



Wildlife and
Countryside



Joint Links response to the Environmental Audit Committee's inquiry: 'Assessment of EU/UK environmental policy'

November 2015

This response is submitted on behalf of the Joint Links which comprises Wildlife and Countryside Link, Scottish Environment Link, Wales Environment Link and the Northern Ireland Environment Link. Each is a coalition of environmental voluntary organisations, united by their common interest in the conservation of nature and the promotion of sustainable development across the terrestrial, freshwater and marine environments.

Each Link represents its member organisations and facilitates their shared efforts in profiling environmental issues and concerns with decision makers, opinion formers, media and the public. Where appropriate, the Links also facilitate cross-border collaboration between their members and working groups on issues of UK-wide impact and concern. The Joint Links collectively represent 224 organisations and more than 8,000,000 members across the UK.

Background

As part of its Regulatory Fitness and Performance Programme, the European Commission is currently undertaking a 'Fitness Check' of the EU Birds and Habitats Directives to assess whether they remain 'fit for purpose'.¹ The Joint Links submitted the UK NGO sector's response to the 'Fitness Check' consultation in April 2015, supported by 100 NGOs and 500 separate pieces of evidence.² Here, we reiterate our view that making changes to the Directives at this critical time would undermine decades of progress and cause unnecessary uncertainty for developers and conservationists alike. Full implementation of the existing requirements set out in the Directives, alongside increased investment and reform of key sectoral policies, is essential for meeting our national and international commitments to biodiversity conservation and sustainable development.

Note: For information on the way in which the provisions of the Birds and Habitats Directives are implemented across the four countries of the UK, see: <http://jncc.defra.gov.uk/page-1372>

1.1. What advantages and/or disadvantages does environmental policy making at the EU level offer for the UK?

The urgent need to halt and reverse the loss of biodiversity is one of the most important environmental issues currently facing the UK. The EU Birds and Habitats Directives (the 'Nature Directives') are widely recognised as the cornerstone of biodiversity conservation efforts in the UK and across the EU as a whole. Together, they establish a common legal framework for protecting rare or threatened species and habitats across their natural range within the EU via the designation of a network of protected sites and the establishment of a system of strict species protection measures. They play an essential role in underpinning biodiversity conservation in the UK, supporting the UK in achieving its own national biodiversity conservation objectives as well as contributing significantly to the achievement of the UK's international biodiversity conservation obligations.

Taking action to protect biodiversity at EU level is essential in ecological terms. Nature does not respect political boundaries and many of the key threats to biodiversity in the UK are cross-border. To be successful, a coordinated trans-boundary approach is required, for example to deliver conservation measures for many of our migratory and wide-ranging species, in particular those in

¹ http://ec.europa.eu/environment/nature/legislation/fitness_check/index_en.htm

² <http://www.wcl.org.uk/habsregs.asp>

the marine environment.³ As the climate changes, the network of sites protected under the Directives will be crucial in helping species survive and shift their ranges, again highlighting the importance of a coordinated approach.⁴

As outlined in more detail in response to Question 2.2., the Nature Directives were adopted to address failures and inconsistencies in national nature protection laws, and tackle rapid and accelerating biodiversity losses. In the absence of these Directives, it is likely that the uncoordinated and ineffective nature conservation efforts in place at national level prior to their adoption would have continued to contribute to the loss of biodiversity, including in the UK.

However, this coordinated approach is not only important in biodiversity conservation terms. The Nature Directives are also important in establishing a level playing field as part of the proper functioning of the Single Market, a shared framework of environmental laws and standards that ensure that no other Member State can gain a short-term competitive advantage over the UK through the adoption of lower environmental standards environment (and vice versa).⁵ This set of common standards plays an important role in providing a clear and stable legislative framework for UK businesses across the EU, providing certainty that the rules applicable to them are the same in all Member States.

