

Appendix 12.1

Legislation

Transport Scotland

August 2018



Table of contents

| Chapter | Pages |
|--|-------|
| 1. Introduction | 1 |
| 2. Designated Sites | 1 |
| 3. Protected Species | 2 |
| 4. Relevant Plans and General Biodiversity Legislation | 8 |

1. Introduction

- 1.1.1. This technical appendix sets out a summary of the relevant nature conservation legislation with reference to the designated sites and protected species found within ecological Study Areas, as defined in Environmental Statement (ES) Chapter 12: Ecology and Nature Conservation.

2. Designated Sites

- 2.1.1. Table 2.1 summarises the legislation relating to the designated sites situated within the Study Area.

Table 2.1 Designated Sites

| Site Designation | Legislation | Protection | Guidance |
|--|--|--|---|
| Special Area of Conservation (SAC) Special Protection Area (SPA) Wetland of International Importance (Ramsar site) | The Conservation (Natural Habitats, & c.) Regulations 1994 (as amended) EC Directive on the conservation of natural habitats and of wild fauna and flora (92/42/EEC). EC Directive on the conservation of wild birds (79/409/EEC). Convention on Wetlands of International Importance especially as Waterfowl Habitat 1971 (the Ramsar Convention). | Part 2 of the Habitats Regulations concerns the protection of certain habitats and the habitats of species within European sites. Planning controls are effected through Part 4, Regulation 48 of The Conservation (Natural Habitats, & c.) Regulations 1994 (as amended). | Habitat Regulation Assessment is required before undertaking, or giving consent, permission or other authorisation for a plan or project which is likely to have a significant effect on such a site. Guidance: http://www.snh.gov.uk/protecting-scotlands-nature/protected-areas/international-designations/natura-sites/hra-appropriate-assessment/ |
| Site of Special Scientific Interest (SSSI) | Nature Conservation (Scotland) Act 2004 (as amended). | It is an offence for any person to intentionally or recklessly damage the protected natural features of an SSSI. Enhanced protection and management of SSSIs - the provisions place a duty on public bodies for the further conservation and enhancement of SSSIs, provide a new offence whereby third parties can be | Owners and occupiers of land within a SSSI must apply to SNH for consent to carry out certain operations that have been notified to them. The body or office-holder must: consult SNH in relation to the exercise of the function; have regard to any advice given by SNH; and, in exercising |

| Site Designation | Legislation | Protection | Guidance |
|-------------------------------|---|---|--|
| | | convicted for damaging SSSIs, and enable the making of byelaws for the protection of SSSIs. | the function, take reasonable steps to further the conservation and enhancement of the natural feature specified in the SSSI notification, and maintain or enhance the representative nature of any series of sites of special scientific interest to which the SSSI notification contributes. |
| National Nature Reserve (NNR) | Designated under the National Parks and Access to the Countryside Act 1949. | NNRs are underpinned by SSSIs and are therefore protected by the measures detailed above. | |

3. Protected Species

3.1.1. Tables 3.1, 3.2, 3.3 and 3.4 summarise the legislation relating to species recorded during the surveys and also those species for which desk study records were received.

Table 3.1 European Protected Species

| Species | Legislation | Offences | Licensing procedures and guidance |
|---------|---|---|--|
| Bats | The Conservation (Natural Habitats, & c.) Regulations 1994 (as amended) | To deliberately or recklessly: capture, injure or kill bats; harass a bat or group of bats; disturb a bat while it is occupying a structure or place used for shelter or protection; disturb a bat while it is rearing or otherwise caring for its young; obstruct access to a breeding site or resting place, or otherwise deny use of the breeding site or resting place; disturb a bat in a manner that is, or in circumstances which are, likely to significantly affect the local distribution or abundance of the species to which it belongs; or in circumstances which are, likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young. To damage or destroy a breeding site or resting place of such an animal [note that | Licences issued for development by Scottish Natural Heritage (SNH). Licence from SNH is required for surveys (scientific purposes) that would involve disturbance of bats or entering a known or suspected roost site. Guidance documents: Bat Workers Manual (JNCC 2004) Bat Surveys: Good Practice Guidelines (BCT 2012) http://www.snh.gov.uk/protecting-scotlands-nature/species-licensing/mammal-licensing/bats-and-licensing/ |



