



# Consideration of NatureScot's Statutory Consultation Duties within the Development Management Regime

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**ENVIRONMENTAL**  
**Standards Scotland**  
Ìrean Àrainneachdail na h-Alba

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## 1. Executive summary

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1.1 Development management is a statutory process through which planning authorities regulate the use and development of land. A key element of this process is the statutory consultee framework, which ensures that planning authorities receive expert environmental advice. NatureScot, alongside other key agencies, plays a significant role in supporting transparent and robust planning decisions in this connection.

1.2 ESS received a representation alleging that NatureScot often does not provide consultation responses for development proposals outside nationally designated sites or interests. The representation contended that this selective engagement risked environmental effects going unassessed, given that much of Scotland's biodiversity lies outside designated areas. ESS determined that the matter fell within its remit and met its significance criteria due to the potential for adverse environmental outcomes.

1.3 ESS identified concerns about the clarity and consistency of the criteria used by NatureScot in determining when it provides detailed advice to planning authorities. Accordingly, ESS concluded that NatureScot's implementation of environmental law was potentially ineffective.

1.4 ESS made recommendations for improvement which NatureScot accepted and committed to implement through a series of remedial actions. ESS considers that these actions will improve clarity, consistency and transparency in NatureScot's statutory consultation role and ensure effective implementation of environmental law.

1.5 Accordingly, ESS considers that informal resolution has been achieved. ESS will monitor NatureScot's delivery of the agreed remedial actions and provide public updates on progress.

## 2. Background

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2.1 Development management is the statutory process through which planning authorities regulate land use and development. The statutory consultee framework is an important part of this process which ensures that planning authorities obtain expert, evidence-based advice on the potential environmental and human health impacts of proposed developments.

2.2 NatureScot, among other public authorities, is a statutory consultee in specified circumstances. Its advice is central to achieving high-quality and legally robust planning decisions.

### Relevant Environmental Law

2.3 The Town and Country Planning (Scotland) Act 1997 ('the 1997 Act')<sup>1</sup> requires planning authorities to consult NatureScot where proposals may affect natural heritage interests<sup>2</sup>. Additionally, the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 ('the 2017 Regulations')<sup>3</sup> designate NatureScot as a consultation body and require planning authorities and Scottish Ministers to consult NatureScot at several key stages of the EIA process<sup>4</sup>. These requirements ensure that NatureScot's expertise informs decisions on developments that may have significant effects on the environment.

2.4 The 2017 Regulations do not prescribe how detailed a consultation response must be, or how NatureScot should engage on individual cases, thereby affording NatureScot discretion in its level of engagement.

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<sup>1</sup> [Town and Country Planning \(Scotland\) Act 1997](#)

<sup>2</sup> Natural heritage interests refers to all natural resources including wildlife, habitats, and landforms

<sup>3</sup> [The Town and Country Planning \(Environmental Impact Assessment\) \(Scotland\) Regulations 2017](#)

<sup>4</sup> The Environmental Impact Assessment (EIA) process is the statutory procedure under the 2017 Regulations requiring screening, scoping, an Environmental Impact Assessment Report (EIAR), consultation, and assessment of significant environmental effects before an application is determined.

### 3. The representation

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3.1 ESS received a representation from a member of the public expressing concerns over NatureScot's approach to providing statutory consultation responses within the development management process, including planning proposals for major developments requiring an EIA.

3.2 The representation asserted that NatureScot routinely does not provide advice on development proposals located outside nationally designated sites (for example Sites of Special Scientific Interest and Special Areas of Conservation) or proposals that did not clearly threaten landscapes or species of national interest.

3.3 ESS considered the case to be within its remit for the following reasons:

- the representation related to a public authority – NatureScot
- the representation related to environmental law – principally the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017
- the failure (as set out in the representation) concerned potential ineffective implementation of environmental law

3.4 ESS also determined that the issue met its significance criteria, as the alleged failings may lead to inconsistent or inadequate assessment of environmental impacts, particularly for non-designated sites or areas of higher biodiversity value where NatureScot may provide detailed advice in certain circumstances. Inadequate or delayed identification of potential national interest issues in these cases may undermine progress towards national biodiversity commitments and increase the risk of long-term environmental harm, including incremental biodiversity loss.