As stated by the Aldersgate Group, “EU legislation has often resulted in stronger environmental standards than would have otherwise applied... Many of these...have opened up economic opportunities for businesses and savings for consumers...”⁶

Similarly, as stated by CEMEX, “...sound and well implemented legislation are important in order to provide a level playing field for industry and stimulate innovation and enhanced performance. The EU Birds and Habitats Directives provide an appropriate and effective legal instrument for the conservation of biodiversity in Europe and an appropriate framework for the development of extractive activities in harmony with nature.”⁷

Aside from the functioning of the Single Market, it is also important to recognise the role played by EU environmental standards in supporting the EU economy more broadly: the network of sites protected under the Directives represent a core component of the UK’s natural capital, underpinning human health, well-being, and prosperity. Although many of these benefits cannot be accurately quantified, it is clear that the benefits substantially outweigh the costs. A study of the costs and benefits associated with Natura 2000 sites in Scotland found an overall benefit-cost ratio (BCR) of 7:1.⁸ Similarly, a study of the costs and benefits associated with Sites of Special Scientific Interest in England and Wales found a BCR of 8:1 in England and over 10:1 in Wales (note that all Natura 2000 sites in England and Wales are also SSSIs).⁹

The important role played by EU legislation in improving the UK’s environmental performance is recognised by a wide range of stakeholders, ranging from academics to businesses. It is therefore clear that the issues addressed by the Nature Directives continue to require action at the EU level. It is unlikely that the UK or any other individual Member State alone could deliver the same benefits in the absence of this coordinated approach.

³ IEEP. (2013). [A Report on the Influence of EU Policies on the Environment](#).

⁴ Gillingham et al. (2015). The effectiveness of protected areas in the conservation of species with changing geographical ranges. *Biological Journal of the Linnean Society*; Hiley et al. (2013). Protected areas act as establishment centres for species colonizing the UK. *Proceedings of the Royal Society of London B: Biological Sciences*, 280(1760); Thomas et al. (2012). Protected areas facilitate species’ range expansions. *Proceedings of the National Academy of Sciences*, 109(35), 14063-14068.

⁵ Jacob et al. (2009). [Environment and the Single Market](#). Final Report to the European Commission.

⁶ <http://www.aldersgategroup.org.uk/reports>

⁷ <http://www.birdlife.org/europe-and-central-asia/news/rules-business-and-environment-cemex-and-birdlife-jointly-endorse-eu>

⁸ Jacobs et al. (2004). [An Economic Assessment of the Costs and Benefits of Natura 2000 Sites in Scotland](#). Environment Group Research Report 2004/05.

⁹ GHK. (2011). [Benefits of Sites of Special Scientific Interest: Final Report](#).

This approach is also supported by the majority of UK citizens, with the environment as one of the few policy areas where UK citizens strongly support EU action.¹⁰ The European Commission's 12-week online public consultation undertaken as part of the 'Fitness Check' witnessed the unprecedented participation of more than half a million people – over 100,000 of which were from the UK – making it the largest ever response to an EU public consultation. Over 90% called on the Commission to improve implementation of the Directives rather than weaken them.

1.2. Has the right balance between the objective of setting a flexible common EU framework for tackling cross-border environmental problems, and allowing for distinct national approaches to be reserved into account been achieved?

See answer to Question 2.1.

1.3. How successful has the implementation of EU environmental policy and the role of the EU as an international negotiator on environmental issues been for the UK? In areas where this has fallen short, where could improvements be made?

Both the EU and the 28 individual Member States (including the UK) are signatories to the Convention on Biological Diversity (CBD). The Nature Directives are the cornerstone of the EU's efforts to conserve biodiversity, and are the main tools for delivering on the EU's commitments under the CBD. Member States' obligations under the Nature Directives often form the basis of a common EU negotiating position within international fora, providing a strong and united pro-conservation voice in international negotiations and a best-practice example for other countries to follow. Thanks to the Nature Directives, EU Member States have been able to demonstrate strong leadership globally in taking actions to conserve biodiversity. In the absence of the Nature Directives, this simply would not have been possible.