| Species | Legislation | Offences | Licensing procedures and guidance |
|--------------------|---|--|---|
| | | this does not need to be deliberate or reckless to constitute an offence]. | |
| Great crested newt | The Conservation (Natural Habitats, & c.) Regulations 1994 (as amended) | To deliberately or recklessly: capture, injure or kill great crested newts; harass a great crested newt or group of newts; disturb a great crested newt while it is occupying a place used for shelter or protection; obstruct access to a breeding site or resting place, or otherwise deny use of the breeding site or resting place; disturb a great crested newt in a manner that is, or in circumstances which are, likely to significantly affect the local distribution or abundance of the species to which it belongs; or in circumstances which are, likely to impair its ability to survive, breed or reproduce; take or destroy the eggs of such an animal. To damage or destroy a breeding site or resting place of such an animal [note that this does not need to be deliberate or reckless to constitute an offence]. | Licences issued for development by Scottish Natural Heritage (SNH). Licences issued for survey, science, research, education and conservation by Scottish Natural Heritage (SNH). Guidance documents: Guidance for trapping Great Crested Newts (<i>Triturus cristatus</i>) (SNH) http://www.snh.org.uk/pdfs/licences/B35055.pdf Great Crested Newt Mitigation Guidelines (English Nature 2001) http://www.snh.gov.uk/protecting-scotlands-nature/protected-species/which-and-how/amphibians-reptiles/ |
| Otter | The Conservation (Natural Habitats, & c.) Regulations 1994 (as amended) | To deliberately or recklessly: capture, injure or kill an otter; harass an otter or group of otters; disturb an otter while it is occupying a structure or place used for shelter or protection; disturb an otter while it is rearing or otherwise caring for its young; obstruct access to a breeding site or resting place, or otherwise deny use of the breeding site or resting place; disturb an otter in a manner that is, or in circumstances which are, likely to significantly affect the local distribution or abundance of the species to which it belongs; or in circumstances which are, likely to impair its ability to survive, | Licences issued for development by Scottish Natural Heritage (SNH). Survey licences are not required for otter, unless an intrusive survey is being undertaken, this includes the use of endoscope and in some instances, camera trapping, depending on the positioning of the trap. Surveys licences are issued by SNH. Guidance documents: http://www.snh.gov.uk/about-scotlands-nature/wildlife-and-you/otters/best-practice/ |

| Species | Legislation | Offences | Licensing procedures and guidance |
|---------|---|---|---|
| | | <p>breed or reproduce, or rear or otherwise care for its young.</p> <p>To damage or destroy a breeding site or resting place of such an animal [note that this does not need to be deliberate or reckless to constitute an offence].</p> | |
| Wildcat | The Conservation (Natural Habitats, & c.) Regulations 1994 (as amended) | <p>To deliberately or recklessly:</p> <p>capture, injure, kill or harass a wildcat;</p> <p>disturb a wildcat in a den or any other structure or place it uses for shelter or protection;</p> <p>disturb a wildcat while it is rearing or otherwise caring for its young;</p> <p>obstruct access to a den or other structure or place wildcats use for shelter or protection or to otherwise deny the animal use of that place;</p> <p>disturb a wildcat in a manner that is, or in circumstances which are, likely to significantly affect the local distribution or abundance of the species or likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young.</p> <p>To damage or destroy a breeding site or resting place of such an animal [note that this does not need to be deliberate or reckless to constitute an offence].</p> | <p>Licenses issued for development by Scottish Natural Heritage (SNH).</p> <p>Guidance documents: http://www.snh.gov.uk/protecting-scotlands-nature/species-licensing/mammal-licensing/wildcats/</p> |

Table 3.2: Protected species (not protected under European legislation)

| Species | Legislation | Offences | Licensing procedures and guidance |
|---------|---|---|---|
| Badger | Protection of Badgers Act 1992 (as amended) | <p>To wilfully: kill, injure, take or attempt to kill a badger.</p> <p>To interfere with a badger sett by intentionally or recklessly causing or allowing:</p> <p>damage to a sett or any part of it;</p> <p>destruction of a sett;</p> <p>sett access to be obstructed, or any entrance of it;</p> <p>a dog to enter a sett.</p> | <p>Licences for development activities involving disturbance or sett interference or closure are issued by Scottish Natural Heritage (SNH).</p> <p>Licences are normally not granted from November to July inclusive because cubs may be present within setts.</p> <p>Guidance documents:</p> |