## 4. ESS' consideration

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4.1 ESS may investigate whether a public authority is compliant with environmental law, whether its implementation and application of that law is effective, and whether the law itself is functioning as intended. In this case, ESS examined whether NatureScot's approach to statutory consultation, and the exercise of discretion afforded under the 2017 Regulations amounted to effective implementation of environmental law.

### NatureScot's position

4.2 NatureScot confirmed to ESS that since 2016 the approach to consultation responses has focused on providing detailed 'bespoke' advice where issues of **national importance** may be affected. At the local level<sup>5</sup>, NatureScot stated that it engages proactively through strategic planning processes<sup>6</sup> and Local Development Plans<sup>7</sup>, where nature-related policies and allocations can be influenced most effectively. Accordingly, it does not comment on every development proposal.

4.3 NatureScot also confirmed that, although nationally designated sites provide clear triggers for engagement, its approach to providing detailed advice can also extend to proposals affecting non-designated areas or areas of higher biodiversity value where impacts may raise issues of national interest.

4.4 NatureScot's Development Management guidance<sup>8</sup> sets out this selective engagement strategy, prioritising proposals with potential significant effects that may raise issues of national interest. In making such assessments, case officers consider factors such as the magnitude and sensitivity of effects, the relevance to national interests and can consult with internal specialists. This guidance also outlines the

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<sup>5</sup> Local level refers to planning functions conducted by local authorities, rather than at national or regional planning levels

<sup>6</sup> Strategic planning processes refers to are early planning activities where councils gather evidence and start shaping future planning policies. Agencies such as NatureScot can contribute at this stage to help influence how land and the environment will be managed in the area.

<sup>7</sup> Local Development Plans are statutory documents prepared under the 1997 Act. They set out where development should happen, what type of development is supported, and what policies apply.

<sup>8</sup> [Guidance - Development Management and the Natural Heritage | NatureScot](#)

range of potential responses available, from outright objections to “no comment” responses. Standing advice<sup>9</sup> is also available on NatureScot’s website<sup>10</sup>.

4.5 NatureScot further explained that its engagement is guided by thresholds set out in its service statement<sup>11</sup>, which outlines the circumstances in which a consultation response will be provided and when standing advice should be relied upon. NatureScot stated that these thresholds help determine the level of response provided and support a consistent approach to managing consultation requests.

### ESS’ analysis and findings

4.6 ESS notes that environmental law does not require NatureScot to provide detailed advice on all development proposals, and the 2017 Regulations afford NatureScot discretion over the form and depth of its engagement when acting as a consultation body. Accordingly, ESS’ assessment focused on how NatureScot implements its responsibilities under the 2017 Regulations; namely, the clarity, consistency, and effectiveness of how this discretion is exercised.

4.7 ESS identified concerns over how NatureScot may exercise this discretion in practice. Specifically, ESS notes issues regarding the clarity and consistency of key criteria used within NatureScot’s guidance to determine when detailed consultation advice is provided. Key terms including ‘significant effects’, ‘significant impacts’, and ‘national interest’ are used across various documents but are not applied or defined consistently. In some contexts, such as the Habitats Regulations<sup>12</sup>, ‘likely significant effect’ has a specific legal meaning, while in others NatureScot uses similar terminology in a general advisory sense without explanation. This inconsistent usage risks confusion over whether ‘significant’ is a legal test, an advisory judgement, or a procedural trigger.

4.8 ESS also found that NatureScot’s guidance refers to providing detailed advice where a proposal ‘closely approaches’ the threshold for raising issues of national

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<sup>9</sup> Standing advice refers to NatureScot’s standard guidance on commonly occurring natural heritage issues. It allows planning authorities to apply NatureScot’s established advice without requiring a bespoke consultation response, helping to ensure consistency, transparency, and efficiency in the planning process.

<sup>10</sup> <https://www.nature.scot/professional-advice/planning-and-development/planning-and-development-advice/planning-and-development-protected-species>

<sup>11</sup> <https://www.nature.scot/doc/planning-great-places-service-statement>

<sup>12</sup> [The Conservation of Habitats and Species Regulations 2017](#)

interest. However, the guidance does not explain what ‘closely approaches’ means in practice, how case officers should identify such proposals, or what evidence should be considered. This lack of clarity is particularly important because the phrase determines whether a proposal is escalated for specialist review. ESS’ assessment found no internal criteria, definitions, or examples to support officers in applying this threshold, including non-designated sites or areas of higher biodiversity value, where professional judgement is relied upon more heavily. The absence of clear parameters for these cases increases the potential for variability in how similar proposals are treated.