2.1. Have EU environmental policies taken into account the specific character of environmental issues in the UK?

Yes. The Nature Directives establish an effective, efficient, and flexible legal framework that has proven capable of addressing a wide range of problems and concerns facing the species and habitats in the UK protected under the Directives. Scientific evidence shows that the Directives have been delivering improvements in the status of protected species in the face of a range of growing pressures, despite inadequate resourcing and incomplete implementation.¹¹

This arises from the fact that the Nature Directives set out the results to be achieved without necessarily dictating the precise means of achieving those results, and require Member States to take the necessary measures to safeguard biodiversity without being problem-specific. They thus allow for the specific character of environmental issues in individual Member States to be adequately taken into account via the adoption of distinct national approaches.

Given that the protections provided by the Directives are driven by the ecological requirements of the species and habitats concerned, regardless of the cause of any decline, this flexibility also means that the protections afforded by the Directives will be extremely important in accommodating many of the issues arising from the impacts of climate change on biodiversity.¹²

Beyond ecological requirements, evidence suggests that the Directives “*provide a clear and robust legal framework for achieving sustainable development*” in the UK – as highlighted by the UK

¹⁰ Eurobarometer: http://ec.europa.eu/public_opinion/index_en.htm

¹¹ Sanderson et al. (2015). Assessing the Performance of EU Nature Legislation in Protecting Target Bird Species in an Era of Climate Change. *Conservation Letters*; Donald et al. (2007). International conservation policy delivers benefits for birds in Europe. *Science*, 317(5839), 810-813.

¹² Dodd et al. (2010). [Protected Areas and Climate Change: Reflections from a Practitioner's Perspective](#). *Utrecht Law Review*, 6(1).

Sustainable Development Commission in 2007.¹³ Too often presented as a barrier to growth, the Directives instead provide a 'litmus test' for sustainable development. They do not block all development; they simply provide the minimum safeguard necessary to ensure that biodiversity is taken properly into account alongside other considerations when planning decisions are taken.

Of course, given the wide range of pressures facing biodiversity, it remains the case that the Nature Directives can only achieve their objectives where they are not undermined by other policies promoting unsustainable practices (see Question 2.2. below).

2.2. How effective have EU environmental policies been in addressing environmental issues in the UK? What work still needs to be done?

Key message: Nature is in trouble in the UK, as highlighted by the 2013 State of Nature Report.¹⁴ There is strong evidence demonstrating that, without the Directives, nature in the UK would be in a far worse state. However, incomplete implementation, inadequate funding of conservation measures and the undermining influence of other policies mean that nature in the UK is still in decline.

The Nature Directives are widely recognised as the cornerstone of our efforts to deliver environmental sustainability and to halt and reverse the loss of biodiversity in the UK. Thanks to the Directives, there have been substantial improvements in the standards of protection for habitats and species in the UK, such that the loss of important wildlife sites has declined dramatically and many species have recovered from the brink of extinction. Scientific evidence shows that the Nature Directives have delivered demonstrable benefits for species and habitats where properly implemented and that they will continue to be essential in helping wildlife adapt to future challenges, in particular climate change.

The Directives have significantly increased the area of land and sea protected in the UK and added a layer of protection for nature above and beyond that provided in previous national legislation: changes made to national law in order to comply with the requirements of the Directives have improved the legislative framework for wider conservation efforts at national level.¹⁵ For example, although protected areas were introduced in national legislation in 1949 (Sites of Special Scientific Interest (SSSIs) in England, Scotland and Wales and Areas of Special Scientific Interest (ASSIs) in Northern Ireland), until 1981 they provided only limited protection from development and damage caused by changes in agricultural and forestry management.¹⁶ However, changes to national legislation driven by the requirements of the Directives, have led to a marked improvement in the site protection system, resulting in a significant decline in the area of SSSI/ASSI being damaged and/or lost each year. Nevertheless, the standard of protection from damaging development applied to SSSIs/ASSIs remains lower than that afforded to sites protected under the Nature Directives, as demonstrated by a number of cases where damaging developments or management activities on non-Natura 2000 SSSIs have been consented under circumstances which would not have complied with the legal requirements for the protection of Natura 2000 sites. This highlights the important role played by the Nature Directives in strengthening protections for our most important sites, and provides an insight into what the situation might be like without them.

