

Issue 59		Protected Species	
Development plan reference:		Policy 59 (Para 21.4, Page 106)	Reporter:
Body or person(s) submitting a representation raising the issue (including reference number)			
The Mountaineering Council of Scotland (MCS) (2), Brenda Herrick (5), Scottish Natural Heritage (SNH) (118), Scottish Wildlife Trust (285), Mrs Caudrey (338), SLR Consulting Ltd for RWE Npower Renewables Limited (419), CASA Planning and Environment Ltd for Cube Engineering (449), Jones Lang Lasalle for Spittal Hill Windfarms Ltd (450), Jones Lang LaSalle for PI Renewables (454), Biggart Baillie for Nanclach Ltd (457), Jones Lang LaSalle for Wind Energy Glenmorrie Ltd (462)			
Provision of the development plan to which the issue relates:		Where there is good reason that a protected species is present at a site (or may be affected by a proposed development), a survey will be required to establish any such presences and if necessary a mitigation plan may be required before the application can be determined.	
Council's summary of the representation(s):			
<p>The Mountaineering Council of Scotland (2) welcomes the inclusion of cumulative impact in these considerations. The Scottish Wildlife Trust (285) is pleased to see references to both the Biodiversity Toolkit and the multifunctional nature of green networks. They are also supportive of the reference to Article 10 of the Habitats Directive.</p> <p>Brenda Herrick (5) feels that these policies are excellent but should have been put in place before now.</p> <p>Scottish Natural Heritage(118) and Mrs. Caudrey (338) have noted that an out of date web link for the 'Birds of Conservation Concern' is quoted within this policy i.e. http://www.jncc.gov.uk/PDF/Pop_status_of_birds_card.pdf dated 2002 - 2007).</p> <p>David Bell(462), Jones Lang LaSalle for PI Renewables(454) , Spittal Hill Wind farms(450) and Nanclach Ltd (457) acknowledge that this policy seeks to reflect the legislative and national policy tests applicable to the assessment of development on European Protected Species. They feel that the policy goes further than it needs to by adding an additional policy test which is inconsistent with the SPP.</p> <p>Scottish Natural Heritage (118) feels that the decision to request a protected species survey should be based upon the presence of an appropriate habitat. They also feel that the reference to the Protection of Badgers Act should reflect recent amendments and should read as follows: The Protection of Badgers Act 1992 (as amended by the Nature Conservation (Scotland) Act</p>			

2004.

SLR(419) asks that the policy refer to significant unacceptable impacts or significant impacts.

CASA Planning(449) recognise the importance of nature conservation, but believe the clause stating “ Development that is likely to have an adverse effect... on protected bird species will only permitted when there is no other satisfactory solution; and the development is required in the interest of public health or public safety “is too prescriptive.

CASA(449) also feel that this policy fails to demonstrate what constitutes adverse impacts on protected bird species. They suggest that this is modified in conformity with Article 16 of the Habitats Directive. This modification they feel would act as a means to clarify that impacts are deemed adverse if they are likely to prove detrimental to the maintenance and integrity of a species population

Modifications sought by those submitting representations:

Up date the web link contained in the policy to show the following i.e.
<http://www.bto.org/sites/default/files/u37/downloads/recording/bocc3.pdf>
(118,338).

Removal of the third test contained within the policy as this is recognised under the SPP and would be better removed in order to ensure consistency and avoid conflicts in decision making (450, 454,457, 462).

First sentence amended to read, “Where there is good reason to believe that a protected species may be present on site...” (118). The policy should highlight that the decision to request a protected species survey should be based upon the presence of an appropriate habitat. (118).

Badgers legislation should be amended to The Protection of Badgers Act 1992 (as amended by the Nature Conservation (Scotland) Act 2004 (118).

SLR asks that the policy refer to significant unacceptable impacts or significant impacts (419).

Inclusion of a statement supporting applications that support and significantly promote imperative developments delivering Scotland’s progress towards Sustainable Development as expressed in the SPP as a further exception to the policy (449).

The clause which states development that adversely impacts on protected bird species will only be permitted when ‘the development is required in the interest of public health...’ or ‘there is no satisfactory solution’ needs to be less prescriptive (449).

Inclusion of 3rd bullet point stating 'proposals can demonstrate not to be detrimental to the integrity or viability of the species concerned' (449).

The policy seeks to demonstrate what constitutes adverse impacts on protected bird species. This needs to be modified in order to align with Article 16 of the Habitats Directive, to clarify that impacts are deemed adverse if they are likely to prove detrimental to the maintenance and integrity of a species population (449).

Summary of responses (including reasons) by Planning Authority:

The web link referring to Birds of Conservation Concern (118,338) and the reference to the Protection of Badgers Act (118) should be updated as there are more up to date references available i.e.:

- <http://www.bto.org/sites/default/files/u37/downloads/recording/bocc3.pdf>
- The Protection of Badgers Act 1992 (as amended by the Nature Conservation (Scotland) Act 2004)

As regards the suggestion that the third test is removed from the policy (450, 454,457, 462) the Council on this occasion feel that they are simply reflecting the wording that is contained within Scottish Planning Policy i.e." In no circumstances can development be approved which would be detrimental to the maintenance of the population of a European protected species at a favourable conservation status in its natural range".

The Council feel that the first sentence of the policy should be amended to read "Where there is good reason to believe that a protected species may be present on site..." as per Scottish Natural Heritage's suggestion (118). However the council do not feel that the policy should include the wording "the presence of an appropriate habitat" as this is not necessary if the wording is adapted as per the text in the preceding lines.

SLR (419) suggested that the policy should refer to significant unacceptable impacts or significant impacts. The Council feel that this policy should remain unchanged as its wording reflects current National Planning Policy i.e. the word adverse is used.

CASA Planning (449) suggests a statement should be included here with regard to sustainable development. However on this occasion, the Council feel that it would be difficult to include such a reference given the recent Climate Change Act.

CASA Planning (449) feels that the clause which states development that adversely impacts on protected bird species will only be permitted when 'the development is required in the interest of public health...' or 'there is no satisfactory solution' is too prescriptive. The Council feels however that this wording should be upheld as it is reflective of the wording set down in the SPP.

Any further plan changes commended by the council

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[illegible]