

Drumochter â?? how effective was the EU in protecting nature in Scotland?

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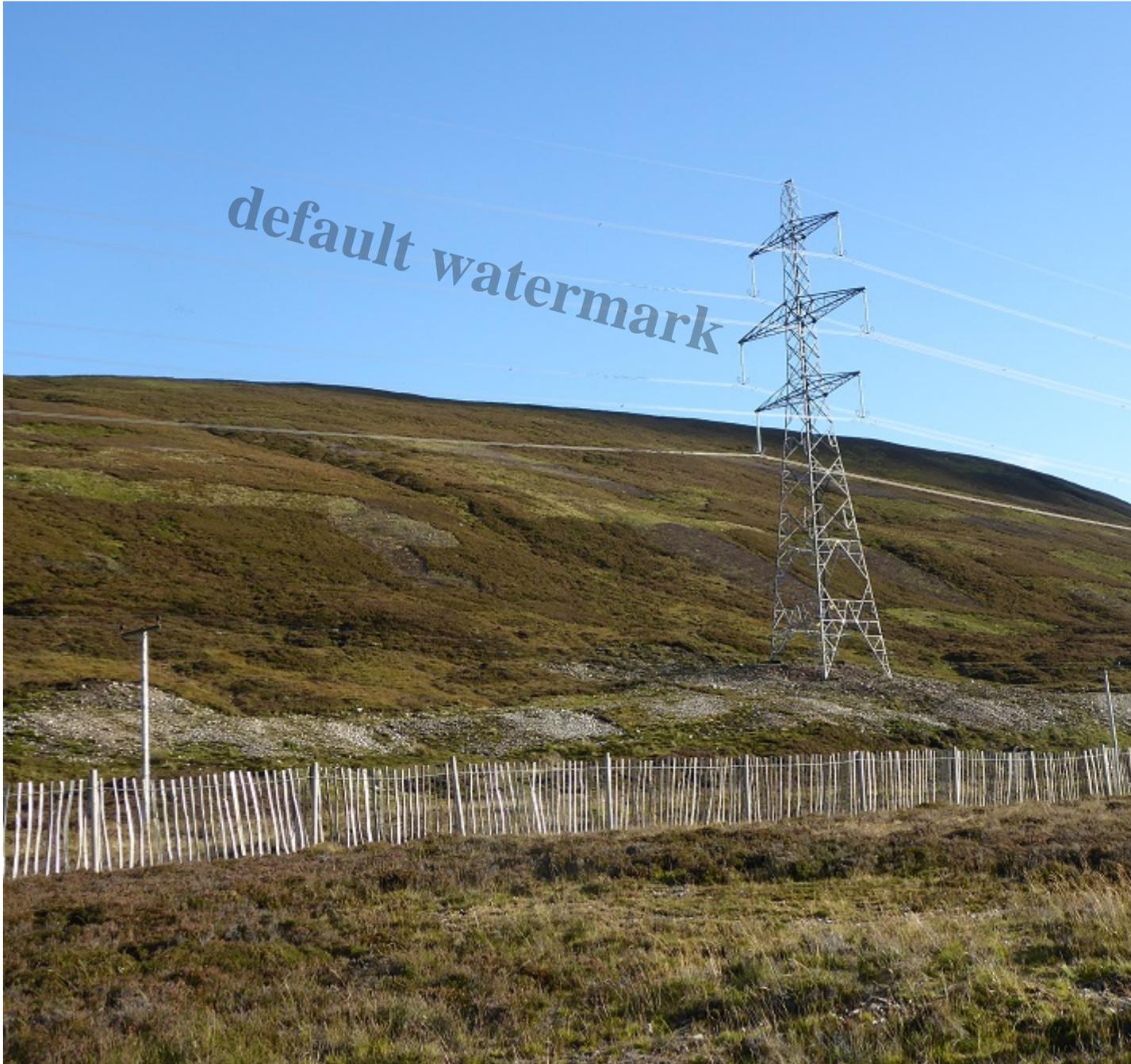


The Beaully Denny powerline and construction track scar. North Drumochter Lodge is in the woods in background. September 2020.

