

# Appendix A12.1: Legislation and Policy

## 1.1 Introduction

- 1.1.1 This appendix describes the legislation and policy referenced in Section 12.2 of Chapter 12 (Biodiversity) and associated appendices.
- 1.1.2 Best practice guidance for assessment and surveys is discussed specifically within Chapter 12 (Biodiversity) and Appendix A12.3 (Detailed Survey Methods and Baseline Data).

## 1.2 Legislation

- 1.2.1 Table A12.1-1 presents legislation and conventions relevant to the assessment of the proposed scheme.

**Table A12.1-1: Relevant legislation and conventions**

Legislation and Conventions	Summary
<b>International</b>	
The Convention on Biological Diversity (CBD)	<p>The CBD was adopted in 1992 at the international Conference on Environment and Development (the 'Earth Summit') and entered into force in 1993. The CBD is an international and legally-binding treaty that commits signatories to three main goals of: conserving biodiversity; sustainable use of biodiversity; and the fair and equitable sharing of the benefits arising from the use of genetic resources. The aim of these goals is to promote actions for a sustainable future.</p> <p>The UK ratified the CBD in 1994 and established the UK Biodiversity Action Plan (1992-2012) to deliver the CBD objectives. This was superseded by the Strategic Plan for Biodiversity 2011-2020 and the Aichi Targets (20 global targets) to be met by 2020.</p> <p>The UK Post-2010 Biodiversity Framework is overseen by the Four Countries' Biodiversity Group. In Scotland, the Scottish Biodiversity Strategy was established with goals for 2020. The Scottish Government published its Scottish biodiversity strategy post-2020 statement of intent on 14 December 2020 in preparation for the CBD Conference of the Parties 15 in 2021.</p>
The Convention on the Conservation of Migratory Species of Wild Animals (the Bonn Convention or CMS)	<p>The CMS was adopted in 1979 and entered into force in 1983. The CMS is an international and environmental treaty of the United Nations, and acts as a framework Convention to conserve and protect migratory species, their habitats, and their migration routes, notably those that cross international borders.</p> <p>The UK ratified the CMS in 1985 and established protection of Appendix I species in the Wildlife and Countryside Act 1981 (as amended).</p>

Legislation and Conventions	Summary
The Convention on the Conservation of European Wildlife and Natural Habitats (the Bern Convention)	<p>The Bern Convention was adopted in 1979 and entered into force in 1982. The Bern Convention is an international and legally-binding treaty that aims to conserve and protect wild plant and animal species and their natural habitats, to increase cooperation between parties, and to regulate exploitation of migratory species. Through the Bern Convention, internationally, there are legal obligations on signatories to protect over 500 wild plant species and over 1,000 wild animal species.</p> <p>The UK ratified the Bern Convention in 1982 and transposed the obligations into UK law through the Wildlife and Countryside Act 1981 (as amended) and, in Scotland, the Nature Conservation (Scotland) Act 2004 (as amended).</p>
The Convention on Wetlands of International Importance especially as Waterfowl Habitat (the Ramsar Convention)	<p>The Ramsar Convention was adopted in Ramsar, Iran, 1971, and entered into force in 1975. The Ramsar Convention is an international treaty that provides the mechanism for protecting wetland sites of global importance through: designation of wetlands of international importance as Ramsar sites; the promotion of the wise use of wetlands; and international cooperation to further the wise use of wetlands and their resources.</p> <p>The UK ratified the Ramsar Convention and designated its first Ramsar sites in 1976.</p>
The Birds Directive (2009/147/EC)	<p>The European Union (EU) Directive on the Conservation of wild birds (79/409/EEC) was adopted in 1979 and amended in 2009 to become the Directive (2009/147/EC). The Birds Directive is a primary tool for delivering EU obligations under the CBD (as detailed above), and the Ramsar and Bonn (CMS) Conventions. Through the Birds Directive and the Habitats Directive, Member States are required to undertake measures to conserve and maintain all naturally occurring populations of bird species listed on Annex I of the Directive, and migratory species, across the EU through the designation of Special Protection Areas (SPAs); this includes actions to protect the birds, their sites, and their habitats.</p>
Council Regulations (EC) No 1100/2007 Establishing Measures for the Recovery of the Stock of European Eel	<p>These regulations establish measures for the recovery of the European eel stock by requiring EU Member States to put in place an Eel Management Plan for their river basin districts (RBD), to reduce eel mortality as a result of human activities.</p>
The Habitats Directive (92/43/EEC)	<p>The EU Directive (92/43/EEC) on the conservation of natural habitats and of wild fauna and flora (Habitats Directive) was adopted in 1992 and is the means by which the European Community (EC) would meet its obligations as a signatory of the</p>

