot confirmed that a number of police investigations have taken place.

## **NNR manager positions on drone use**

Each organisation who manages NNRs has its own approach to the use of drones. The organisations with online statements on drones are set out below:

- **NatureScot** [guidance on the use of drones on NNRs it manages is set out in a FAQs page on its website](#). It states:

### **“Can I fly a drone?**

Disturbance by drones can seriously disturb wildlife and other visitors quiet enjoyment of the countryside.

If you are flying a drone, you must comply with the Civil Aviation Authority’s guidance including the Drone Code. You must also take extra care to avoid disturbing wildlife, which may be an offence. If in doubt, ask the site manager or email [nnr@nature.scot](mailto:nnr@nature.scot) before visiting.

When going onto land to launch, land or fly your drone, follow the general guidance on responsible access in the Scottish Outdoor Access Code, comply with any local advice and avoid disturbing people, wildlife or livestock.”

- **National Trust for Scotland** general guidance on the use of drones on its land is set out [on its website](#) and [in a drone policy](#). All operators must seek permission to launch and land drones at Trust properties and provide a risk assessment and flight path. The guidance states:

“The Trust welcomes the use of small unmanned aircraft (SUAs) but we have a duty to protect the heritage we’re entrusted with and will only permit operators to launch and land SUAs where it will not damage built heritage, how enjoyable the visitor experience is, or the natural environment.”

- **Forestry and Land Scotland** general guidance on the use of drones on its land (not just NNRs) is set out in the [permissions and permits section](#) of its website. It allows visitors to fly drones without prior approval as long as they comply with the [Scottish Outdoor Access Code \(SOAC\)](#), [Civil Aviation Authority](#) guidance and [Drone Code](#) and all other legal

requirements, including “wildlife protection”. ‘Higher impact drone use’ for filming and photography is considered through a [specific request process](#).

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The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at [spice@parliament.scot](mailto:spice@parliament.scot)

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