



Protected Areas Committee and Scientific Advisory Committee Expert Panel - Terms of Reference Review
28 October 2020

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| Purpose: | Endorsement |
| How does this link with our corporate priorities of improving biodiversity or delivering nature-based solutions to climate change | <p>The Protected Areas Committee (PAC) directly contributes towards corporate priorities by providing endorsement, decision or discussion of work on NatureScot Outcomes.</p> <p>The Scientific Advisory Committee (SAC) Expert Panel provides scientific advice to NatureScot when requested, particularly on novel or contentious work, ensuring that our work is well informed by the current state of knowledge.</p> |
| Summary: | <p>There is a periodic requirement for Committee Terms of Reference (TORs) to be reviewed. The TORs for the PAC were last reviewed in 2018 and so were due for review this year. The Scientific Advisory Committee TORs were reviewed earlier this year and endorsed at the March Board. The TORs for the SAC Expert Panel were inadvertently omitted from this. They have now been reviewed.</p> <p>For the PAC TORs, the main changes made have been to move explanatory text to an annex and to remove text on PAC members abstaining from voting, if they refer business back to the Board. Text on Openness and Transparency has been included.</p> <p>For the SAC Expert Panel terms of reference, the main change has been to clarify the period of appointment to the panel, to bring it in line with that for SAC members.</p> |
| Actions | Board are asked to review the revised documents and highlight any queries. |
| Recommendations: | Board are asked to endorse the terms of reference. |
| Report Author(s): | Sarah Hutcheon |
| Sponsor: | Sally Thomas |
| Appendices: | Protected Areas Committee Terms of Reference Scientific Advisory Committee Expert Panel Terms of Reference |

TERMS OF REFERENCE - PROTECTED AREAS COMMITTEE

1. The NatureScot Board has established a Protected Areas Committee.

The role of the Protected Areas Committee

2. The Protected Areas Committee acts on behalf of the Board to:
 - Exercise the functions of the Board in relation to protected areas decisions as set out in:
 1. The Nature Conservation (Scotland) Act 2004 for SSSIs;
 2. Section 2 of the Public Services Reform (Scotland) Act 2010;
 3. The Guidelines for the Selection of Special Protection Areas and Special Areas of Conservation (together forming the Natura designations); and
 4. The Marine (Scotland) Act 2010, for Marine Protected Areas.
3. In carrying out these functions, the main role of the Protected Areas Committee is to:
 - Consider scientific representations on the notification or denotification of a SSSI and decide whether to confirm, or not, the notification or denotification of a SSSI;
 - Confirm that the Scientific Advisory Committee has scrutinised the scientific evidence supporting European site¹, MPA and other related protected area advice to Ministers, and that officials have adequately taken on board their advice;
 - Assess the risks associated with decisions or advice on protected area matters and ensure that NatureScot has the appropriate steps in place to mitigate or manage them.

The Protected Areas Committee may also be called upon to hear representations in the case of an appeal for or against a notification or de-notification. The PAC may wish to take advice from the Scientific Advisory Committee.

4. The functions of the Protected Areas Committee are delegated from the full NatureScot Board. The Protected Areas Committee can, at any time, decide that an item of business warrants consideration by the full Board.
5. The Protected Areas Committee also has a role to provide strategic guidance on policy issues that impact on wider protected areas matters, both on land and at sea. In carrying out this role the Committee may commission reports or other documents from NatureScot staff or others, and may arrange workshops or other events to cover relevant topics.

¹ Prior to leaving the EU these sites were known as Natura sites

Responsibilities

6. The Protected Areas Committee acts as a sub-Committee of the NatureScot Board, with its delegated authority. It has responsibility in four main areas of NatureScot's work in relation to Protected Areas, these being:
 - Sites of Special Scientific Interest (SSSI)
 - Special Areas of Conservation (SAC)
 - Special Protection Areas (SPA)
 - Marine Protected Areas (MPA)

It can also approve advice on behalf of the Board on wider protected area matters.

Sites of Special Scientific Interest

7. The Protected Areas Committee is responsible for managing the process to deal with representations made as a result of:
 - The notification of Sites of Special Scientific Interest (SSSI) under section 3 of the Nature Conservation (Scotland) Act 2004;
 - Extensions to existing SSSIs under section 5 of the 2004 Act;
 - Denotification of all or parts of existing SSSIs under section 9 of the 2004 Act;
 - The "10 Year Rule". Under section 21 of the 2004 Act NatureScot is obliged to consider any valid scientific representation made by the owner or occupier of land within a SSSI if this is made at least 10 years after the original notification, or 10 years from any previous such referral.