The Directives will continue to be vital in the future in addressing the threats that nature faces in the UK. In relation to climate change for example, evidence shows that protected areas designated under the Directives are already playing an important role in improving the status of threatened species and that such areas will continue to remain extremely important in the future, in particular by

¹³ Sustainable Development Commission. (2007). *Turning the Tide: Tidal Power in the UK*.

¹⁴ Burns et al. (2013). *State of Nature report*. The State of Nature partnership.

¹⁵ IEEP. (2013). *A Report on the Influence of EU Policies on the Environment*; HM Government. (2014). Review of the Balance of Competences between the United Kingdom and the European Union: *Environment and Climate Change*.

¹⁶ Fairbrass, J., & Jordan, A. (2001). European Union environmental policy and the UK government: a passive observer or a strategic manager?. *Environmental Politics*, 10(2), 1-21; Fairbrass, J., & Jordan, A. (2001). Protecting biodiversity in the European Union: national barriers and European opportunities?. *Journal of European Public Policy*, 8(4), 499-518.

providing areas of suitable habitat to facilitate species' range shifts in response to changes in climate. In the UK, the Directives are already playing a key role in helping species such as the Bittern and the Dartford warbler to recover from historical declines and colonise new sites as conditions change.¹⁷

In terms of what work still needs to be done, progress towards achievement of the objectives of the Directives in the UK has been constrained by inadequate implementation, insufficient investment in biodiversity conservation measures, and the undermining effects of other policies. Tackling these issues is essential if we are to halt the loss of biodiversity, and will deliver a range of co-benefits to people and businesses.

(a) Better implementation: There are a range of measures that are essential in order to improve implementation of the Directives in the UK. To date, delays in transposition and implementation, combined with insufficient enforcement, have had a significant negative impact on progress. For example:

- Although the Directives have contributed to significant improvements in the knowledge base relating to species and habitats in the UK, inadequacies remain due to a lack of appropriate monitoring, particularly in the marine environment. These have significantly held up progress in the designation of protected sites.
- Inadequate enforcement of the species protection elements of the Birds Directive has resulted in a systematic failure to prevent persecution, through the deliberate killing, nest destruction and disturbance of raptor species. This represents a failure to fulfil Article 5 obligations and prevents the UK from fulfilling its obligations under Articles 2, 3 and 4 as the failure to address persecution prevents these raptors from occupying the suitable habitat that constitutes their natural range, including in areas classified as Special Protection Areas for their protection.¹⁸
- Aside from protected species and sites, effective conservation measures are also required across the wider landscape. However, the relevant provisions of the Nature Directives have yet to be properly implemented and enforced (e.g. Article 10 of the Habitats Directive).

(b) Increased investment: A lack of sufficient funding, combined with limited uptake and poor targeting of the EU funds available, remains a major constraint on the achievement of the UK's biodiversity conservation objectives. The only EU funding source dedicated solely to nature conservation (LIFE) represents less than 1% of total EU budget. The European Commission itself has acknowledged that funding for network of sites protected under the Directives is inadequate, with only 9-19% of the estimated needs covered by the EU funds available.¹⁹ Significant budget cuts to nature conservation authorities at national level are also limiting progress.

(c) Improved integration: The Nature Directives can only play their part in solving the crisis facing nature as part of a coordinated and consistent policy response to the pressures and threats driving biodiversity loss. Therefore, there is a pressing need to align other policies with the need to protect and restore biodiversity. By far the most significant integration failure that currently exists relates to the Common Agriculture Policy (CAP), which has undermined the achievement of the Directives' objectives and contributed to the collapse of farmland biodiversity. Without fundamental reform, the CAP will continue to remain an obstacle to the achievement of these objectives.

