

Consultation Response

Proposals to Amend Scottish Government Policy on the Protection Afforded to Certain Ramsar Features

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Environmental Law sub-committee welcomes the opportunity to consider and respond to the Scottish Government consultation: *Proposals to amend Scottish Government policy on the protection afforded to certain Ramsar features*.¹ We have the following comments to put forward for consideration.

Questions

1. Do you agree that all Ramsar natural features should be given the same level of scrutiny when assessing potential effects of any new plan or project by treating all natural features on Ramsar sites in the equivalent way to European sites for the purposes of the Habitats Regulations Appraisal process?

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In principle, we welcome an approach which would create a single tier of consideration as regards the Habitats Regulations Appraisal Process for all Ramsar sites. Consolidation and simplification of the effects of the current multiplicity of overlapping designations is to be welcomed.

We consider that applying the same level of scrutiny to plans or projects affecting all Ramsar natural features would simplify the planning process and, in all likelihood, reduce legal challenges which might currently arise from the different approaches on a site-by-site basis. A single approach would also provide clarity for all Ramsar sites and a better understanding of the pathway for any planning or other challenges. We note that such an approach would address the 'perceived gap' highlighted by Environmental Standards Scotland following an investigation in 2022² and would also bring Scotland in line with England and Wales.

¹ [Proposals to amend Scottish Government policy on the protection afforded to certain Ramsar features - Scottish Government consultations](#)

² [Ramsar Site Protection Summary Report - Environmental Standards Scotland](#)

However, we do have some concerns regarding the proposed mechanism for giving effect to this approach. The consultation proposes a new policy whereby all Ramsar sites will be treated as 'European Sites' for the purposes of the Habitats Regulations. It does not propose any changes to the underlying legislative framework. We are concerned that this approach to addressing the issues identified in the consultation document and by Environmental Standards Scotland may in fact create a further lack of clarity and certainty as to the protection afforded to Ramsar sites, which do not currently fall within the legislative definition of a "European Site" found in Regulation 10 of the Habitats Regulations. This would amount to using policy to redefine a term in legislation, potentially creating a perception of additional protection with no underlying legal effect. This may create uncertainty as to the legal position, and result in legal challenges in relation to the Appropriate Assessment required in law.

Whilst we support the proposed approach in principle, we would suggest that consideration should be given to achieving it by way of a mechanism which provides a higher degree of legal certainty. The planned Natural Environment Bill, included in the 2024-25 Programme for Government, may provide an opportunity to clarify the legislative landscape whilst the Biodiversity Delivery Plan may focus efforts on addressing multiple designations for existing sites.



For further information, please contact:

Jennifer Paton
Policy Team
Law Society of Scotland
0131 476 8146
jenniferpaton@lawscot.org.uk