See Annex 1 for further detail on SSSI processes and the role of the PAC.

Special Protection Areas (SPAs) and Special Areas of Conservation (SACs)

8. SPAs are classified under Directive 2009/147/EC (the codified version of Directive 79/409/EEC on the conservation of wild birds (the Birds Directive)). SACs are designated under Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive). Collectively these sites are known as European sites. In Scotland the responsibility for designating SACs lies with the Scottish Government, using selection criteria based on Annex 3 of the Habitats Directive. SPA selection is based on UK guidelines, agreed by the UK Government and published by JNCC ("The Birds Directive Selection Guidelines for Special Protection Areas"). Scottish Ministers authorise NatureScot to consult on sites and are responsible for classifying sites following consultation.

9. NatureScot is required to advise the Scottish Government on the suitability of sites that are put forward as possible European sites. This advice should include an assessment of whether these sites are those that best satisfy the selection criteria. The Protected Areas Committee's role is to consider and approve this advice to the Scottish Government.
10. In particular the Protected Areas Committee will be asked to confirm that staff have sought and adequately considered the advice on the Scientific Advisory Committee on the areas put forward. These areas will be selected on the basis of the most robust science available with appropriate boundaries and therefore represent the best sites for the proposed qualifying interests.
11. As NatureScot's role is to offer advice to Scottish Government on which they take decisions about the sites to consult on, the Protected Areas Committee will not be required to assess any representations or comments from owners or occupiers of the land in question or from members of the public.

Marine Protected Areas (MPA)

12. The Marine (Scotland) Act 2010 creates powers for the Scottish Ministers to designate MPAs in Scottish territorial waters for 'nature conservation', 'demonstration and research' and 'historic' interests. Third parties can also put forward proposals to be considered alongside those developed by NatureScot and JNCC.
13. MPAs are a key part of the Scottish Government's strategy for marine nature conservation and there is a duty on Ministers to designate sufficient new MPAs to ensure that the resultant network (which will encompass existing European Marine Sites and possibly also other types of areas which provide natural heritage benefits), fulfils obligations under OSPAR and the Marine Strategy Framework Directive.
14. The Scientific Advisory Committee reviews the MPA selection process applied by NatureScot and confirms that the principles of the selection guidelines, published by Scottish Government, have been followed. The detailed scientific cases for individual MPA proposals are quality assured and the data confidence assessments reviewed by a sub-group of the Scientific Advisory Committee. The Protected Areas Committee verifies that staff have adequately considered the advice of the Scientific Advisory Committee.
15. As NatureScot's role is to offer advice to Scottish Government on which they take decisions about the sites to consult on, the Protected Areas Committee will not be required to assess any representations or comments from owners or occupiers of the land in question or from members of the public during the consultation.

Procedures for advice to Ministers

16. Some papers may be dealt with in closed session, in line with the guidance at paragraph 22-24 of the Standing Orders for Formal Meetings of the NatureScot Board. This is likely to apply when the Protected Areas Committee is asked to approve NatureScot's advice to the Scottish Government on future European sites or MPAs. Staff should be in attendance to make a formal record of the decisions.

Membership

17. The membership is approved by the NatureScot Board. The Protected Areas Committee comprises a standing group of a Chair and 3 other Members who bring a mix of expertise covering a wide range of disciplines, all of whom are Members of the NatureScot Board.

Meetings

18. The Committee holds meetings as and when required according to the casework arising and this is likely to be no more than four times per year.

19. The Chair of the Committee may decide that some decisions will be made by correspondence, in line with the Guidance at paragraph 35 of the Standing Orders for Formal Meetings of the NatureScot Board. This may be required in order to keep an SSSI notification process within the statutory timescale allowed, or where a procedural decision is required during the notification of an SSSI that is viewed as being uncontroversial.

20. The Standing Orders for meetings of the Board of NatureScot set out in the 'Ways of Working Guidance' apply as appropriate to the meetings of the Protected Areas Committee. In addition:

- NatureScot Directors may be in attendance at the meetings.
- The Protected Areas Committee is able to take advice from whoever it feels is appropriate.
- If a case is referred to NatureScot Board for the confirmation of a SSSI notification the Protected Areas Committee Members will be able to explain any issues and make recommendations as required.
- In the event of a hearing to discuss scientific representations with objectors, the decision of the Protected Areas Committee must be made only by those members present at the hearing. Staff should be in attendance at any decision making meeting to make a formal record.

