

PE2131/A: Grant Scottish rivers, including the River Clyde, the legal right to personhood

Scottish Government written submission, 20 January 2025

The Scottish Government does not support the proposals in petition PE2131 calling on the Scottish Parliament to urge the Scottish Government to grant the River Clyde, and potentially other rivers in Scotland, the legal right to personhood by:

- adopting the Universal Declaration on the Rights of Rivers
- appointing a Nature Director to act as a guardian of the River Clyde, with the responsibility for upholding its river rights
- considering whether an alternative mechanism should be established to act for the rights of the river, its inhabitants (human and non-human), and society at large.

The Scottish Government's understanding is that the Universal Declaration on the Rights of Rivers states that all rivers shall possess, at minimum, the following fundamental rights: (1) The right to flow, (2) The right to perform essential functions within its ecosystem (including flooding), (3) The right to be free from pollution, (4) The right to feed and be fed by sustainable aquifers, (5) The right to native biodiversity, and (6) The right to regeneration and restoration. The Declaration calls for the appointment of one or more legal guardians that act solely on behalf of a river, and that rivers shall have their best interests, as determined by their legal guardians, assessed and taken into account by both government and private entities in all actions or decisions that concern such rivers. The Declaration states that all states shall implement these rights in full within a reasonable amount of time.

The Universal Declaration on the Rights of Rivers has no formal legal status. It is unclear whether "adoption" of the Declaration is intended by the petitioners to mean adoption of the principles of the Declaration as a matter of policy, or the implementation of legislation to embody the rights contained in the Declaration in Scots law.

We consider that, however this set of rights was implemented, there would be a need to balance these rights with the rights of existing natural persons (humans) and existing non-natural persons (public authorities, companies and other organisations). It is not clear to what degree the petitioners are considering that the rights they are proposing for rivers would be balanced with other people's rights. For example, it is not clear in what circumstances the right of a river to flood would be seen to take precedence over the rights and interests of communities and businesses that would be flooded.

The petition suggests the appointment of a Nature Director to act as a guardian of the River Clyde. Given the existing policy, legal and organisational provisions, set out below, it is our view that the additional value of such a post would be questionable and the additional costs not merited.

The final point of the petition calls for consideration of whether an alternative mechanism should be established to act for the rights of the river, its inhabitants (human and non-human), and society at large. Whilst not expressly framed in the

language of rights, there are already well-developed policy mechanisms in place that balance the interests of nature, society and the economy.

There is already in place robust legislation with associated regulatory action to protect and improve Scotland's water environment. The Water Environment and Water Services (Scotland) Act 2003 ("the 2003 Act") transposed Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy ("the Water Framework Directive") into Scots law and in doing so established a legal framework for the protection, improvement and sustainable use of the water environment in Scotland. This includes the protection of inland surface waters, transitional waters, coastal waters and groundwater, as well as the promotion of sustainable water use based on a long-term protection of available water resources. The 2003 Act and secondary legislation made under it provide for an integrated approach to the protection of the water environment, including river basin management through the River Basin Management Planning process and the regulation of controlled activities for the purposes of the protection of the water environment. Scottish Ministers are responsible for developing the policy and regulatory framework to support the implementation of the Water Environment and Water Services (Scotland) Act 2003.

In addition to legislation specific to the water environment, our Fourth National Planning Framework (NPF4) is a long-term plan looking to 2045 that guides spatial development, sets out national planning policies, designates national developments and highlights regional spatial priorities. NPF4 was published and adopted in February 2023 following approval by the Scottish Parliament. It is part of the development plan, and so influences planning decisions across Scotland. NPF4 National Development 13 is a national, place-based Mission to make the Clyde an engine of economic success for Glasgow, the city region and Scotland. An ambitious redevelopment programme is being taken forward under Five Missions. This collective, cross-sector effort will bring forward assets and sites that are ready for redevelopment to sustain a range of uses. It will help to repurpose and reinvigorate brownfield land and support local living, improve quality of place, generate employment and support disadvantaged communities, as well as adapting the area to the impacts of climate change.

The Clyde Mission is focused on the River Clyde and the riverside from South Lanarkshire in the east to Inverclyde and Argyll and Bute in the west and focusing on an area up to around 500 metres from the river edge. NPF4 designates as national developments major proposals involving the river and land immediately next to it (up to around 500 metres from the river) along its length, and covering a wide range of development types including larger scale proposals for new residential, redeveloped brownfield land, and new reused or upgraded buildings, port and harbour facilities commercial and industrial developments, and new or upgraded sustainable travel and recreation routes and infrastructure.

The River Basin Management Plan (RBMP) is Scotland's framework for protecting and improving the water environment in the Scotland River Basin District (with separate provision for cross-border planning for the Solway Tweed River Basin District and the Northumbria River Basin District). The RBMP takes an evidence-based approach, and where water bodies are classified as less than "good", sets out a range of planned actions, which must be both proportionate and feasible, for public bodies, industry and land managers in Scotland. The RBMP summarises the state of

the water environment; pressures affecting the quality of the water environment where it is in less than good condition; and actions to protect and improve the water environment. For example, where pressures from combined sewerage overflows are identified, this informs Scottish Water's targeted programme of investment to improve the performance of the sewerage system to reduce the impact on the water environment. SEPA is responsible for preparing the RBMP which is then approved by the Scottish Ministers. The RBMP is required to be reviewed and updated every six years. SEPA has published a statement which sets out the steps it will take to engage stakeholders in reviewing and updating the RBMP for Scotland over the next three years. SEPA's statement is available here: [SEPA | River Basin Management Planning in Scotland, Statement of Consultation Steps](#).

Actions through the River Basin Management process and the Scottish Government's investments over the last 15-20 years have led to significant improvement in the overall status of Scotland's water bodies including an overall marked improvement in the water quality of the Lower River Clyde. 85% of Scotland's rivers is assessed by SEPA as having a 'high' or 'good' classification for water quality – up from 82% in 2014. Further feasible improvements in sewerage systems, actions on diffuse pollution and improvements to the wider catchment areas, will all contribute to protect the status of the natural environment of the River Clyde and tributaries such as the River Kelvin and White Cart Water.

In summary, the Scottish Government's view is that granting one or more rivers legal personhood is not necessary and would have unpredictable results, particularly as it would be a novel development in Scots law. The objective to improve the freshwater environment is recognised as a valuable goal in its own right and one that is addressed by the current legislative and regulatory framework. It is unclear how, by itself, granting legal personhood to one or all of Scotland's rivers would address the underlying complex causes of water quality issues, and could lead to an allocation of scarce financial resources in ways contradictory to either overall environmental or broader Government priorities. The current processes to identify budgetary priorities with Parliamentary scrutiny are an appropriate democratic process for these key decisions.

Environment and Forestry Directorate