

## **A11.1 Legislative and Policy Framework**

This appendix provides detailed information on the legislative and policy framework relevant to Chapter 11 (Habitats and Biodiversity).

### **1 International Conventions and Directives**

#### **The Convention on Biological Diversity (CBD)**

- 1.1 The Convention on Biological Diversity (CBD) provides a legal framework for biodiversity conservation. Contracting Parties are required to create and enforce national strategies and action plans to conserve, protect and enhance biological diversity. In response to the CBD, the UK Government published the UK Biodiversity Action Plan (UKBAP) (1994), and to compliment the UKBAP, Scotland's Biodiversity Strategy was launched in 2004 (Scottish Executive 2004).
- 1.2 In 2010 the CBD Contracting Parties adopted a revised and updated Strategic Plan for Biodiversity, including the Aichi Biodiversity Targets, for the 2011-2020 period (CBD 2010). The Aichi Biodiversity Targets have five strategic goals, relating generally to addressing biodiversity loss, improving biodiversity status, and enhancing implementation of measures to achieve these goals. Each strategic goal has a number of targets associated with it, giving a total of 20 targets.

#### **The Bern Convention on the Conservation of European Wildlife and Natural Habitats 1979**

- 1.3 The Convention on the Conservation of European Wildlife and Natural Habitats (the Bern Convention 1979) imposes legal obligations on European Union (EU) member States and non-member States (as appropriate) to ensure conservation and protection of wild plant and animal species listed within the appendices to the Convention. Special attention is given to endangered and vulnerable species, including endangered and vulnerable migratory species specified. The convention was adopted in Bern, Switzerland in 1979 and was ratified by the UK in 1982. It was implemented in the UK in 1982 through the Wildlife and Countryside Act (WCA) 1981 (as amended) which was updated and amended in Scotland by the Nature Conservation (Scotland) Act (NCSA) (2004) (as amended).

#### **The Bonn Convention on Conservation of Migratory Species of Wild Animals 1979**

- 1.4 The Convention on the Conservation of Migratory Species of Wild Animals (the Bonn Convention 1979) was adopted in 1979 and came into force in 1985. Signatories work together to conserve terrestrial, aquatic and avian migratory species and their habitats throughout their range by:
- providing strict protection for endangered migratory species (listed in Appendix I of the Convention);
  - concluding multilateral agreements for the conservation and management of migratory species which require or would benefit from international cooperation (listed in Appendix II); and
  - by undertaking cooperative research activities.
- 1.5 The Convention aims to achieve the effective management of migratory species across national or jurisdictional boundaries. In the UK, the legal requirement for the strict protection of Appendix I species is provided by the WCA 1981 (as amended).

#### **European Council Directive (79/409/EEC) 1979 (Birds Directive)**

- 1.6 The European Council (EC) Directive 79/409/EEC on the conservation of wild birds (Birds Directive) (as amended) is the means by which Member States meet obligations under The Bern Convention (1979) and The Bonn Convention (1979). The Directive provides a framework for the conservation of wild birds in Europe, and the management of human interactions with them. Provisions of the Directive include the identification and classification of Special Protection Areas (SPAs) for rare or vulnerable species listed in Annex I of the Directive, as well as for all regularly

occurring migratory species, paying particular attention to the protection of wetlands of international importance (Article 4). The directive was amended in 2009 and became Directive 2009/147/EC on the conservation of wild birds.

#### **European Union Directive (92/43/EEC) (Habitats Directive 1992)**

- 1.7 The EU Directive 92/43/EEC on the conservation of natural habitats and wild flora and fauna (Habitat Directive) is the means by which Member States meet obligations made as a signatory of The Bern Convention (1979). The main aim of the Directive is to promote the maintenance of biodiversity by requiring Member States to take measures to maintain or restore natural habitats and wild species at a favourable conservation status. This is achieved by introducing robust protection for those habitats and species of European importance. Each Member State is required to prepare and propose a national list of sites for evaluation in order to form a European network of Sites of Community Importance. Once adopted, these are designated by Member States as Special Areas of Conservation (SACs).
- 1.8 Article 3 of the Directive requires that the designated sites contribute to a coherent European ecological network of protected sites under the title Natura 2000. In addition, the Article requires that SPAs, which are classified under the Birds Directive, are also included in this network. Member States endeavour to improve the ecological coherence of the Natura 2000 network by maintaining, and where appropriate, developing features of the landscape which are of major importance for wild fauna and flora.