21. In addition to the formal role of the committee set out above, members may be invited individually or collectively to participate in the development and thinking on Protected Areas work.

Quorum

22. The Quorum of the Protected Areas Committee is a majority (that is, more than half) of currently appointed members, including the person chairing the meeting. Where a meeting is unlikely to be Quorate, every effort will be made to reschedule the meeting to allow for a Quorum. Where a meeting, or an individual item of business (owing to Conflict of Interest declarations or any other reason) is not Quorate no decision will be taken. The Protected Areas Committee may either defer the decision until Quorum can be reached, or the item can be referred to the NatureScot Board for a decision.

Openness and Transparency

23. Access to the Open session meeting agenda will be available to the public 5 days prior to each meeting via www.nature.scot. Open Session meeting papers will also be available to download from the website 5 days prior to the meeting. Open session minutes will also be made available on the website once confirmed as true and accurate records by the Chair and Committee members.
24. Notice of planned attendance by the public to open session items must be provided 24 hours prior to any PAC meeting by e-mailing lynne.clark@nature.scot Members of the public cannot participate in discussions or decisions of the PAC during the meeting.

Reporting

25. The Protected Areas Committee will provide the Board with an annual report (an Information Paper) summarising its conclusions from the work it has done during the year. Should the Protected Areas Committee Chair wish to have a discussion with the Board at any time then they will seek the NatureScot Chair's approval for a separate item on the Board agenda.

Dignity at work

26. NatureScot is an equal opportunities employer and is committed to treating every member of staff with dignity and respect. The individual and corporate responsibilities outlined in our Dignity at Work Policy extend to Board & Committee members and incorporates duties under the Equality Act 2010.

Greening and carbon management

27. Lower carbon ways of working include less work travel, making better choices of ways to travel, reducing paper use and participating in recycling of waste. In the interests of reducing its carbon footprint, where possible NatureScot will utilise Video/telephone Conferencing equipment to reduce travel distance of attendees.

Secretariat

28. NatureScot staff provide the secretariat to the Protected Areas Committee.

Review

29. These terms of reference are reviewed every two years. Date of adoption of revised Terms of Reference: October 2020.

Annex 1: Background to SSSI processes and the role of the PAC

1. The key piece of legislation in relation to SSSIs is the Nature Conservation (Scotland) Act 2004. As noted in the terms of reference though, Section 2 of the Public Services Reform (Scotland) Act 2010 is also relevant. This is because the PAC fulfils the functions of the now dissolved Advisory Committee on Sites of Special Scientific Interest (ACSSSI), whose duties transferred to the NatureScot Board in enactment of Section 2 of the Public Services Reform (Scotland) Act 2010. This relates solely to considering scientific representations in relation to Sites of Special Scientific Interest (SSSIs).
2. The process for the notification of new SSSIs and extending existing SSSIs including the Protected Areas Committee's role is described below:
 - Where NatureScot considers that land is of special interest by reason of any of its natural features then it must notify that fact to the interested parties. This duty is fulfilled by the Senior Leadership Team, which authorises staff to make the notification.
 - There follows a period of at least 3 months during which the notified parties can make written representations to NatureScot.
 - The Protected Areas Committee is responsible for assessing each representation before passing on recommendations to the Board on how to proceed. The Board is responsible for deciding whether to confirm the notification, with or without modifications, having considered recommendations from the Protected Areas Committee.
 - The Committee's assessment will involve seeking advice from staff and members of the Scientific Advisory Committee on the scientific merits of each representation and inviting objectors to discuss their representations with the Committee.
 - The Protected Areas Committee can listen to any non-scientific objections, although these objections cannot over-ride the scientific case for notification. Socio-economic issues must be considered by staff when responding to applications from owners and occupiers to carry out operations requiring consent.
 - If a notification does not result in any representation on scientific grounds, the Protected Areas Committee may confirm it instead of the Board. The Committee may choose to refer any such notification to the Board if the consultation reveals significant non-scientific issues.
 - The notification must be confirmed within 12 months of having been made or within 18 months if an assessment of any scientific representations has been required.

