

Citizen Participation and Public Petitions Committee

15th Meeting, 2022 (Session 6), Wednesday
9 November 2022

PE1812: Protect Scotland's remaining ancient, native and semi-native woodlands and woodland floors

Note by the Clerk

Lodged on	5 August 2020
Petitioner	Audrey Baird and Fiona Baker on behalf of Help Trees Help Us
Petition summary	Calling on the Scottish Parliament to urge the Scottish Government to deliver world-leading legislation giving Scotland's remaining fragments of ancient, native and semi-native woodlands and woodland floors full legal protection before COP 26 (UN Climate Change Conference of the Parties) in Glasgow in November 2021.
Webpage	https://petitions.parliament.scot/petitions/PE1812

Introduction

1. The Committee last considered this petition at its meeting on [4 May 2022](#). At that meeting, the Committee agreed to undertake a visit to an ancient and/or native woodland to explore the issues raised in this petition. The Committee also agreed to write to Scottish Local Authorities and Scottish Forestry.
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received new responses from Scottish Forestry and the petitioner, which are set out in **Annexe C**. The Committee has also received responses from 22 local authorities. A brief summary of these responses is included in **Annexe D**.

4. Following the last consideration of this petition, Members of the Committee visited Pressmennan Wood in East Lothian on 21 September 2022. During this visit, hosted by the Woodlands Trust, Committee Members had the opportunity to learn more about the challenges around protecting Scotland's woodlands.
5. Written submissions received prior to the Committee's last consideration can be found on the petition's [webpage](#). All written submissions received on the petition before May 2021 can be viewed on the petition on the [archive webpage](#).
6. Further background information about this petition can be found in the [SPICe briefing](#) for this petition.
7. The Scottish Government's initial position on this petition can be found on the petition's [webpage](#).

Key issues highlighted in evidence

8. Evidence from stakeholders highlighted the importance of ancient and native woodlands for biodiversity and carbon capture. Stakeholders suggest existing protections are insufficient in fully safeguarding Scotland's ancient, native, and semi-native woodlands.

Evidence highlighted a number of issues impacting the effectiveness of current woodland strategies and policies, including:

- Over-grazing, invasive non-native species and commercial forestry obligations;
- Lack of information on the location and condition of ancient woodland, and a lack of resources to properly monitor their condition;
- Tension between the pursuit of commercial forestry and protecting ancient and native woodland;
- Planning policies and processes are not effective in protecting ancient and native woodland;
- Community voices are insufficiently heard and taken into account;
- Sanctions for illegal felling do not act as a deterrent, with Scottish Forestry and local authorities rarely pursuing prosecution where illegal felling has occurred; and
- Where enforcement does occur this typically takes the form of replanting or a tree management plan, with stakeholders emphasising this does little to mitigate the irreplaceable nature of ancient trees.

The Committee also heard suggestions for possible improvements, which include:

- Prioritising the development and updating of the inventory of Ancient Woodland;

- Designating ancient woodlands as SSSI;
- Removing Permitted Development Rights for forestry plantations;
- Strengthening the language of existing policies, such as the Fourth National Planning Framework, to ensure protections can be realised in practice;
- Improving the implementation of existing policies;
- Improving compliance and enforcement;
- Opportunities to address key issues through upcoming bills and policies, including:
 - The Land Reform Bill
 - The Natural Environment Bill
 - The Agriculture Bill (including in relation to forestry grants schemes delivered as part of rural support)
 - The upcoming Biodiversity Strategy and subsequent delivery plans
 - Planned changes to deer management

Action

The Committee is invited to consider what action it wishes to take.

Clerk to the Committee

Annexe A

PE1812: Protect Scotland's remaining ancient, native and semi-native woodlands and woodland floors

Petitioner

Audrey Baird and Fiona Baker on behalf of Help Trees Help Us

Date lodged

5 August 2020

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to deliver world-leading legislation giving Scotland's remaining fragments of ancient, native and semi-native woodlands and woodland floors full legal protection before COP 26 (UN Climate Change Conference of the Parties) in Glasgow in November 2021.