Legislation and Conventions	Summary
	<p>Bern Convention. The Directive introduces a range of measures including the protection and surveillance of habitats and species. The main aim of the Directive is to promote the maintenance of biodiversity by requiring EU Member States to take measures to maintain or restore natural habitats and wild species at a favourable conservation status, introducing robust protection for those habitats and species of European importance.</p> <p>The habitats listed in Annex I of the Directive, and the species listed in Annex II, are to be protected by means of a network of sites. 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 (SCIs). Once adopted, these are designated by Member States as SACs and, along with SPAs classified under the Birds Directive after 1994, form a network of protected areas known as Natura 2000 (now referred to in Scotland as European Sites and in England and Wales as National Site Network sites).</p>
Water Framework Directive (2000/60/EC)	<p>The Water Framework Directive (WFD) is an EU directive to establish a framework for the protection of all waterbodies. The main aims are to: prevent deterioration and enhance status of aquatic ecosystems, including groundwater; promote sustainable water use; reduce pollution; and contribute to the mitigation of floods and droughts. Under the WFD, Scotland comprises one singular River Basin District (RBD) (the Scotland RBD) and shares the Solway-Tweed RBD with England.</p>
National	
The Conservation (Natural Habitats, &c.) Regulations 1994 (EU Exit) (Scotland) (Amendment) Regulations 2019	<p>The Conservation (Natural Habitats, &amp;c.) Regulations 1994 (as amended in Scotland) remain in place post 31 December 2020 with only minor changes being introduced by the Conservation (Natural Habitats, &amp;c.) (EU Exit) (Scotland) (Amendment) Regulations 2019. The Regulations extend to Scotland only.</p>
The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended in Scotland)	<p>The UK was a Member State of the EU when this legislation was formalised. Following the UK's withdrawal from the EU, this legislation has now been transferred into domestic 'retained EU law.'</p> <p>The Conservation (Natural Habitats, &amp;c.) Regulations 1994 (as amended in Scotland) 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.</p> <p>Under the Regulations it is an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in the animals listed in</p>

Legislation and Conventions	Summary
	<p>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, and 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.</p>
Wildlife and Natural Environment (Scotland) Act 2011	<p>The Wildlife and Natural Environment (Scotland) Act 2011 (referred to as the WANE Act) amended wildlife laws in Scotland, including the Wildlife and Countryside Act 1981 and the Protection of Badgers Act 1992. It primarily covers management for game species, but also provides a mechanism for the management of non-native species. The WANE Act expanded the Biodiversity Duty placed on public bodies by the Nature Conservation (Scotland) Act 2004 by introducing a requirement for all public bodies to report on their compliance with the Biodiversity Duty.</p>
The Freshwater Fish Conservation (Prohibition on Fishing for Eels) (Scotland) Regulations 2008	<p>As mentioned above, under the WFD, Scotland comprises one singular RBD (the Scotland RBD) and shares the Solway-Tweed RBD with England. An Eel Management Plan was created for Scotland in 2010.</p> <p>Eel protection measures are enshrined in Scots law by the Freshwater Fish Conservation (Prohibition on Fishing for Eels) (Scotland) Regulations 2008.</p>
Nature Conservation (Scotland) Act 2004	<p>This Act 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 Sites of Special Scientific Interest (SSSIs).</p> <p>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, such as the Scottish Biodiversity Strategy. 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, 2020) is intended to be a tool for public bodies and is an important source of information and guidance for those seeking to conserve biodiversity.</p>
The Salmon and Freshwater Fisheries	<p>The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 protects both Atlantic salmon and sea trout, the seaward migrating life form of brown trout. This Act makes it an</p>