A tourist travelling north through the Drumochter for the first time, on looking up to their right and seeing this scar, might be forgiven for wondering if someone had tried build a new railway through the pass. I doubt they, or many of the thousands of people who cross the Drumochter each year, realise they are travelling down a narrow unprotected strip â?? just wide enough for the A9 dualling â?? that runs through what is supposed to be one of Scotlandâ??s most highly protected sites for nature

conservation. The boundary of the Drumochter Hills Special Area of Conservation is roughly marked by the snow fence beyond which burned heather, pylons and the scar dominate the landscape.

When Scottish Ministers agreed in 2010, after a lengthy public inquiry, that the Beaully Denny powerline should go ahead in the national interest, they did so on condition that any land disturbed by the construction in the protected areas it crossed should be fully restored. The conditions regarding restoration were specified in a number of detailed planning documents which formed part of the 'Energy Consent'. Had Scottish Ministers not stipulated these, they would almost certainly have been challenged in the Courts by the organisations that opposed the powerline using European law.



View from A9 September 2020

The Beaully Denny went live in December 2015, leaving an enormous landscape scar through the Drumochter Hills Special Area of Conservation (and the Site of Special Scientific Interest which extends towards Dalwhinnie from North Drumochter Lodge). The problem, in a nutshell, was caused by the Scottish Government failing to ensure that Scottish and Southern Energy complied with the planning conditions at the time.

Since then, Scottish Government officials have effectively passed the buck to the Cairngorms National Park Authority and SNH, now NatureScot, to try and work out how the site might be restored ([see here](#)). Both organisations are hamstrung so long as the Scottish Government is unprepared to force the developer to pay for the land to be properly restored. The current plan, in essence, is to hope that nature recovers. To assist with this the estate has stopped driving vehicles along the scar and fencing has been erected around one of the worst areas.



Part of the area that has been fenced in an attempt to stop grazing animals preventing vegetation from recovering. September 2020.

The fundamental issues, which if addressed would take a severe dent out of the profits SSE made from the Beaully Denny, remain: the bulldozed line through glacial landforms, which has left the scar on the landscape and altered drainage patterns on the hillside; the destruction of peat and the creation of new mineral soils; the changes in the vegetation which result from this. Nature will over time modify the destruction, it always does, but in doing so it will create something new, not restore what the SAC was

intended to protect.

Having got nowhere in three and a half years of campaigning and blogging ([see here](#) and [here](#) for example) I decided to take the matter up with the EU ([see here](#)). So in January, just before the final deadline for doing so, I submitted a complaint about the failure of the Scottish Government to protect the Drumochter Hills SAC. The EU Complaints Unit replied in March ([see here](#)). The important bit reads as follows:

Having assessed your complaint it would appear that this complaint is an individual case where the breach alleged is one of possible incorrect application. It appears that you are in particular concerned about the failure by the developer to fully abide by the terms and conditions of the planning permission. In particular, with regard to the removal of 2km of access road and the failure to adequately restore the site where another track was

removed. This is not a matter in which the Commission can be of assistance, as it appears to be a local matter, which is best dealt with nationally.

The whole point of my complaint was the Scottish Government has refused to deal with it nationally.

The only remedy I had left was legal action and only a handful of organisations in Scotland, if any, could afford to take on Scottish and Southern Electric and the Scottish Government.

And the EU's explanation for this?

You may be aware that in 2017 the Commission adopted a Communication entitled *EU Law: Better results through better application*.¹ In this Communication, the Commission explained its current approach to complaints and in particular, to the categories of case that it would be focusing on. The Communication explains that certain categories of cases, in particular, individual cases of incorrect application not raising issues of wide principle, where there is insufficient evidence of a general practice, of a problem of compliance of national legislation with EU law or of a systematic failure to comply with EU law will no longer be followed up at Commission level. I will therefore propose to close this file. Before doing so, I would however like to give you an opportunity to comment. Any such comments should be provided within one month of your receipt of this letter.

Making it impossible to complain gets better results...like the 2km scar that runs across the Drumochter Hills SAC.