Previous action

We have sought guidance from the Planning Department and Access Officer, as well as advice from the Woodland Trust Scotland (WTS), RSPB and MSP Jackie Ballie. WTS contacted Scottish Natural Heritage (SNH) and Scottish Forestry on our behalf.

Background information

According to 2018 report by the United Nations' Intergovernmental Panel on Climate Change, protecting and restoring the world's forests could reduce global emissions by 18 percent by 2030.

Year after year we watch in horror as vast forests in the Amazon, USA, Australia and elsewhere go up in flames. Meanwhile, governments around the world are failing to live up to promises to plant trillions of saplings that will not mature enough to capture meaningful amounts of carbon for decades. It is therefore unacceptable that Scotland's remaining ancient, native and semi-native woodlands and woodland floors have next to no effective legal protection and can be destroyed on a whim.**

According to the Woodland Trust, ancient woodland covers only around 1% of Scotland's land area.

Sir David Attenborough has said: "The future of humanity and indeed all life on Earth depends on us." A local 'lockdown' event has exposed a national tragedy around just how vulnerable Scotland's remaining pockets of ancient woodlands really are. During lockdown a mountain bike trail was constructed, with the landowner's permission, through a small, beautiful, very mature and intensively grazed, ancient woodland that previously had an almost pristine, densely packed native bluebell carpet. Thousands of bluebells (and other native wildflowers) were destroyed, decaying timbers were sawn up and used to create jumps and berms, and small branches were cut to clear part of the trail. The trail was built during the nesting season, disturbing at least one buzzard pair who had a nest directly above the trail and another nest nearby in the wood. Informal wildlife surveys have revealed the wood also supports other protected raptors including owls and sparrowhawks, plus European protected species such as otters and bats. Woodpeckers, hedgehogs, mice voles and other animals are also resident in the wood. The ecosystem pyramid that supports life in this ancient woodland was being destroyed.

The trail did not conform to guidance around the safe construction of mountain bike trails and, although we understand no official has visited the site, we have been informed the bike trail would not need planning permission as it is of mud and timber construction. Additional threats to this wood are that the old stone boundary wall, probably built to stop livestock straying into the gorge and to manage the woodland as a resource, is now in ruins and cattle and deer intensively graze the woodland floor every year. The existing trees are mature and no saplings are able to survive. Thus, without help, much of this wood (in common with many other ancient and native woods) is unlikely to survive beyond this century. Lastly, a gorge cuts through the wood and on the southern boundary a large estate is being demolished. Windblown polystyrene and other debris has littered the south side of the wood and burn at the bottom of the gorge. We, and others, have complained to SEPA and tried to remove the debris ourselves.

It therefore appears no effective legislation exists to protect Scotland's ancient and native woodlands, rare habitats, woodland floors, native bluebells and other wild plants, nesting birds or other wildlife when landowner permission is granted for developments such as mountain bike trails.

The desecration of a small, ancient, irreplaceable habitat is unacceptable and we understand many new trails have been created in woodlands and other green spaces across Scotland during lockdown. Knowledge of the Scottish Outdoor Access Code is limited and, in addition to new legislation, there is clearly an urgent need for greater respect and more effective education around protecting our environment.

According to the Native Woodland Survey of Scotland (NWSS) only 4-5% of native and semi-native woodland (including 'ancient') cover remains in Scotland (down from a high of 80% woodland cover 5,000 years ago). The Survey concludes that '**...the current amount and distribution of regeneration [of Scotland's native and semi-native woodlands] is not yet enough to sustain all of our current native woodland resource in the long term**'.

