

Wildlife and Countryside Link response to the review of Wildlife Guidance

1. Introduction

Wildlife and Countryside Link (Link) brings together 42 voluntary organisations concerned with the conservation and protection of wildlife and the countryside. Our members practise and advocate environmentally sensitive land management, and encourage respect for and enjoyment of natural landscapes and features, the historic and marine environment and biodiversity. Taken together our members have the support of over 8 million people in the UK and manage over 750,000 hectares of land.

This response is supported by the following 12 organisations:

- Amphibian and Reptile Conservation
- Badger Trust
- Buglife – The Invertebrate Conservation Trust
- Royal Society for the Prevention of Cruelty to Animals
- Royal Society for the Protection of Birds
- Friends of the Earth
- Humane Society International
- The Mammal Society
- The Wildlife Trusts
- Whale and Dolphin Conservation
- Wildfowl and Wetlands Trust
- Woodland Trust

2. Comments on the review of Wildlife Guidance

Link welcomes the opportunity to respond to the review of Wildlife Guidance and was pleased that Defra extended the deadline for comment to 1 November. We will not be submitting a comprehensive response and have instead restricted our submission to the headline observations outlined below. For detailed comments on the proposed guidance content, we refer Defra to the responses of our members including, Amphibian and Reptile Conservation, Buglife, BCT and RSPB.

Following the Review of Implementation of the Birds and Habitats Directives in England, we recognise the benefits of simplifying and rationalising guidance on wildlife protection, and welcome measures which encourage and facilitate compliance with the law. As organisations with a wide range of expertise and engagement with European and domestic wildlife legislation, we are well placed to assist Defra in meeting these objectives. We appreciate the previous response from Defra addressing some of our initial issues. However, some points have not been adequately addressed and we view these latest proposals with considerable concern, as follows.

- We have a number of serious concerns regarding the tone, accuracy and legality of the drafted guidance. We would question the grounds for stating that 'if you follow this guidance, you will normally be doing enough to comply with the law.'
- We appreciate the need for clear messaging on protecting species, but communication still needs to be effective, especially considering the legal status of some species. The guidance itself reads poorly and although the stated audience is 'non-experts' the language has a tone of deliberate 'dumbing down'. It is difficult to see how the publication of this new 'non-expert' guidance is going to help individuals understand what is legally expected of them, although this should not be used as an excuse for a lack of rigor when applying the law.
- We have serious concerns about some of the content, which includes misleading statements. There are several spelling mistakes in the scientific names of some species

which leads us to believe this has not been adequately checked and has not been written by an authoritative source. We request that these are corrected.

- Our concerns are reinforced by the presentation of guidance upon which we have previously been consulted. Far from facilitating and clarifying compliance with legal requirements, guidance relating to the Habitats and Wild Birds Directives continues to depart significantly from other UK and EU guidance and may therefore undermine the consistent application of the Directive. The uncertain status of guidance produced to date is likely to lead to considerable concern amongst those utilising it and increased risk of challenge (for example, see the Article 6(4) guidance and the relevant Link response¹).
- It is stated that ‘wildlife protection law and policy are not being changed by this project.’ We welcome this statement, but are concerned that in places the guidance as currently drafted continues to risk changing the current approach, and is in conflict with both existing UK guidance (for example that provided in ODPM Circular 06/2005) and EU guidance.
- We have further concerns regarding the implications of the removal of guidance: we are concerned that a lot of useful detailed guidance will be removed imminently and not replaced. This will certainly lead to problems for practitioners and regulators. Where available, the basic/technical guidance should be supported by this detailed guidance.
- The availability and quality of guidance is intricately linked to the engagement of sufficiently resourced, robust, evidence-based Statutory Nature Conservation Bodies (SNCBs). This is a topic about which both the industry and non-governmental organisations are already deeply concerned, in light of observed declines in SNCBs expertise, resource, consistency and engagement. The effective implementation of the guidance is highly dependent on the quality and quantity of SNCB input, and the guidance should therefore emphasise the importance of such advice rather than treating it as something that ‘may be worth’ considering.
- There is no information about how the legislation covering protected species interacts with the planning system.² The wildlife guidance must make links to relevant sections of the new National Planning Practice Guidance suite. Similarly, links must be made from the planning guidance to the wildlife guidance. Currently, the planning guidance simply says that, ‘Separate guidance is to be published by Defra on statutory obligations in regard to protected species which will replace the advice previously set out in Circular 06/05: Biodiversity and Geological Conservation.’³
- In this vein, we note that Defra is replacing Circular 06/05: Biodiversity and Geological Conservation. The Circular currently provides substantial information on how to consider protected species in the planning system, and its successor must be clearly linked to the refreshed wildlife guidance.

¹ See Wildlife and Countryside Link response to the consultation on draft guidance on the application of Article 6(4) of the Habitats Directive:

[www.wcl.org.uk/docs/Link_response_to_the_consultation_on_guidance_on_article6\(4\)_Oct12.pdf](http://www.wcl.org.uk/docs/Link_response_to_the_consultation_on_guidance_on_article6(4)_Oct12.pdf).

² The relevant legislation is Wildlife and Countryside Act 1981, the Natural Environment and Rural Communities Act 2006, the Conservation of Habitats and Species Regulations 2010 and the Offshore Marine Conservation (Natural Habitats & c.) Regulations 2007 (as amended). The latter two are the regulations which transpose the EU Habitats and Wild Birds Directives.

³ DCLG (2013) National Planning Policy Guidance, ‘Natural Environment’, <http://planningguidance.planningportal.gov.uk/blog/guidance/natural-environment/biodiversity-ecosystems-and-green-infrastructure/>, accessed 31 October 2013.

- We still feel that the consultation method itself is deficient, for several reasons:
 - a) The method of commenting, via text boxes, is difficult to work with, particularly as it prevents suggested alterations being made directly on the relevant portion of text;
 - b) It does not seem possible to view or download the whole document at once, which makes it difficult to comment on properly;
 - c) Several key elements of guidance that have not yet been written are referred to – it is difficult to comment on one element without seeing the content of the other;
 - d) We are grateful for the extension to the previous deadline for comments on this review. However, we wish Defra to be mindful of the fact that this consultation comes at a time when NGOs are responding to a very large number of concurrent Government consultations. This makes it extremely challenging for us to provide considered and constructive responses.
 - e) We require clarity on the reform process going forward. How will the development of further guidance be prioritised, what will happen to the existing guidance and how will stakeholders be notified of and consulted upon further draft content?

As previously mentioned, these are the overarching points which remain of concern and which we strongly believe still need to be addressed. We would be happy to discuss any of the points above in more detail, as we continue to engage with Defra officials on this issue.

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