Legislation and Conventions	Summary
(Consolidation) (Scotland) Act 2003	offence to knowingly injure, disturb, destroy, buy or sell Atlantic salmon eggs, smolt, fry, parr or alevin; and obstruct the migratory passage of any life stage of Atlantic salmon or sea trout individuals.
Protection of Badgers Act 1992 (as amended for Scotland)	The Protection of Badgers Act 1992, as amended by the Wildlife and Natural Environment (Scotland) Act 2011, protects badgers and their setts. Offences under the Act include: wilfully taking, injuring or killing a badger; cruelty to a badger; intentional or reckless interference with a badger sett; sale or possession of a badger; and marking or ringing of a badger. Interference with a badger sett includes: damaging or destroying a sett or any part of it; obstructing access to a sett; disturbing a badger while it is in a sett; causing or allowing a dog to enter a badger sett.
The Wildlife and Countryside Act 1981 (as amended)	The Wildlife and Countryside Act 1981 (as amended) is the principal mechanism for wildlife protection in the UK and it was enacted primarily to implement the requirements of the Bern Convention and the Birds Directive. The Act governs provision of site protection measures under the statutory designation of SSSIs.

## 1.3 Policy

### National Policy

#### National Planning Framework 4

- 1.3.1 The Scottish Government published the [National Planning Framework 4 \(NPF4\)](#) in February 2023, and updated in October 2024. The NPF4 was published with the Scottish Government's intention to tackle the current 'climate emergency' and 'biodiversity crisis' (Scottish Government, 2023). To achieve this the Scottish Government have stated that *"our approach to planning and development will play a critical role in supporting nature restoration and recovery"* (Scottish Government, 2023). NPF4 considers that *"Scotland's future places will be net zero, nature-positive places that are designed to reduce emissions and adapt to the impacts of climate change, whilst protecting, recovering and restoring our environment"*.
- 1.3.2 The national spatial strategy will support the planning and delivery of:
- Sustainable places, where we reduce emissions, restore and better connect biodiversity;
  - Liveable places, where we can all live better, healthier lives; and
  - Productive places where we have a greener, fairer and more inclusive wellbeing economy.
- 1.3.3 NPF4 highlights a strategic connection between Inverness and Edinburgh for which dualling of A9 would play a part in.

- 1.3.4 NPF4 has a number of policies associated with improving biodiversity and helping to secure positive effects for biodiversity; policies of relevance include:
- Policy 1: Tackling the climate and nature crises – states that *“when considering all development proposals significant weight will be given to the global climate and nature crises”*. Any future development plans will have to address these crises by promoting nature recovery and restoration in the area resulting in zero carbon and nature positive places.
  - Policy 3: Biodiversity – is critical in ensuring that development will secure positive effects for biodiversity. The policy states developments *“will contribute to the enhancement of biodiversity, including where relevant, restoring degraded habitats and building and strengthening nature networks and the connections between them”*. It further states that *“development proposals for national or major development, or for development that requires an Environmental Impact Assessment will only be supported where it can be demonstrated that the proposal will conserve, restore and enhance biodiversity, including nature networks so they are in a demonstrably better state than without intervention”*.
- 1.3.5 Adverse impacts, including cumulative impacts of developments on biodiversity, nature networks and the natural environment will be minimised. Policy 3 seeks to tackle biodiversity and address Policy 1 through reversal of biodiversity loss, safeguard ecosystem services and build resilience.
- Policy 4: Natural places – outlines requirements for development proposals to identify, protect and lessen impacts on protected species, habitats and sites. Policy 4 states that *“The planning system should protect, restore and enhance [Scotland’s] natural assets; make best use of nature-based solutions”*. The policy aims to protect and restore natural places and that natural assets are managed in a sustainable way that maintains and grows their essential benefits and services. Enhancing or restoring these natural places is one area that a development could secure positive effects on biodiversity.
  - Policy 6: Forestry, woodland and trees – aims to protect and expand forests, woodland and trees. It states that *“area of existing woodland or land identified as being suitable for woodland creation (under the Forestry and Woodland Strategy) (FWS), as being suitable for woodland creation will only be supported where the enhancement and improvement of woodlands and the planting of new trees on the site [...] are integrated into the design”*. Developments should seek to enhance, expand and improve woodland and tree cover, which could contribute to positive effects on biodiversity.