Therefore we urge:

1. this Scottish Government to use the NWSS to inform a process to grant full legal protection for all ancient and semi-native woodlands greater than 0.5 hectares;
2. a new classification of ancient and semi-natural native bluebell woods to be included in future surveys;
3. new, simple and unequivocal regulation on how our ancient and native woodlands must be managed respectfully from now onwards;
4. the Government to provide incentives to landowners to protect these woodlands from inappropriate development, over grazing by livestock, neglect, misuse, pollution, fly-tipping and other damaging activities;
5. the Government and partner organisations to ensure local communities know where their ancient and native woodlands are, why they are priceless and irreplaceable, and why they must be protected; and
6. that woodland floors of ancient, native and semi-natural woodlands are recognised as irreplaceable and finite assets and that they are properly assessed and classified in EIAs and are afforded the classification of 'sensitive'. No mitigation for disturbance or destruction of woodland floors is currently required by any Environmental Impact good practice guidelines or protocols. Developments such as mountain bike tracks and paths with the landowner's permission appear not to require planning consent and as they are not classed as Schedule 1 or Schedule 2 developments The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 do not appear to apply. Again The Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006 applies only to agricultural development and do not

adequately provide for assessment or protection to our native woodland floors. We urge the Scottish Government to address the current shortcomings in existing legislation to ensure Scotland's diminishing, rich, biodiverse woodland floors, formed over hundreds of years, are protected from damage and destruction. Planning permission for any development, including paths and trails, (i.e. altering the status quo) should be required by statute. Where disturbance for emergencies cannot be avoided, appropriate mitigation measures to minimise the impact, including establishing new areas of native planting to compensate the loss, should be required.

The National Planning Framework 4 includes six high level outcomes, including:

- improving the health & wellbeing of people living in Scotland;
- meeting any targets relating to the reduction of emissions of greenhouse gases; and
- securing positive effects for biodiversity.

We strongly argue that giving full legal protection to Scotland's remaining ancient and native woodlands meets all three and we aspire to a future Scotland that respects and protects our precious trees.

EXISTING LEGISLATION THAT IS NO LONGER FIT FOR PURPOSE

(Note: Scotland's ancient and native woodlands are mentioned in rafts of guidance and policy documents relating to forestry and environmental management, usually linked with economic development and planning. Nowhere in these documents was an unequivocal message around legislation protecting our ancient and native woodlands to be found.)

- Section 8 of the Wildlife & Countryside Act, section 13(2), which prohibits the sale or advertising for sale of native bluebells. We believe this act no longer protects our native bluebells from current real threats.
- Forestry & Land Management Scotland Act 2018. Landowners can legally fell up to 20 cubic metres of trees (or four mature oak trees) in any small ancient or semi-natural woodland larger than 0.5 hectares each year. This is regardless of whether the trees present a danger to life or property. We believe the felling of up to four mature oak trees each year is too large a burden for a small wood to be sustainable and represents an unacceptable disturbance to the ecosystem.
- The Scottish Forestry Commission's 2009 Control of Woodland Removal 2009 states woodland removal with compensatory planting is most likely to be appropriate where it would contribute significantly to encouraging recreational activities and public enjoyment....There will be a 'strong presumption' against removing certain types of woodland, including

ancient and semi-natural woodland. We believe this guidance with no teeth and the focus on recreational activities and public enjoyment is no longer acceptable and ancient woodlands must be valued in their own right for their unique biodiversity and carbon capture.

In an increasingly complex world where people are confused and overwhelmed with information, our priceless remaining ancient, native and semi-native woodland cover must now have full legal protection that is simple to understand, clearly communicated and unequivocal. It is not acceptable that it is legal to continue to exploit, vandalise and disrespect our remaining outstanding natural assets and pass on a further degraded Scotland and home to future generations.

Annexe B

Extract from Official Report of last consideration of PE1812 on 4 May 2022

The Convener: Next is consideration of PE1812, on protecting Scotland’s remaining ancient, native and semi-native woodlands and woodland floors, which was lodged by Audrey Baird and Fiona Baker. We have already taken considerable evidence on the petition, which calls on

“the Scottish Parliament to urge the Scottish Government to deliver world-leading legislation giving Scotland’s remaining fragments of ancient, native and semi-native woodlands and woodland floors full legal protection”.

