

A review of progress made against the UK Government's recommendations for improved implementation of the Birds and Habitats Directives

The England Review of Nature Directives Implementation

In 2011, amid claims of 'gold-plating' and 'unnecessary burdens on business' the UK government launched a 'Review of the Implementation of the Birds and Habitats Directives in England'. This review, undertaken by the Department for the Environment and Rural Affairs (Defra), attracted a high level of stakeholder interest, with both the business and NGO sectors providing substantial evidence to inform its findings (see for example ¹ and ²).

The 'Report of the Habitats and Wild Birds Directives Implementation Review'³ was published in March 2012. In that report the UK Government reiterated its commitment⁴ 'to ensuring that England's most valuable habitats and species are protected and that development is carried out in a sustainable manner'.

Findings and recommendations of the England Review

The review did not find evidence of 'gold-plating' or 'unnecessary burdens', and the headline conclusion of the Government's review⁵ was that:

'It was clear from the wide range of evidence and views submitted in the course of the Review that in the large majority of cases the implementation of the Directives is working well, allowing both development of key infrastructure and ensuring that a high level of environmental protection is maintained'.

It further concluded that:

'it is clear that there is scope for improving the way the Directives are implemented in England'

Therefore, in addition to the findings of the Review, the report also detailed actions that the Government would take, 'in partnership with others in the public, private and voluntary sectors, to improve implementation and in doing so strengthen the environmental purpose and integrity of the Directives'.

¹ http://www.wcl.org.uk/docs/link_response_to_nature_directives_060212.pdf

² http://www.rspb.org.uk/forprofessionals/policy/planning/habitats_regulations.aspx

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69513/pb13724-habitats-review-report.pdf

⁴ See Para 1, Pg 1

⁵ See Pg 13, para 27

There were a total of 28 recommended measures, focussed around four themes⁶:

- Facilitating nationally significant infrastructure projects;
- Improving implementation processes and streamlining guidance;
- Improving the quality, quantity and sharing of data;
- Improving the customer experience.

NGO and industry perspectives on the recommendations of the England Review

The recommended measures were broadly welcomed by both the industry and NGO sectors, who in many cases had asked for the same things (albeit sometimes for different – if complimentary – reasons). For example:

- The introduction of clear and quantified conservation objectives for Natura 2000 sites to steer management for nature conservation and better inform appropriate assessments,;
- Steps to address the significant data gaps in the marine environment to facilitate the identification (and where appropriate designation) of sensitive areas to protect nature and give clarity to developers and investors
- The need to develop an approach to European Protected Species that would better serve both those species and the needs of developers⁷

However, in a number of cases what was proposed fell short of what was required. Both NGOs and industry highlighted the loss of resources and expertise within the statutory nature conservation agencies as a key barrier to effective implementation^{8, 9, 10} and yet related measures¹¹ were confined to the inclusion of commitments to co-operation, transparency and delivery in the corporate plans of government agencies, staff exchange programmes, development of professional standards for ecologists and a workshop to explore ways of managing expertise. These were welcome, but do nothing to address the fundamental issues of resourcing and expertise.

In other cases, calls for support in specific areas were not reflected in the measures identified. For example calls for guidance on, and the promotion of, best practice¹² were not addressed.

England Review and Fitness Check: Common Themes

Here, it is interesting to note that many of the issues highlighted by NGOs and industry in their evidence to the Defra review, and reflected in the measures identified, have been echoed in evidence provided to the Fitness Check of the Nature Directives across a range

⁶ For summary – see Pgs 4 -6; for detail see pgs 16 – 37)

⁷ http://www.wcl.org.uk/docs/link_response_to_nature_directives_060212.pdf

⁸ <http://coastal-futures.net/archives/415>

⁹ http://www.wcl.org.uk/docs/link_response_to_nature_directives_060212.pdf

¹⁰ http://www.rspb.org.uk/forprofessionals/policy/planning/habitats_regulations.aspx

¹¹ Measures 24, 26, 27 and 28

¹² <http://coastal-futures.net/archives/415>

of other Member States (both in written evidence and in 'Mission' meeting discussions). These include for example:

- The need for clear conservation objectives for Natura 2000 sites (to both steer management for nature conservation and provide clarity for the purposes of 'Appropriate Assessment')¹³
- The need for (and often the increasing lack of) adequate capacity and ecological expertise, especially within regulators and statutory nature conservation bodies to support robust, consistent and proportionate assessment of plans and projects¹⁴
- Lack of evidence to support site identification, site management and appropriate assessment - particularly at sea¹⁵
- The need for more/better/clearer guidance¹⁶
- The need to develop a better, more robust and more proportionate approach to addressing the impacts of development on European Protected Species, in order to deliver better results for those species and for developers alike¹⁷

Progress towards implementation of the UK Government's recommended measures

In June 2013, a Defra progress report¹⁸ found that 25 of the 28 recommended measures had been implemented, and included a commitment to complete the remaining 3 in 2013.

However, of the measures identified as complete, the review highlights that 15¹⁹ are in fact ongoing actions – many of which have since been abandoned or sidelined, suggesting a lack of political will to see through their delivery. Some of those delivered have failed to secure real change²⁰, while some others have resulted in perverse outcomes²¹. Finally, at the time of writing, 2 of the 3 outstanding actions²² remain incomplete, and no further review of progress has been undertaken.