| Species | Legislation | Offences | Licensing procedures and guidance |
|-----------------------------|--|--|--|
| | | disturbance to a badger when it is occupying a sett. | http://www.snh.gov.uk/protecting-scotlands-nature/protected-species/which-and-how/mammals/badger-protection/ Note: Any snares found should be tagged with an id number. |
| Freshwater pearl mussel | Wildlife and Countryside Act 1981 (as amended) S.5 | To intentionally or recklessly: kill, injure or take a freshwater pearl mussel; damage, destroy or obstruct access to any structure or place used for shelter or protection; disturb when it is occupying a structure or place for that purpose. | Surveys require a licence from Scottish Natural Heritage (SNH). Licences issued for development (for significant economic benefit) from SNH. The continued threat to pearl mussels from illegal activities has made the species a UK wildlife crime conservation priority. Guidance: http://www.snh.gov.uk/protecting-scotlands-nature/protected-species/which-and-how/invertebrates/ |
| Mountain hare Brown hare | The Conservation (Natural Habitats, & c.) Regulations 1994 (as amended) S.3 (Mountain hare only) Wildlife and Countryside Act 1981 (as amended) S.5 | To intentionally or recklessly: kill, injure or take either hare species during their close seasons; | Guidance documents: http://www.snh.gov.uk/protecting-scotlands-nature/protected-species/which-and-how/mammals/hares/ |
| Red squirrel | Wildlife and Countryside Act 1981 (as amended) S.5 | To intentionally or recklessly: kill, injure or take a red squirrel; damage, destroy or obstruct access to any structure or place which a red squirrel uses for shelter or protection (a drey); disturb a red squirrel when it is occupying a structure or place for that purpose. | A development licence can be obtained from Scottish Natural Heritage (SNH). Guidance documents: http://www.snh.gov.uk/protecting-scotlands-nature/species-licensing/mammal-licensing/squirrels/ |
| Reptiles: Adder | Wildlife and Countryside Act | To intentionally kill or injure any common reptile species. | No licence is required. However, an assessment for the potential of a site to |



| Species | Legislation | Offences | Licensing procedures and guidance |
|----------------------------|--|--|--|
| Common lizard Slow worm | 1981 (as amended) S. 5. | | support reptiles should be undertaken prior to any development works which have potential to affect these animals. |
| Pine marten | Wildlife and Countryside Act 1981 (as amended) S.5 | To intentionally or recklessly: kill, injure or take a wild pine marten; damage, destroy or obstruct access to any structure or place used for shelter or protection (a nest or den)*; disturb when it is occupying a structure or place for that purpose*. * unless this happens in a dwelling-house. i.e. if a pine marten builds a den in a house (usually a roof-space). | Licence for development obtained through Scottish Natural Heritage (SNH). Must show significant social, economic or environmental benefit. Licences also available for pine marten predation. Guidance documents: http://www.snh.gov.uk/protecting-scotlands-nature/species-licensing/mammal-licensing/pine-martens/ |
| Water vole | Wildlife and Countryside Act 1981 (as amended) S.5 | To intentionally or recklessly: damage, destroy or obstruct access to a water vole burrow; disturb a water vole whilst it is occupying its burrow. | Only partial protection under the Act in Scotland. Proposed for full protection under review. Because water voles are only partially protected in Scotland, there is no offence under the Wildlife and Countryside Act of possession of water voles or parts of water voles. This means that the water vole's places of shelter or protection are protected, but not the animals themselves. A development licence can be obtained from Scottish Natural Heritage (SNH) for social, economic or environmental reasons. Guidance documents: The Water Vole Conservation Handbook, 3rd Edition (2011) R. Strachan & T. Moorhouse, Wildlife Conservation Research Unit, Oxford. The Water Vole Mitigation Handbook (2016) M Dean, R Strachan, D Gow & R Andrews, The Mammal Society, London. http://www.snh.gov.uk/protecting-scotlands-nature/species- |



| Species | Legislation | Offences | Licensing procedures and guidance |
|---------|-------------|----------|--|
| | | | licensing/mammal-licensing/shrew-vole/ |