#### **European Council Water Framework Directive (WFD) (2000/60/EC)**

- 1.9 In October 2000, the Water Framework Directive (WFD) 2000/60/EC (2000) (European Commission 2000) was adopted, and came into force in December 2000. It established a framework for community action in the field of water policy. The Directive requires that all inland and coastal watercourses in Europe do not deteriorate from their condition at that time, with an ultimate goal of all waters achieving and maintaining at least Good status. Under the WFD (European Commission 2000), the ecological status of watercourses is now the focus of river management and impact assessment. Transposition into national law occurred through the Water Environment and Water Services (Scotland) Act (WEWS) (2003).

#### **European Council Regulation No 1100/2007/EC establishing measures for the recovery of the stock of European eel**

- 1.10 In response to the decline of European eels, the EU proposed an Eel Management Plan (European Commission 2007); each Member State is required to create separate management plans for each river basin district.

## **2 National Legislation**

#### **The Wildlife and Countryside Act (WCA) 1981 (as amended in Scotland)**

- 2.1 The Wildlife and Countryside Act (WCA) (1981) (as amended in Scotland) is the principal mechanism for wildlife protection in the UK. Its aim is to implement the requirements of The Bern Convention (1979) and the Birds Directive. The statutory designation of Sites of Special Scientific Interest (SSSI) is the main site protection measure in the UK established under the WCA.

#### **The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended in Scotland)**

- 2.2 The Conservation (Natural Habitats, &c.) Regulations (1994) (as amended) transpose the EC Habitats Directive into national law. The Regulations provide for the designation and protection of 'European sites', the protection of 'European protected species', and the adaptation of planning and other controls for the protection of European sites.
- 2.3 Under the Regulations it is an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in the animals listed in Schedule 2 of the Regulations, or to pick, collect, cut, uproot, destroy, or trade the plants listed in Schedule 4. These actions can however be made lawful through the

granting of licences by the appropriate authorities. Licences may be granted for a number of purposes (such as science and education, conservation, preserving public health and safety), but only after the appropriate authority is satisfied that there are no satisfactory alternatives and that such actions will have no detrimental effect on the conservation status of the species concerned.

#### **Nature Conservation (Scotland) Act (NCSA) 2004**

- 2.4 The Nature Conservation (Scotland) Act (2004) places duties on public bodies in relation to the conservation of biodiversity. It also amends and strengthens existing nature conservation legislation and increases protection for SSSIs.
- 2.5 In addition, the Act places a duty on every public body to further the conservation of biodiversity and requires Scottish Ministers to designate one or more strategies for the conservation of biodiversity as Scotland's Biodiversity Strategy (Scottish Executive 2004). It also requires Scottish Ministers to publish a list of habitats and species considered to be of principal importance for biodiversity. The Scottish Biodiversity List (SBL) (Scottish Government 2005) is intended to be a tool for public bodies and an important source of information and guidance for all.

#### **Wildlife and Natural Environment (WANE) (Scotland) Act 2011**

- 2.6 The Wildlife and Natural Environment (WANE) (Scotland) Act (2011) amended a number of other pieces of legislation including the WCA 1981 and the Deer (Scotland) Act 1996. The WANE Act (2011) introduced new wildlife related offences, including 'vicarious liability'. It does the following:
- abolishes the designation of 'areas of special protection' under the WCA 1981;
  - adds further regulation of snaring practice;
  - further regulates invasive and non-native species;
  - ensures that badger licensing is consistent with that of other protected species;
  - amends current arrangements for deer management and deer stalking;
  - strengthens protection of badgers;
  - changes how moor burn can be practised; and
  - makes operational changes to the management of SSSIs.
- 2.7 The Act also changed the approach to dealing with invasive non-native species and aims to prevent the release and spread of non-native animal and plant species into areas where they can cause damage to native species and habitats and to economic interests, ensure a rapid response to new populations can be undertaken, and ensure effective control and eradication measures can be carried out when problem situations arise.
- 2.8 A Code of Practice, issued under new section 14C of the WCA 1981, helps people who manage land containing non-native plants and animals or who are involved in the keeping of such species, to understand their legal responsibilities. It also provides a licensing means to derogate offences against species protected by the WCA 1981 in certain circumstances.

#### **Protection of Badgers Act 1992**

- 2.9 The Protection of Badgers Act (1992) ensures that badgers and their setts are comprehensively protected (as amended by the WANE Act). Under this act it is an offence to wilfully kill, injure, take or attempt to kill a badger. It is also a crime to interfere with a badger sett by intentionally or recklessly causing or allowing damage or destruction to a sett, or any part of it, obstructing a sett or disturbing a badger occupying a sett.
- 2.10 A badger sett is defined in law as any structure or place which displays signs of current use by a badger.