4.9 Taken together, these shortcomings in ESS’ view affect the underlying decision-making framework that determines when NatureScot chooses to engage and the level of advice it provides. The absence of clear terminology, definitions, and criteria increases the risk of inconsistent decision-making, uncertainty for planning authorities and applicants, and reduced transparency. Accordingly, ESS considers that these issues render NatureScot’s implementation of the 2017 Regulations potentially ineffective.

4.10 ESS therefore concluded that improvements to the clarity of terminology, the definition and application of the national-interest threshold, and the provision of practical decision-making support within NatureScot’s guidance are necessary to support consistent and effective application of the 2017 Regulations. Accordingly, ESS invited NatureScot to resolve these matters informally.

## 5. Informal resolution

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5.1 Informal resolution is the process of agreeing effective remedial actions with the relevant public authority to resolve identified issues, without the use of formal enforcement measures. ESS considers that informal resolution is often more expedient, cost-effective and results in better environmental outcomes.

5.2 Following ESS' invitation, NatureScot agreed to work with ESS to rectify the identified failings. ESS recommended improvements to strengthen the clarity, consistency, and transparency of NatureScot's guidance, which NatureScot accepted and committed to deliver through the following actions:

1. NatureScot will revise its guidance to include a formal definition of 'national interest'. The revised guidance will also clarify how proposals that 'closely approach' this threshold should be assessed, including the role of specialist advisers.
2. NatureScot will revise its guidance to use the term 'significant effects' consistently and clarify how the meaning of 'significant' differs between the applicable legal and policy contexts. These distinctions will be set out clearly within the revised guidance with signposting to relevant supporting materials.
3. NatureScot will identify habitats and species of outstanding conservation importance and provide clearer practical examples and decision-making criteria to support case officers in determining when proposals may raise issues of national interest.

5.3 NatureScot expects to complete work on actions 1 and 2 by April 2026, with work on recommendation 3 progressing thereafter due to links to ongoing reforms triggered by the Key Agency Rapid Planning Audit (KARPA) report<sup>13</sup>. NatureScot also plans to improve the online accessibility of its guidance and is considering a standalone summary of its national-interest approach.

5.4 ESS is satisfied that NatureScot's proposed actions are proportionate and sufficiently targeted to address the failings identified. In ESS' view these measures will strengthen transparency, improve the robustness and consistency of

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<sup>13</sup> [Key Agency Rapid Planning Audits](#) - The KARPA report (independent review commissioned by the Scottish Government) examined the efficiency and consistency of key agency engagement in planning.

NatureScot's decision-making within the statutory consultation process, and support the effective implementation of environmental law.

5.5 The improvements agreed with NatureScot are broadly consistent with the wider systemic recommendations of the KARPA report on clearer thresholds, consistent terminology, and more streamlined engagement between Key Agencies, planning authorities and applicants. While separate from ESS' investigation, this alignment reinforces the value of the actions being taken to strengthen consistency, transparency, and the effectiveness of NatureScot's statutory consultation role.

## 6. Conclusion

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6.1 It is important that development proposals, particularly those requiring EIAs, are assessed consistently, transparently and in a manner that safeguards Scotland's natural heritage. Statutory consultation processes play a critical role within this system by ensuring that planning authorities receive high-quality environmental advice to support lawful and robust decision making.

6.2 ESS identified shortcomings in the way NatureScot's decision-making policies and processes, which risked inconsistent consultation responses, reduced scrutiny of proposals affecting non-designated but environmentally important sites and diminished confidence in statutory environmental protections. Collectively, this could contribute to incremental biodiversity loss and missed opportunities to protect ecosystems of high local or national importance.

6.3 As a result of the proportionate and targeted remedial actions agreed, ESS considers that informal resolution has been achieved in that:

- the risk of inconsistent or ineffective statutory consultation responses will be reduced, improving the quality and reliability of NatureScot's input to planning and EIA processes
- the actions strengthen alignment with Scotland's wider environmental objectives, supporting more consistent consideration of biodiversity and environmental effects within the development management system.

6.4 To ensure transparency and effective delivery of these remedial actions, ESS has requested a formal implementation plan from NatureScot setting out how and when the agreed actions will be completed. ESS will monitor the delivery of the agreed remedial actions and provide public updates on progress.

## CONTACT

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