¹⁷ Johnston et al. (2013) *Observed and predicted effects of climate change on species abundance in protected areas*. Nature Climate Change 3(12), 1055-1061; Pearce-Higgins et al. (2011). [Final Report to the Climate Change Impacts on Avian Interests of Protected Area Networks \(CHAINSPAN\) Steering Group](#); RSPB. (2015). [The nature of climate change](#).

¹⁸ Fielding et al. (2011). [A Conservation Framework for Hen Harriers in the United Kingdom](#). JNCC Report 441. Joint Nature Conservation Committee, Peterborough; Natural England. (2008). [A future for the Hen Harrier in England?](#)

¹⁹ http://ec.europa.eu/environment/nature/natura2000/financing/docs/financing_natura2000.pdf

2.3. What impact has EU environmental policy had on the UK's businesses which are affected by the policies?

As outlined in answer to Question 1.1., the Nature Directives provide a range of important benefits to the UK's businesses, where properly implemented. In addition to generating a range of new business opportunities (for example in relation to recreation and tourism), they provide a clear and consistent level playing field by establishing common standards for environmental protection that apply across all EU Member States. Many industries, from ports and shipping to major renewable energy producers on land and at sea, have developed ways of working effectively with these laws and value the certainty and stability that they provide. According to the UK Government's Balance of Competences Review (Environment): "*The evidence showed that a large number of organisations representing all sectors considered that it is in the UK's national interest for the EU to have a degree of competence in the broad areas of environment and climate change because of the advantages that this brings for the Single Market and environmental protection.*"²⁰

Contrary to perceptions, the Directives do not prevent development: rather, they simply ensure that it is undertaken in a way which is compatible with the protection of biodiversity. There is no evidence to suggest that the Directives are placing 'unnecessary burdens' on business: environmental regulations are responsible for less than 1% of the administrative burden on business in the EU.²¹ Figures produced by Defra suggest that the costs of environmental regulations as a whole account for less than 2% of industry turnover on average. Once the benefits to business are taken into account, the net costs are even lower.²²

Evidence suggests that less than 0.05% of planning permissions each year in England require a licence for European Protected Species, and fewer than 0.5% of land use consultations are objected to on Directives grounds (most of which are successfully dealt with at the planning stage). In this context, it is also worth noting that the % of the UK land area designated as Natura 2000 (approx. 8.5%) is the second lowest in the EU and less than half the EU average.

In the relatively small number of cases where issues do occur, evidence suggests that they relate not to the laws themselves, but rather to the way in which the laws have been implemented. For example, a lack of survey and designation of protected sites offshore has led to unnecessary and avoidable uncertainty for offshore wind development in the UK. This could be remedied by proper implementation of Nature Directives.

The observation above is consistent with the finding of the 2012 Habitats and Wild Birds Directives Implementation Review in England, which 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 that there were a range of sensible measures that could be taken to improve implementation and reduce costs to developers (e.g. the development of clearer guidance and more streamlined licensing processes, improved access to/availability of data etc.).²³ These measures were supported by both businesses and conservationists. Unfortunately, as pointed out by Energy UK in their response to the 'Fitness Check', "*many are yet to be fully implemented*".²⁴

²⁰ HM Government. (2014). Review of the Balance of Competences between the United Kingdom and the European Union: [Environment and Climate Change](#).

²¹ High Level Group on Administrative Burdens. (2014). [Cutting Red Tape in Europe](#): Legacy and outlook (Final Report)

²² DEFRA. (2015). [Emerging Findings from Defra's Regulation Assessment](#): First Update Covering 2012.

²³ HM Government. (2012). [Report of the Habitats and Wild Birds Directives Implementation Review](#).

²⁴ http://ec.europa.eu/environment/nature/legislation/fitness_check/evidence_gathering/index_en.htm