#### **Environmental Protection Act 1990**

- 2.11 The Environmental Protection Act (1990) aims to provide protection and conservation of the natural environment. A number of provisions are set out within this Act that includes provision for the improved control of pollution arising from certain industrial and other processes.

#### **Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003**

- 2.12 The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act (2003) affords protection through a number of orders to which planning authorities must adhere. Under this any person who knowingly takes, injures or destroys; or obstructs the passage of, any smolt, parr, salmon fry or alevin shall be guilty of an offence. Additionally, any person knowingly injuring or disturbing salmon spawn, or disturbing any spawning bed, or any bank or shallow in which the spawn of salmon may be, shall be guilty of an offence.

#### **Water Environment and Water Services (WEWS) (Scotland) Act 2003**

- 2.13 The WEWS (Scotland) Act 2003 implements the WFD in Scotland but it is now augmented by the Controlled Activities Regulations (CAR) as stated below.

#### **Water Environment (Controlled Activities) (Scotland) Regulations (CAR) 2011**

- 2.14 The Water Environment (Controlled Activities) (Scotland) Regulations (CAR) 2011 is the implementation in Scotland of the WFD. The Regulations apply to inland waters and wetlands linking to lochs or rivers (although the regulations may be extended to cover all wetlands).

### **3 National Policy**

#### **Natural Heritage Futures**

- 3.1 Natural Heritage Futures is the vision Scottish Natural Heritage (SNH) has for Scotland aiming to guide sustainable management and use of the natural heritage for Scotland's nature and landscapes towards 2025 (SNH 2016a). It comprises six national prospectuses covering:

- coasts and seas;
- farmland;
- forests and woodlands;
- fresh waters;
- hills and moors; and
- settlements.

- 3.2 Local prospectuses have been developed for twenty-one regions of Scotland. The prospectuses describe what is distinctive to each region, what the vision for the natural heritage is for 2025, and the objectives and actions required to pursue that vision. These objectives and actions are anticipated by SNH to be translated into, for instance, Biodiversity Action Plans (BAPs) and planning frameworks, to promote integrated approaches to natural heritage at the local scale.

- 3.3 The national and local prospectuses were published in 2002 and updated in August 2009. The A96 Dualling Inverness to Nairn (including Nairn Bypass) falls entirely within the Moray Firth natural heritage area (the local prospectus) and has nine objectives (SNH 2002 and 2009) covering a range of topics including improving, restoring or maintaining habitats and the integrity of characteristic terrestrial species.

#### **Biodiversity Action Plans (BAPs) and the UK Biodiversity Framework**

- 3.4 The UKBAP 1994 was the UK's response to the CBD (1992) (paragraph 1.1). The UK Biodiversity Steering Group published individual action plans for priority habitats and some of the UK's most

threatened and endangered species. These Habitat and Species Action Plans (HAPs and SAPs, respectively) were developed to guide conservation action and promote biodiversity.

- 3.5 The UKBAP has now been superseded through a process of devolution to the four countries of the UK (England, Northern Ireland, Scotland and Wales) who developed their own country strategies. The UK Post-2010 Biodiversity Framework (JNCC and Defra 2012) succeeds the UKBAP. It forms the UK Government's response to the new strategic plan of the CBD, agreed in 2010 at a meeting in Nagoya, Japan.
- 3.6 The Framework covers the period from 2011 to 2020 and shows how the work of the four UK countries joins up with work at a UK level to achieve the 'Aichi Biodiversity Targets' and the aims of the EU biodiversity strategy. Most work which was previously carried out under the UKBAP is now focussed at the country level.

### **Scotland's Biodiversity Strategy**

- 3.7 Scotland's Biodiversity Strategy (Scottish Executive 2004) places a duty of care on public bodies to further the conservation of biodiversity in Scotland, the execution of which is implemented through the Local BAPs. The current strategy was revised in light of new International and European agreements, the EU's Biodiversity Strategy for 2020 and the 'Aichi Biodiversity Targets' (Secretariat of the CBD, undated). This new strategy, '2020 Challenge for Scotland's Biodiversity', was published in June 2013 (Scottish Government 2013a, formerly the Scottish Executive).
- 3.8 In 2015, the Scottish Government published 'Scotland's Biodiversity: a route map to 2020' (Scottish Government 2015) which sets out the priority tasks up to 2020 to meet the Aichi Targets. Action is coordinated into six 'Big Steps for Nature', beneath which sit a series of priority projects. Projects include:
- restoration of native woodland;
  - restoration of freshwaters;
  - conservation of priority species; and
  - improving ecological connection.