We last considered the petition on 23 March, when we took evidence from the Minister for Environment and Land Reform, Màiri McAllan, and Doug Howieson from Scottish Forestry. That session followed evidence that, as members will recall, we heard from the petitioners on 9 March, and from the round table with NatureScot, the Woodland Trust Scotland, Scottish Forestry, the Confederation of Forest Industries and the Royal Society for the Protection of Birds.

At the meeting with the minister, she indicated that work would be under way this summer to develop the register of ancient woodlands. The minister remains open minded on how existing protections and enforcement measures could be improved.

During that meeting and at the round table, we heard about the importance of ancient woodlands for biodiversity and carbon capture. We also explored how forestry standards are currently enforced and what needs to happen to ensure continuing protection of ancient and native woodlands.

We agreed to reflect on the evidence that we had heard and to consider our next steps this morning. I wonder, colleagues, what we might do next.

David Torrance: I would like to visit one of the ancient or native woodlands to see what the problems are.

Also, as a sitting MSP, I have heard complaints from constituents about trees being removed that had been protected by tree preservation orders, on which the response from Fife Council—I will put this on record—was that it was not in the public’s interest to prosecute. I would like to write to all the local authorities in Scotland to see how many prosecutions they have undertaken with respect to TPOs for native woodland or trees in their areas, just to see what response we get.

The Convener: Thank you. I see that nobody else has suggestions. On that first point, we previously indicated that we might like to undertake a site visit, so I formally suggest that we would like to do that.

David Torrance's second point is well made. The evidence that we received from the minister was that additional legal protections are not necessary because protections are in place, but as is often the case, we might want to inquire whether those protections are being used.

Are members content to proceed by writing to local authorities?

Members indicated agreement.

Fergus Ewing: It would be good to write to Scottish Forestry, too, because it has various enforcement responsibilities in respect of inappropriate felling, which was one of the issues that was raised.

The Convener: I am happy to do that, too.

Paul Sweeney: I recall the petitioners presenting a particular case study. If we are planning a visit, it might be interesting to visit that location to see the situation on the ground.

The Convener: We are going to get some recommendations from the organisations that we are going to. I do not think that we want to be in the deepest darkest hinterlands on a Wednesday morning, abandoned in the forest with a compass. I am not quite sure where we would end up.

Annexe C

Scottish Forestry submission of 27 July 2022 PE1812/RR: Protect Scotland's remaining ancient, native and semi-native woodlands and woodland floors

Thank you for your letter and for giving me the opportunity to provide evidence at the committee and then to support Minister Mairi McAllan.

I apologise for the delay in responding, this is as a result of taking the time to investigate evidence to respond to your further questions.

This is as follows:

The number of occasions between 2012 – 2022 where Scottish Forestry consider that ancient and native trees have been unlawfully felled, broken down by year

We investigate all reports of illegal felling but only keep records where we consider that further investigation is required. To this end, we have insufficient records to provide an accurate response. This in itself suggests that felling of ancient and native trees, which exceeds felling exemption tolerances is exceptionally infrequent. The Forest and Land Management (Scotland) Act 2018 has enabled us to further tighten our controls around ancient and semi-natural woodlands and there is now no volume exemption in native woodlands between 0.1 and 0.5 ha. This has strengthened our protection of these woodland types.

The number of prosecutions Scottish Forestry have undertaken in relation to ancient and native tree felling between 2012 – 2022, broken down by year;

There have been no prosecutions in the time span requested in relation to ancient and native trees. A successful prosecution was achieved in 2019 but in relation to non-native tree species.