For example:

- The Major Infrastructure and Environment Unit (MIEU) established within Defra to work with nationally significant infrastructure projects (Measure 1) 'has notably failed to do what developers and NGOs alike were calling for, which is to provide certainty on difficult strategic issues'²³, such as the provision of a clear and robust decision-making framework for offshore wind developments. The Technical Working Group

¹³ Equates to Defra review Measure 14

¹⁴ Equates to Defra review Measures 26 - 28

¹⁵ Equates to Defra review Measure 15

¹⁶ Equates to Defra review Measures 1 – 3, 7 – 9, 13 - 14

¹⁷ Equates to Defra review Measures 10, 21 - 22

¹⁸ <https://www.gov.uk/government/publications/progress-of-the-habitats-directive-implementation-review>

¹⁹ Measures 1, 4, 5, 6, 8, 12, 15, 17, 18, 19, 21, 22, 23, 26, 27

²⁰ For example, Measures 14 and 28

²¹ <http://coastal-futures.net/archives/415>

²² Measures 7 and 8

²³ http://www.wcl.org.uk/docs/Link_Nature_Check_Report_November_2013.pdf

established to help steer the work of the MIEU has not met since late 2013, and it is unclear to what extent the unit continues to function.

- Guidance on a new voluntary process for agreeing up-front evidence requirements for nationally important infrastructure projects (Measure 12) was published in September 2012, and the MIEU initially engaged proactively with those developers who chose to adopt this approach. However, it would appear that Defra have recently withdrawn their engagement from evidence plan development²⁴.
- New guidance on the application of Article 6(4) of the Habitats Directive (Measure 3) was 'fast-tracked' and published in December 2012²⁵, ahead of planned 'overarching guidance' on the requirements of the Birds and Habitats Directives. Instead of providing clarity, sections of that guidance depart significantly from the EU guidance and may therefore undermine the consistent application of the Habitats Directive. It has therefore had the perverse effect of introducing additional uncertainty for developers, investors and other stakeholders, and increased the likelihood of legal challenge²⁶.
- Two drafts of the planned new 'overarching' guidance on the application of the Birds and Habitats Directives in respect of both species protection and appropriate assessment (Measure 7) were issued for consultation in 2013. Both were seriously flawed, and as far as we are aware, no final version has ever been published.
- Measure 14 required the publication of a new approach to increasing the information on the conservation objectives for Natura 2000 sites. This was delivered, but to date new conservation objectives developed in line with this approach have only been delivered for a handful of coastal and marine Natura 2000 sites. None have been delivered for any of England's terrestrial Natura 2000 sites.
- Measure 15 required the establishment of a Marine Evidence Group to address marine data sharing, research gaps and post-construction monitoring. The group was established, but failed to tackle the issues highlighted as being of highest priority by the stakeholders who sat on the group, and while never officially disbanded, the group has not met since December 2013.
- Measures 22 and 23 focussed on the need to work with NGOs to improve the relevance of existing monitoring and surveillance schemes for European Protected Species and to pilot new ways of monitoring these species, with a focus on bats and great-crested newts. Here there has been some progress with some joint working between Defra and the Bat Conservation Trust to tackle issues relating to bats in churches, domestic properties and affected by other developments²⁷. Defra has

²⁴ Natural England staff member, Pers comm. 2015

²⁵ <https://www.gov.uk/government/publications/habitats-and-wild-birds-directives-guidance-on-the-application-of-article-6-4>

²⁶ <http://coastal-futures.net/archives/415>

²⁷ Recent Defra and English Heritage funded research has looked at providing tools and solutions that encourage bats to use areas in churches that minimise disruption and damage, whilst ensuring that bat populations do not suffer. Natural England, BCT, church organisations and other partners are now seeking funding to take this work forward. The Bat

also established a Great-crested Newt Task Force to work towards a more evidence-based approach to the protection of this species for the benefit of both developers and newts. Unlike the MIEU and the Marine Evidence Group, the Task Force (which includes a range of stakeholders including Defra, statutory nature conservation agencies, NGOs and ecological consultants) remains active, and has made some positive progress, but has yet to deliver a new approach to the assessment of impacts on this species.

Summary

The Review of Implementation of the Birds and Habitats Directives in England concluded that *'in the large majority of cases the implementation of the Directives is working well, allowing both development of key infrastructure and ensuring that a high level of environmental protection is maintained'*, but also identified measures to improve the way the Directives are implemented in England.

The recommended measures were based on substantial and considered evidence provided by stakeholders, and were broadly welcomed by both the industry and NGO sectors. However, in a number of cases what was proposed fell short of what was required and in others, calls for support in specific areas were not reflected in the measures identified.

Many of the issues highlighted by NGOs and industry in their evidence to the Defra review, and reflected in the measures identified, have been echoed in evidence provided to the Fitness Check of the Nature Directives across a range of other Member States.

Although a Defra review of the implementation of the recommended measures suggested that the vast majority had been completed by June 2013, many (15 out of the 28 measures) are in fact ongoing actions – many of which have since been abandoned or sidelined, suggesting a lack of political will to see through their delivery. Some of those delivered have failed to deliver real change, some have resulted in perverse outcomes, and 2 remain undelivered, two years after the deadline for their implementation.