Scottish Government Policy for proposed SACs and proposed SPAs

In Scotland, a proposed Special Area of Conservation (pSAC) is a site that has been approved for consultation by the Scottish Government but has yet to be submitted to the European Commission. A proposed SPA (pSPA) is a site that has been approved for consultation by the Scottish Government but is not yet classified.

The Scottish Government has a policy of protecting such sites as if they were designated. This policy is set out in paragraphs 207 to 210 of Scottish Planning Policy. The UK Government has a similar policy\(^1\) which applies in relation to reserved matters\(^2\) in Scotland.

The legal protection afforded to designated European sites\(^3\) is set out in the Conservation (Natural Habitats, &c.) Regulations 1994 as amended (‘the Habitats Regulations’), or for reserved matters, the Conservation of Habitats and Species Regulations 2017 (the ‘2017 Regulations’).

Accordingly, when a plan or project has the potential to affect a pSPA or pSAC, competent authorities should apply the procedural requirements of Regulation 48 of the Habitats Regulations or, with respect to reserved activities, regulation 63 of the 2017 Regulations.

This means that the competent authority should:

- determine whether the proposal is directly connected with or necessary to site management for conservation; and, if not,
- determine whether the proposal is likely to have a significant effect on the site either individually or in combination with other plans or projects; and, if so, then
- make an appropriate assessment of the implications (of the proposal) for the site in view of that site’s conservation objectives

(This consideration is commonly known as Habitats Regulations Appraisal (HRA) and extends where appropriate to plans or projects outwith the boundary of the site in order to determine their implications for the interests protected within the site.)

If significant effects are unknown or likely, the competent authority can only agree to the proposal if it can be ascertained by means of the appropriate assessment that the proposal will not adversely affect the integrity of the site and having first consulted and had regard to any representations made by SNH.

---

2. Reserved matters (within the meaning of Schedule 5 of the Scotland Act 1998) include: activities consented under sections 36 or 37 of the Electricity Act 1989; activities consented under the Pipelines Act 1962; matters related to the exploration for, and exploitation of, deposits of oil and natural gas; and matters related to defence of the realm.
3. In Scotland, European sites are defined in regulation 10 of the Habitats Regulations and include candidate SACs, designated SACs and classified SPAs.
If it is not possible to ascertain that the proposal will not adversely affect the integrity of the site and there are no alternative solutions, the following options are available for consideration in exceptional cases:

**(i) for sites where no priority habitat is affected**

The proposal can only be allowed to proceed if there are imperative reasons of overriding public interest, which in this case can include those of a social or economic nature. If you propose to approve the plan on the grounds of imperative reasons of overriding public interest then regulation 49 (or regulation 64, as modified by regulation 67(3)(c), of the 2017 Regulations) states that you must inform Scottish Ministers (or the Secretary of State) and you must not issue approval for a period of 21 days after receipt by Scottish Ministers (or the Secretary of State) unless notified otherwise.

If proposals are allowed to proceed in accordance with regulation 49 (or regulation 64, as modified by regulation 69(3)(c), of the 2017 Regulations) then it should be noted that regulation 53 (or regulation 68, as modified by regulation 69(3)(c), of the 2017 Regulations) requires that Scottish Ministers (or the Secretary of State) shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

*Or (ii) for sites where a priority habitat is affected*

The proposal can only be allowed to proceed if there are imperative reasons of overriding public interest. As the site is identified for a priority habitat, reasons of overriding public interest can relate only to human health, public safety, beneficial consequences of primary importance for the environment or other reasons subject to the opinion of the European Commission (via the Government). If you propose to approve the plan on the grounds of imperative reasons of overriding public interest then regulation 49 (or regulation 64, as modified by regulation 69(3)(c), of the 2017 Regulations) states that you must inform Scottish Ministers (or the Secretary of State) and you must not issue approval for a period of 21 days after receipt by Scottish Ministers (or the Secretary of State) unless notified otherwise.

If proposals are allowed to proceed in accordance with regulation 49 (or regulation 64, as modified by regulation 69(3)(c), of the 2017 Regulations) then it should be noted that regulation 53 (or regulation 68, as modified by regulation 69(3)(c), of the 2017 Regulations) requires that Scottish Ministers (or the Secretary of State) shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

---

*Priority habitats (within the meaning of the Habitats Directive and the Habitats Regulations) which occur as qualifying interests in SACs in Scotland are listed [here](#). Priority habitats are not qualifying interests of SPAs and there are no European sites designated for any priority species in Scotland.***

*Scottish Ministers are the competent authority in relation to considerations under regulations 49 and 53 of the 1994 Habitats Regulations. Scottish Ministers are also the appropriate authority in relation to regulations 64 to 68 of the 2017 Regulations for activities consented under sections 36 or 37 of the Electricity Act 1989 and activities consented under the Pipelines Act 1962. For reserved matters other than Electricity and Pipelines, the appropriate authority in relation to these provisions is the Secretary of State (Westminster).***