

## **Ramsar Case Update: IESS.21.011**

### **Background**

Environmental Standards Scotland (ESS) previously identified a perceived gap in Scottish law and policy that could mean a lower level of protection was applied to some Ramsar areas during the consideration of planning applications, in contravention of Ramsar Convention requirements.<sup>1</sup> Following ESS' discussions with the Scottish Government (SG) in 2022, the SG proposed to address this gap during the development of the 30x30 Framework and / or the Natural Environment Bill.

In light of this, ESS decided to close the case and monitor progress. In Autumn 2023, ESS engaged with the SG, noting that no visible progress had been made in revising Ramsar protections. In early 2024, the SG informed ESS that it was still considering policy and legislative options to resolve the issue but could not provide a timetable for resolution. Accordingly, ESS decided to re-open the investigation case.

### **Request for information and the Scottish Government's response**

Due to the lack of clarity provided by the SG on its plans to resolve this issue, on 23 February 2024 ESS issued an information notice to the SG under Section 24 of the UK

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<sup>1</sup> Further information on the background to ESS' consideration of this issue can be found in our publicly available summary updates at:

<https://environmentalstandards.scot/wp-content/uploads/2022/09/Ramsar-case-summary-for-website.pdf> and <https://environmentalstandards.scot/wp-content/uploads/2024/02/ESS-Investigation-Ramsar-Site-Protection-Monitoring-Update-IESS.21.011-1.pdf>

Withdrawal from the European Union (Continuity) (Scotland) Act 2021. This notice requested details of the specific options under consideration for revising Ramsar protections and associated timelines.

The SG responded on 22 March 2024 stating that legislation was no longer a viable option and that the preferred option was therefore through policy mechanisms. The intention of this new policy would be that all Ramsar features will be treated as European features when assessing the likelihood of adverse impacts to the integrity of the site. This new policy would be implemented during the current Parliament, but the SG could not give a firm timetable for the delivery of the work nor when public consultation would occur.

### **Assessment of the Scottish Government's approach**

The perceived gap of concern relates to Scotland's two-tier protection system, where some Ramsar features are assigned European Site protections (which are more compatible with Ramsar convention requirements) and others are assigned Site of Special Scientific Interest (SSSI) protections (which are less comprehensive than European Site protections). Under the current system, any Ramsar feature(s) assigned SSSI protections could theoretically be permitted for development (effectively deleting Ramsar areas) without meeting the Ramsar convention requirements to first prove an 'urgent national interest' and to compensate for any loss of wetland resources when areas are removed. In contrast, European site protections require proving 'imperative reasons of overriding public interest' and compensatory measures to ensure the overall coherence of the network in these situations; ESS considers these protections to be better aligned with the Ramsar convention requirements.

ESS anticipates that the SG's preferred option would address the perceived gap in Ramsar protection. However, ESS was concerned that the SG's only assurance on timescales was that it 'would expect' new protections within the current Parliament (which ends in May 2026).

The perceived gap has been a longstanding issue. The SG has been considering revising Ramsar protections since 2021, with little material progress having been made

in the interim. The longer the perceived gap remains, the likelihood increases that Scotland will contravene the Ramsar convention. Accordingly, ESS engaged further with the SG to better understand the necessary steps and associated timeframes to implement the new policy.

### **Progress towards informal resolution**

A meeting was held between ESS and the SG on 9 April 2024 to discuss the SG's response to ESS' Section 24 information request and ESS' residual concerns. Regarding timescales, the SG proposed to provide ESS with a letter of assurance containing a timetable and key milestones to deliver policy protection for SSSI-underpinned Ramsar features. In its letter dated 12 July 2024, the SG stated the following approach had been approved by the Cabinet Secretary for Net Zero and Energy:

- the SG will run a targeted consultation with key stakeholders during summer 2024 on the proposal that a revised policy statement on Ramsar should state that features underpinned by SSSI will be treated as European sites for the purposes of determining whether a plan or project is likely to have an adverse impact on the integrity of the site
- subject to the outcome of the consultation, it is anticipated that a policy statement will be published in the autumn of 2024, and will be a material consideration for Competent Authorities (e.g. Planning Authorities) when determining applications for consent / licences affecting Ramsar sites

### **Conclusion**

ESS welcomes the SG's new proposal to address the perceived gap in Ramsar protections. ESS will continue to monitor the implementation of the proposal and report publicly when informal resolution has been achieved. Should ESS become concerned with the content of the new policy or if the SG fails to meet the delivery milestones, ESS will consider use of its formal powers to address the perceived gap in Ramsar protections.