It was clearly pointless to try and take this any further with the EU. But it does help illustrate why the EU's legal framework for protecting habitats and wildlife has done so little to prevent the catastrophic decline we have seen in Scotland. This was well documented by the state of nature report ([see here](#))

published last year:

24%

decline in average species' abundance.

Our indicator of average species' abundance of 352 terrestrial and freshwater species has fallen by 24% since 1994. There has been very little change in the rate of decline in the last 10 years.

14%

decline in average species' distribution.

Our indicator of average species' distribution, covering 2,970 terrestrial and freshwater species over a broad range of taxonomic groups, has fallen by 14% since 1970, and is 2% lower than in 2005.

49%

of species have decreased in abundance.

Of the species showing either strong or moderate changes in numbers, 49% have decreased and 28% have increased. Likewise more species have decreased in distribution (33%) than increased (20%) since 1970.

62%

of species show strong changes.

Our wildlife is undergoing rapid change, the proportion of species defined as showing strong changes in abundance, either increasing or decreasing, rose from 45% since 1994 to 62% over the last 10 years.

11%

of species are threatened.

Of the 6,413 species found in Scotland that have been assessed using Regional Red List criteria, 11% have been classified as threatened with extinction from Great Britain.

38%

decline in the Scottish breeding seabird indicator between 1986 and 2016.

However, the abundance indicators for fish species, both pelagic and demersal, show some signs of recovery from deep historic lows in the Celtic and North Seas.

Currently, the Scottish Parliament is considering the Withdrawal from the European Union (Scotland) Continuity Bill ([see here](#)):

â??This Bill does 3 main things. It:

- gives Scottish Ministers power to keep devolved laws similar to EU laws
- ensures Scottish Ministers and public bodies pay attention to environmental principles when they make policies
- sets up a new organisation to replace the oversight of environmental law provided by the EU

A large chunk of the bill sets out how the environmental framework developed by the EU will be continued in Scottish law. The implication being that EU environmental law is generally a very good thing despite the evidence we have of how our wildlife has collapsed. As an example:

â??55. The purpose of the duties on the Scottish Ministers and public authorities under the Bill is to promote a high level of environmental protection and sustainable development in Scotland. This will be a key part of delivering on Scottish Ministers' commitment to maintain EU standards on environmental protection following the UK's exit from the EU. (extract from Policy Memorandum [see here](#))

Now, I fully appreciate why so many environmental organisations are concerned that we retain the environmental framework developed under the EU, including designated sites such as Special Areas of Conservation. A Trumpian type alternative could be far far worse and there has been legislation, like that stemming from the Water Framework Directive, that has been progressive. But the Natura Sites set up under the Habitats and Birds Directives have been generally ineffective, as is illustrated by the continued persecution of birds of prey in the Cairngorms Special Protection Area and the continued intensification of grouse moor management, and are not fit for purpose. Instead of continuing with more of the same, the Scottish Parliament should be taking the opportunity to strengthen our environmental laws to prevent environmental crisis becoming even worse.

Besides stronger laws, however, we also need them to be enforced properly. The new organisation the Scottish Government is proposing to create to oversee the law will be known as Environmental Standards Scotland. Recruitment to its non-statutory precursor is already well under way ([see here](#)). A

good test of its likely effectiveness is whether it will be able, legally, to take action in cases that preceded its creation and if so whether it does so.

We should hope and expect that Environmental Standards Scotland will be far more effective than the EU in holding the Scottish Government to account for the damage that has been to the Drumochter Hills SAC and places like it. If this time next year proper work has been started, with skilled environmental contractors, anyone in Scotland who cares about conservation should be delighted. But I wouldn't hold your breath.

Postscript

After writing this, I realised I should have mentioned Scottish Environment Link's new campaign to strengthen environmental law ([see here](#)). While I disagree with their claim that EU Membership offered important environmental safeguards, I strongly support the objectives of the campaign which would result in stronger protections than those supposedly offered by the EU.

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Category

1. Cairngorms

Tags

1. CNPA
2. conservation
3. landscape
4. NatureScot
5. planning
6. Scottish Government

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