- At all stages the Protected Areas Committee has an important role to play in satisfying itself that the organisation's policies and procedures in relation to SSSI notification have been followed.
3. The process for denotifying all or part of a SSSI is described below:
- Approval to formally denotify all or part of a SSSI is given to staff by the Director of Nature and Climate Change.
 - The owners of the land to be denotified are given 3 months in which to make written representations to NatureScot. Any unresolved objections must be considered by NatureScot.
 - The Protected Areas Committee is responsible for assessing each representation and deciding whether to confirm the de-notification. This will involve seeking advice from staff and the Scientific Advisory Committee on the scientific merits of each representation and inviting objectors to discuss their representations with the Committee. The protected status of the SSSI will remain until the denotification is confirmed.
 - The Director of Nature and Climate Change can approve the confirmation of the denotification if this does not attract any scientific representations. They may, at their discretion, refer significant cases to the Protected Areas Committee for the decision to be made.
 - The denotification must be confirmed within 12 months of having been made or within 18 months if an assessment of any scientific representations has been required.
4. The process for the review of SSSIs under Section 21 of the 2004 Act (the "10 year rule"), and the Protected Areas Committee's role is described below:
- Under section 21 of the 2004 Act NatureScot must consider any valid scientific representation and/or appeal made by the owner or occupier of land within a SSSI. This must have been made at least 10 years after the original notification, or 10 years from any previous representation. If this cannot be resolved by staff and the Director of Nature and Climate Change, the Protected Areas Committee is responsible for assessing any representation received and deciding on the appropriate course of action. This may include instructing staff to denotify all or part of the SSSI.
 - Staff or the Protected Areas Committee should act to review the SSSI in a reasonable timescale and communicate this to the owner/occupier or their agent.
 - The Committee's assessment must be based on the case for retaining the designation against the SSSI Selection Guidelines. This will involve seeking advice from staff and members of the Scientific Advisory Committee or others where

relevant on the scientific merits of each representation. The objector(s) can be invited to discuss their representations with the Committee.

- The Protected Areas Committee is responsible for assessing the evidence presented to it before coming to a view on the review, or passing on recommendations to the Board on how to proceed should the case be particularly contentious and the Protected Areas Committee deem it necessary to do so.
- The Protected Areas Committee can listen to any non-scientific objections, although these objections cannot affect the scientific case for decision on the review.

Scientific Advisory Committee 'Panel of Experts' Terms of Reference

Roles and Responsibilities of the SAC 'Expert Panel'

1. The role of a panel member may cover any, or all, of the following, on request from NatureScot:
 - **Advice:** provide necessary advice on scientific matters, especially in relation to novel or contentious work. This advice may be sought over the life-cycle of a project (start-up to final reporting).
 - **Peer Review:** to review the quality of NatureScot research reports.
 - **Research Theme Review:** contribute to in-depth investigations of specific research themes that underpin NatureScot's programmes of work. These reviews are designed to ensure that NatureScot's advice is based on robust science and draws on expertise from appropriate sources. Some of this work involves working as a member of a SAC sub-group (which always has two Committee members, and may involve experts outwith the Committee/Expert Panel).

Remuneration

2. Members of the Expert Panel will receive a day rate (pro-rata) when asked to provide any of the services in paragraph 1 above. In addition, NatureScot will cover reasonable expenses (including travel, accommodation, childcare and carer expenses) incurred as a result of the work. NatureScot rates will apply.

Membership

3. Membership of the Expert Panel is not a guarantee of work, as contributions will be dictated by operational requirements at any given time. Panel members will be approached in advance and asked if they can contribute to a particular issue within their specific area(s) of expertise. Occasionally, contributions may be sought at short notice.
4. Membership will usually last for three years (with the possibility of extension of appointment, with the maximum overall duration of service no more than six years). NatureScot will review the work of the Panel member annually, and reserves the right to terminate membership if work from the member is not required or is not contributing to the requirements under paragraph 1.

Dignity at work

5. NatureScot is an equal opportunities employer and is committed to treating every member of staff with dignity and respect. The individual and corporate responsibilities outlined in our Dignity at Work Policy² extend to Committee/SAC 'Expert Panel' members, and incorporates duties under the Equality Act 2010.

² NatureScot Dignity at work policy can be accessed [here](#).

Greening and Carbon Management

6. Lower carbon ways of working include less work travel, making better choices of ways to travel, reducing paper use and participating in recycling of waste.

Support services

7. The administrative servicing of the Expert Panel is provided by the Executive Office. The scientific servicing of the SAC and the Expert Panel is undertaken by the Director Support Team - Nature and Climate Change. More information about these services can be provided on request.

28 October 2020 (next review date October 2022)