The number of occasions where an ancient tree has been felled without the necessary permissions, but where this has not proceeded to prosecution

Nil response for the reasons above. As stated at committee, it is often very difficult to secure a prosecution and more often, we seek an opportunity to agree a management plan with the woodland owner as an alternative to prosecution procedures.

The reasons why such cases have not been prosecuted.

As stated at committee, it is often very difficult to achieve a prosecution as a result of PF availability and mitigating factors or including voluntary reinstatement / replanting for example. This is quite often at very small scale where the public benefit and cost of pursuing a prosecution is marginal. Where on a much larger scale, the presence of ancient and native woodland is established during land searches and surveys; thereby being avoided before felling commences. Through the Forest and Land management (Scotland) Act 2018, we have strengthened our controls by, for example, introducing an option to serve a restocking direction whether we pursue and achieve a prosecution or not. This allows for a quicker and more proactive response.

I am more than happy to answer any further questions and wish the Committee, the petitioners and Ms McAllan, Minister for Environment and Land Reform, well.

Petitioner submission of 13 October 2022

PE1812/AAA: Protect Scotland's remaining ancient, native and semi-native woodlands and woodland floors

We thank the Committee for its research.

We urge the Committee to extend its investigations to build the solid evidence base that may help lead to genuine respect and protection for

Scotland's remaining fragments of natural woodland. Will the Committee consider contacting the two National Park Authorities and pursue the 10 Local Authorities that have failed to provide responses to your enquiries?

Will the Committee also consider requesting Local Authorities and Park Authorities provide information on how many reports they have received from the public about damage to Scotland's woods and how many ancient and native woods have been damaged or lost to development with and without planning consent?

That the Scottish Government regulator, Scottish Forestry (SF), appears to shift the focus for the absence of any prosecutions on to the Procurator Fiscal (PF) is, we feel, also worthy of further, urgent, investigation by the Committee. How can the PF assess the extent of damage to native woodland if SF does not report it? What percentage of confirmed cases does SF report to the PF?

The submissions from 22 Scottish Local Authorities and SF should leave the Committee in no doubt why Scotland continues to rank as one of the most nature depleted countries on Earth and how our complacency and over consumption contributes to the 69% average decline of wildlife species across the world since 1972 (Living Planet Index 2022).

Scotland's *paper only* environmental protections sparked our petition in 2020 and the Committee's research has confirmed our deepest fears: Scotland is over exploited and unprotected. As noted in their response, while our Scottish ancient woods and all their biodiversity and beauty quietly fade into history, SF has not pursued one single prosecution for damage or unlicensed felling in Scotland's natural woods in at least 10 years. The Tree Preservation Order systems operated by local authorities appear chaotic, ineffective and demonstrate a shocking lack of shared procedures, record keeping, quality control or evidence of awareness of the pivotal contribution Scotland's unique native woods and veteran trees make to health & wellbeing, economy & tourism, as well as climate & nature.

Our experience is in stark contrast to the evidence provided to the Committee by SF. In just two years we have reported four incidences of damage within a five-mile radius, including two cases of unlicensed

felling in ancient and LEPO (long-established woodlands of plantation origin) woods, one of deliberate fire setting of acres of standing veteran trees and saplings, and one of construction of a mountain bike track in a small, rare ancient bluebell wood designated as Local Area Nature Reserve. We reported these to all relevant statutory bodies, including Police Scotland and Fire Scotland where appropriate and, currently, no action appears to have been taken to prosecute the known perpetrators.

Instead of pursuing prosecution where unlicensed felling has occurred, SF appear content to grant permission for further extensive felling in ancient woodland via their process to create a Woodland Management Plan, including sham community consultations (which we experienced in June this year).

Our own research reveals the general public rarely report incidences of damage and illegal felling because they do not know they can take action, and they fear recriminations from neighbours. Sadly, they also make assumptions that landowners, statutory authorities, and others are operating within the law and are left disenfranchised and powerless to stop the relentless exploitation and decline of our country.

