

## Consultation Document – Proposals to Amend Scottish Government Policy on the Protection Afforded to Certain Ramsar Features

### Background

1. The International Convention on Wetlands of International Importance ('Ramsar Convention') was adopted in Ramsar, Iran in February 1971 and came into force in December 1975. The United Kingdom Government is signatory to the Convention, but as biodiversity is a devolved matter, provisions for site protection and management are the responsibility of Scottish Government. There are currently 51 Ramsar sites in Scotland, supporting 284 Ramsar natural features (i.e. wetland habitats or bird populations).

2. In Scotland, statutory protection of natural heritage sites is delivered primarily through designation either as a Site of Special Scientific Interest (SSSI) or as a Special Area of Conservation / Special Protection Area (European site) under the [Nature Conservation (Scotland) Act 2004 and The Conservation (Natural Habitats, &c.) Regulations 1994 (Habitats Regulations) respectively.

3. There is no specific, separate legislative protection for Ramsar features in Scotland or the wider UK. Rather, Ramsar sites are identified and designated alongside the underpinning SSSI or European site designations. The Scottish Government policy position for the protection of Ramsar natural features in land use planning and licencing decision making<sup>1</sup>. This has been taken forward in National Planning Framework 4 (NPF4), which says:

*Policy 4c) All Ramsar sites are also European sites and / or Sites of Special Scientific Interest and are extended protection under the relevant statutory regimes*

4. In England and Wales, the protection mechanism for Ramsar natural features is similarly derived from the underpinning protected area (SSSI or European site). However, the National Planning Policy Framework in England and Wales stipulates that both European sites and Ramsar sites should be treated as 'habitats sites' for the purpose of assessing the effects of plans or projects which may have an adverse effect on them. This effectively means that Ramsar features are treated as though they are European sites for the purposes of Habitats Regulations Appraisal.

5. To implement a similar policy position in Scotland to that in England and Wales will require:

- The development of Conservation Objectives for all Ramsar natural features which have been identified in the site citations to feed in to the Habitats Regulations process.
- Provisions of Guidance for Planning/Consenting/Licencing Authorities of the considerations they must take in determining plans or projects which may have an adverse impact on Ramsar sites before giving consent.

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<sup>1</sup> Implementation of Scottish Government policy on protecting Ramsar sites - gov.scot (www.gov.scot)

## **Practical Implications of the Current Policy Position for Ramsar in Scotland**

6. The current position in Scotland means that there is the appearance of a two tier protection system in place for Ramsar natural features depending on whether the underpinning designation is a SSSI or a European site. It can be argued that European sites attract a slightly higher degree of protection through planning, consenting and licencing systems by requiring an appropriate assessment under the provisions of Regulation 48 of the Habitats Regulations if a significant effect on a European site is deemed likely by the consenting / licencing authority (e.g. Planning Authority or SEPA).
7. Such an assessment process under the Habitats Regulations must take explicit account of any likely adverse effect on a European site in combination with other plans or projects – these could be on or off the site itself. For SSSI, the assessment of off-site proposals which could have adverse implications for the protected area is less explicit and could therefore be seen to be at the discretion of the consenting/licencing authority. For instance, in a Planning context, NPF Policy 4c) stipulates that:

*Development proposals that will affect a .....Site of Special Scientific Interest..... will only be supported where:*

*i. The objectives of designation and the overall integrity of the areas will not be compromised; or*

*ii. Any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, environmental or economic benefits of national importance*

8. The practical implication of the current situation is that plans or projects which could have adverse impacts on the same habitat (e.g. inter-tidal mud / sandflats) or species (e.g. barnacle goose) could be assessed in different ways on different Ramsar sites, depending on whether the feature is under-pinned by SSSI or European site. This could cause confusion for the consenting / licencing body (Competent Authorities for the purposes of Habitats Regulations) and / or land managers seeking to take forward land use change on or adjacent to Ramsar sites.
9. In order to secure the equivalent level of protection for all Ramsar features, and to achieve a similar position to the wider UK with respect to Ramsar features, the Scottish Government therefore proposes to introduce new policy such that plans or projects likely to affect any Ramsar site / natural feature will be treated as though it was a European site for the purposes of the Habitats Regulations Appraisal process. We propose this policy should apply to any Competent Authority, as recognised under the Habitats Regulations, including Ministers, government departments, public or statutory undertakers, public bodies or person holding public office. The policy would therefore become a material consideration in land use planning consenting, licencing and other authorisations for land use change.

## **Interaction with existing policy including National Planning Framework 4 (NPF4)**

10. Subject to the consultation responses received, any statement of Scottish Government policy on new or additional protections to be afforded to Ramsar features will be a material consideration in any planning application. To support implementation in practice we will write to all Competent Authorities, including Planning Authorities informing them of the revised policy position.

11. Following adoption of any new policy we will take forward proposed amendments to NPF4 at the next relevant and applicable opportunity.

**Question:**

**Do you agree that all Ramsar natural features should be given the same level of scrutiny when assessing potential effects of any new plan or project by treating all natural features on Ramsar sites in the equivalent way to European sites for the purposes of the Habitats Regulations Appraisal process?**

**Yes**

**No**

**Please provide any comments in support of your response**

We agree that all Ramsar natural features should have the same level of protection as European Sites for the purposes of Habitat Regulation Appraisal; in other words, “that they are offered protection that at least accords with their international status under the UK’s treaty commitments”.<sup>2</sup>

Since Ramsar is an international designation, all qualifying sites and features should be designated as SAC/SPA, including those currently only underpinned by a national designation, i.e. SSSI. This will be much more efficient, particularly as all Ramsar sites in Scotland are already designated as European Sites, aside from [Loch an Duin in Benbecula](#). Therefore, we question whether the proposed policy amendment — requiring the development of Conservation Objectives and guidance for all Ramsar natural features — might be better tackled by utilising the international existing designations of SAC/SPAs and the existing conservation objectives and guidance for each.

We would rather see this gap in protection closed than not, so if the decision is made to take forward the proposed policy amendment, we caution that its implementation should not be overly onerous to NatureScot or Local Authorities. In practice, new conservation objectives could likely simply reiterate the objectives for the underlying European sites. Given how few sites this currently affects, we do not see this as a matter of urgency.

There is also the issue that overlapping designations and non-aligned boundaries can confuse many land managers, including public/gov bodies who look after land. Land managers may then resort to reducing their considerations to the simplest designation they are aware of (often SSSI b/c of Operations Requiring Consent). This is an issue that should be addressed in any guidance.

Regardless of how this gap in protection is addressed, the application of planning policy needs to stem from rigorous assessment which can be assured through good evidence gathering and consultation.

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<https://www.law.ed.ac.uk/sites/default/files/2024-02/Ensuring%20the%20effectiveness%20of%20the%20Marie%20Protected%20Area%20Network%20in%20Scotland.pdf>

Finally, we note that the consultation refers to NPF4, however, many Ramsar sites have a marine component as is mentioned in the National Marine Plan. The proposal will therefore need to be incorporated in NMP2.