Table 3.3: Birds

| Species | Legislation | Offences | Licensing procedures and guidance |
|---------|--|--|---|
| Birds | Wildlife and Countryside Act 1981 (as amended) S.1 | To intentionally or recklessly: kill, injure or take a wild bird; obstruct or prevent any wild bird from using its nest; take, damage, destroy or interfere with a nest of any wild bird whilst it is in use or being built. For schedule 1 species it is an offence to intentionally or recklessly: take or destroy an egg of any wild bird; disturb any wild bird 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; harass any wild bird. | No licences are available to disturb any birds in regard to development. Licences are available in certain circumstances to damage or destroy nests, but these only apply to the list of licensable activities in the Act and do not cover development. General licences are available in respect of 'pest species' but only for certain very specific purposes e.g. public health, public safety, air safety. Guidance http://www.snh.gov.uk/protecting-scotlands-nature/protected-species/which-and-how/birds/ |

Table 3.4: Plants

| Species | Legislation | Offences | Licensing procedures and guidance |
|--|--|---|---|
| Plants Nationally protected species | Wildlife and Countryside Act 1981 (as amended) S.13 (Schedule 8) | To intentionally or recklessly pick, uproot or destroy any wild plant on Schedule 8. | No licence is required for survey. Licences can be issued by Scottish Natural Heritage for specific purposes only. There is no provision for licensing development operations under the Wildlife & Countryside Act 1981 (as amended). |
| Invasive species e.g. Japanese knotweed, hybrid knotweed, giant knotweed, | Wildlife and Countryside Act 1981 (as amended) S.14 | To plant a plant in the wild at a place outwith its native range, or otherwise cause a plant to grow in the wild at a place outwith its native range. | Any contaminated soil or plant material is classified as controlled waste and should be disposed of in a suitably licensed landfill site, accompanied by appropriate Waste Transfer documentation, and must comply with section 34 of the |



| Species | Legislation | Offences | Licensing procedures and guidance |
|---|-------------|----------|---|
| giant hogweed, rhododendron, Himalayan balsam | | | Environmental Protection Act 1990. Guidance documents: Native range and in the wild are defined in Code of Practice on Non-Native Species (Scottish Government 2012) The Knotweed Code of Practice (Environment Agency, 2013 version 3) Managing Invasive Non-native Plants (Environment Agency 2010) |

4. Relevant Plans and General Biodiversity Legislation

- 4.1.1. Details of relevant planning policies are provided in ES Chapter 19: Policy and Plans. This includes details of the Scottish Planning Policy (SPP): Valuing the Natural Environment and Planning Advice Note (PAN) 60: Planning for Natural Heritage. Summaries of legislation relating to biodiversity and details of the relevant biodiversity action plan (BAP) are provided in Table 4.1 below.

Table 4.1. Biodiversity Legislation and Plans

| Legislation/Policy | Protection | Guidance |
|--|--|--|
| Nature Conservation (Scotland) Act 2004 | A duty to further the conservation of biodiversity was placed on all public sector bodies in Scotland in 2004. This biodiversity duty is about connecting people with the environment and managing biodiversity in the wider environment, not just in specific protected sites. Duty on every public body to further the conservation of biodiversity. Scottish Ministers to designate one or more strategies for the conservation of biodiversity as the Scottish Biodiversity Strategy, and to publish lists of species of flora and fauna and habitats of principal importance. | The Scottish Biodiversity List (SBL) is a list of animals, plants and habitats that Scottish Ministers consider to be of principal importance for biodiversity conservation in Scotland. The SBL was published in 2005 and revised in 2013 to satisfy the requirement under Section 2(4) of The Nature Conservation (Scotland) Act 2004. The purpose of the list is to help public bodies carry out their Biodiversity Duty by identifying the species and habitats which are the highest priority for biodiversity conservation in Scotland. |
| The Wildlife and Natural Environment (Scotland) Act 2011 | The Wildlife and Natural Environment (Scotland) Act 2011 introduced a requirement for all public bodies to make publicly available a report on their compliance with biodiversity duty. | Full SBL list: http://www.scotland.gov.uk/Topics/Environment/Wildlife-Habitats/16118/Biodiversitylist/SBL |



| Legislation/Policy | Protection | Guidance |
|--|---|----------------|
| Biodiversity Action Plan (BAP) Inverness and Nairn 2004 | No specific legislation, unless it is also a species or habitat of principal importance as described above. | Not Applicable |