We also wanted to make the Committee aware that since its last consideration of our petition, we have received correspondence indicating that a representative from SF would be in touch to arrange to meet us on site to discuss the spread of self-seeding invasive non-native conifer species from commercial plantations into native woodland. This follows on from the invitation offered by the Minister when she provided evidence on 23 March 2022. Unfortunately, we have yet to hear from SF to arrange this site visit.

Annexe D

Summary of local authority submissions

The Committee wrote to each local authority in Scotland to request the following information:

- The mechanisms in place for reporting a potential breach of a Tree Preservation Order (TPO), including how such information is recorded and analysed.
- The number of potential breaches of TPOs reported to the local authority between 2012-22, broken down by year.
- The number of prosecutions the local authority have undertaken in relation to Tree Preservation Orders (TPO) between 2012 – 2022; broken down by year; and
- The number of occasions where a breach of a TPO has not proceeded to prosecution, and the reasons for not pursuing prosecution.

The Committee received responses from 22 of Scotland's 32 local authorities, links to which are set out below. The Committee also received responses Dundee City Council and Falkirk Council indicating they did not wish to provide a formal response.

The responses show that the procedures for reporting a potential breach of a Tree Protection Order vary. Overall, local authorities received a very small number of reports of potential breaches over the period 2012-2022, with the majority of reports relating to single trees in the built environment.

Edinburgh City Council recorded the highest number of potential breaches (32) over the period between 2012-2022, while three local authorities (Comhairle nan Eilean, Orkney, and Shetlands Councils) responded to say no potential breaches were recorded during this period. A further three local authorities (East Ayrshire, Fife, and Highland Councils) told the Committee that do not record, or hold the information in a way that would enable them to provide this data.

Three local authorities indicated that reported TPO breaches had proceeded to prosecution (one case each in Aberdeen City Council, Midlothian Council and West Lothian Council).

Reasons for not pursuing a prosecution vary, with the most frequent reasons given being proportionality; the likelihood of gaining a successful prosecution; and that prosecution does not provide the mechanism for the replacement of damaged or lost trees. Perth and Kinross Council stated in their response that serving a 'Tree Replacement Notice' can enable "*the ability to secure good replacement planting*".

[PE1812/BB: Moray Council submission of 24 May 2022](#)

[PE1812/CC: Aberdeen City Council submission of 31 May 2022](#)

[PE1812/DD: Aberdeenshire Council submission of 6 June 2022](#)

[PE1812/EE: Shetlands Islands Council submission of 6 June 2022](#)

[PE1812/FF:South Lanarkshire Council submission of 8 June 2022](#)

[PE1812/GG: Perth and Kinross Council submission of 8 June 2022](#)

[PE1812/HH: Fife Council submission of 8 June 2022](#)

[PE1812/II: East Ayrshire Council submission of 8 June 2022](#)

[PE1812/JJ: Dumfries and Galloway Council submission of 17 June 2022](#)

[PE1812/KK: Comhairle nan Eilean Siar submission of 19 July 2022](#)

[PE1812/MM:Midlothian Council submission of 20 July 2022](#)

[PE1812/NN: Orkney Islands Council submission of 21 July 2022](#)

[PE1812/OO: Stirling Council submission of 25 July 2022](#)

[PE1812/PP: South Ayrshire Council submission of 25 July 2022](#)

[PE1812/QQ: East Dunbartonshire Council submission of 26 July 2022](#)

[PE1812/SS: North Ayrshire Council submission of 27 July 2022](#)

[PE1812/TT: East Lothian Council submission of 1 August 2022](#)

[PE1812/UU: Argyll and Bute Council submission of 3 August 2022](#)

[PE1812/WW: Highland Council submission of 9 August 2022](#)

[PE1812/XX: West Lothian Council submission of 12 August 2022](#)

[PE1812/YY: Renfrewshire Council submission of 12 August 2022](#)

[PE1812/ZZ: City of Edinburgh Council submission of 5 October 2022](#)