### **Scottish Biodiversity List (SBL)**

- 3.9 As indicated in paragraph 2.5, the SBL is a list of animals, plants and habitats that Scottish Ministers consider to be of principal importance for biodiversity conservation in Scotland, and was developed to meet the requirements of the NCSA 2004 (SNH 2016b). The list provides a guide to empower decision-makers to further the conservation of biodiversity in Scotland. It was published in 2005 and has since been updated to take account of changes to the UKBAP priorities list. The most recent list was published on 22 April 2013 (Scottish Government 2013b).

### **Local Biodiversity Action Plans (BAPs)**

- 3.10 Local BAPs integrated the conservation measures in the former UKBAP to enhance biodiversity at the local and regional level. They now integrate the various UK and Scottish strategies and plans. LBAPs are implemented through planning policy, identifying habitats and species of particular value or endangerment at the local or regional level.

#### The Highland BAP

- 3.11 The proposed Scheme is covered by the regional Highland BAP (Highland Environment Forum 2015). Published in 2015, the Highland BAP (Highland Environment Forum 2015) seeks to conserve biodiversity by maintaining the natural characteristics of the Highland region up to 2020. It identifies key strategic biodiversity issues in the region and proposes 33 future actions listed under six broad objectives.

- 3.12 The Highland BAP envisages an ecosystem approach to habitat management, moving away from individual species and HAPs (except where absolutely necessary) and the proposed actions reflect this approach.
- 3.13 The Highland BAP has also however highlighted a number of key habitats that are said to support significant numbers of priority species across the Highland region. Actions for these key habitats have been proposed under the six broad objectives.
- 3.14 Within the Highland BAP there are a number of local plans for each of the Highland Council's administrative areas; the Inverness & Nairn LBAP is pertinent to the proposed Scheme (Inverness & Nairn Biodiversity Group 2004).

#### The Inverness & Nairn LBAP

- 3.15 The Inverness & Nairn LBAP (Inverness & Nairn Biodiversity Group 2004) sits under the Highland BAP and seeks to raise awareness of local biodiversity, identifying priority habitats and species of relevance to that area. It included eight general objectives as over-arching themes to guide biodiversity work in the Inverness and Nairn area over the 5-10 years from 2004. As it has not been possible to update the plan, it remains the most up to date document for delivery of biodiversity actions in the area.
- 3.16 The LBAP covers 34 habitats in six broad groups, 26 plants (vascular plants, bryophytes and lichens), 21 mammals, 62 birds and 14 species of fish.

## **4 Other Non-Statutory Guidance**

### **International Union for Conservation of Nature (IUCN)**

- 4.1 The International Union for Conservation of Nature (IUCN) was founded in 1948 following an international conference in France. The IUCN aims to deliver conservation and sustainability at both the global and local level through science, the delivery of conservation projects, and by influencing international environmental conventions, policies and law.
- 4.2 The IUCN has produced the IUCN Red List of Threatened Species™ (IUCN 2015) as a comprehensive and objective global approach to evaluating the conservation status of plant and animal species. The goal of the Red List is to provide information and analysis on the status, trends and threats to species in order to inform and catalyse action for biodiversity conservation. Species are classified into the following categories according to their extinction risk: Extinct; Extinct in the Wild; Critically Endangered; Endangered; Vulnerable; Near Threatened; Least Concern; and Data Deficient.

### **Scottish Planning Policy (SPP)**

- 4.3 The Scottish Planning Policy (SPP) (Scottish Government 2014) is the statement of the Scottish Government's policy on nationally important land use planning matters. This document supersedes a number of documents including National Policy Planning Guideline (NPPG) 14: Natural Heritage. It outlines planning guidance in relation to the natural environment providing planning authorities with advice on how to address the maintenance and enhancement of biodiversity.

### **Planning Advice Note (PAN) 60: Planning for Natural Heritage**

- 4.4 Planning Advice Note (PAN) 60 (Scottish Government 2000) provides guidance on good practice in relation to conservation and natural heritage in Scotland. It covers the protection of biodiversity, designated sites and the wider natural heritage, with the provision that all development effects can be material considerations in the planning process.

**Scottish Environment Protection Agency (SEPA), Engineering in the Water Environment: Good Practice Guide**

- 4.5 The Scottish Environment Protection Agency (SEPA), Engineering in the Water Environment: Good Practice Guide (SEPA 2010) provides information on how river crossings can be designed and constructed in a way that minimises harm to the environment and complies with environmental standards. It discusses the impact of river crossings on aquatic habitats, protected species (e.g. freshwater pearl mussel, Atlantic salmon, water voles) and flood plain management. The guidance presents guidelines and steps to minimise negative impacts and provides information on times of the year during which certain activities that will affect protected species should be avoided.

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