#### Biodiversity Action Plan

- 1.3.6 The proposed scheme is covered by the [Tayside Local Biodiversity Action Plan \(LBAP\)](#) (Tayside Biodiversity Partnership, 2016) which, through adopting an ecosystem approach to biodiversity protection and enhancement, aims to deliver Tayside’s vision for a fully functioning ecosystem network by 2030. The LBAP provides a biodiversity list of priority protected species and identifies objectives and targets for the conservation of six ecosystems, including the habitats and species present within them, namely: water and wetland, coastal and marine, urban, upland, farmland, and woodland. Appendix A12.3 (Detailed Survey Methods and Baseline Data) details whether a biodiversity resource is listed in the Tayside LBAP.



#### Scottish Biodiversity Strategy

- 1.3.7 The [Scottish Biodiversity Strategy 2045](#) (Scottish Government, 2024a), has replaced the previous versions:
- [Scotland's Biodiversity: It's in Your Hands](#) (Scottish Executive, 2004); and
  - [2020 Challenge for Scotland's Biodiversity](#) (Scottish Government, 2013).
- 1.3.8 The strategy supports the aim of tackling climate and biodiversity crises through its objectives and closely aligns itself with NPF4. The strategies main objectives are to *“protect and restore biodiversity”* and to *“support healthier ecosystems”*, *“connect people with the natural world”* and to *“involve them more in decisions about their environment”* as well as to *“maximise the benefits for Scotland of a diverse natural environment and the services it provides, contributing to sustainable economic growth”*.
- 1.3.9 In conjunction with the Scottish Biodiversity Strategy, the [Scottish Biodiversity Delivery Plan 2024-2030](#) (Scottish Government, 2024b) is the first a series of rolling delivery plans which form part of the strategic framework for biodiversity. It includes actions needed to ensure Scotland is on track to achieving the vision and outcomes in the strategy.

#### Scottish Biodiversity List

- 1.3.10 The [Scottish Biodiversity List](#) (SBL) (Scottish Government, 2020) is the statutory list of animals, plants and habitats considered by the Scottish Ministers to be most important for biodiversity conservation in Scotland. The publication of the SBL satisfies the requirements of the Nature Conservation (Scotland) Act 2004 (as amended for Scotland), which places a duty on public bodies to further the conservation of biodiversity.

#### Forestry Strategy

- 1.3.11 [Scotland's Forestry Strategy 2019 – 2029](#) (Scottish Government, 2019) presents a 50-year vision and 10-year framework to action, expand, protect and enhance Scotland's forests and woodlands. It takes onboard emerging priorities and sets out the actions the Scottish Government and its partners will deliver over the next few years. It looks to enable the continued growth of forestry with economic, environmental, and social benefits now and into the future.

#### Perth and Kinross Local Development Plan 2

- 1.3.12 The [Perth and Kinross Local Development Plan](#) (LDP) was adopted in 2019 (LDP2) and contains a spatial strategy which explains the council's overall view of where development should go and the underlying principles. Policy 38 of the plan relates to environment and conservation (Perth and Kinross Council, 2019).
- 1.3.13 The next Plan (LDP3) is in preparation and is due to be published and adopted in October-December 2027 (Perth and Kinross Council, 2024). Alongside NPF4, the LDP3 will be the main document which will influence future built development in the Perth and Kinross area.



### **Biodiversity Net Gain (BNG)**

- 1.3.14 BNG is an approach to development that ensures that habitats are left in a measurably better state than before the development. Whilst not mandatory in Scotland, BNG is enshrined in law under Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021) in England. BNG has been mandatory in England from 12 February 2024.
- 1.3.15 Further detail on the BNG, and how it has been applied to the proposed scheme, is provided in Appendix A12.8 (Positive Effects for Biodiversity and Biodiversity Net Gain).

## **1.4 References**

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<http://www.taysidebiodiversity.co.uk> (Accessed March 2020).