

A Race to Protect Europe's Natural Heritage

WWF European Snapshot Report on the Status of Implementation of the Habitats Directive

UK
Score: 19/30

I. Legal Aspects of Implementation			Score: 6/9
Transposition: To what extent has the Habitats Directive been transposed into national or regional law?			
Good/complete transposition 3	Some gaps remaining 2	Key/major gaps remaining 1	Failure to transpose 0
<p>The Habitats Directive was originally transposed into UK law through The Conservation (Natural Habitats) regulations 1994 – the “Habitats Regulations”. Additional Government guidance on the treatment of nature conservation issues in the planning system has also been provided. These Regulations and guidance also cover the treatment of Special Protection Areas (SPAs) under the Birds Directive. However, devolution within the UK means that Wales, Scotland and Northern Ireland have, or are about to, produce Country level Regulations and planning guidance. New national legislation on wildlife protection (The Countryside and Rights of Way Act 2000) – the CRoW Act – in England will also require revision of both the Regulations and guidance.</p> <p>Although Articles 3 and 4 (regarding the selection and eventual designation of SACs) have been duly transposed, there are a range of issues surrounding their implementation that still give cause for concern. These concerns centre on the selection, numbers and boundaries of SACs. These are covered in greater detail in 2(i).</p> <p>Article 6 is given effect through the Regulations, and detailed additional guidance is provided as noted above. Whilst the Regulations and guidance represent a reasonably good transposition of the Directive’s requirements, this has proved to be one of the more contentious areas of the Directive, specifically regarding the treatment of development proposals on or adjacent to <i>Natura 2000</i> sites, and how the merits of such proposals are judged against the nature conservation status of a given site. In particular there is a real concern that the current regulations do not adequately enforce reviews of existing plans or projects which may impact on <i>Natura 2000</i> sites.</p> <p>The transposition of Articles 12, 13 and 16 give real cause for concern in the UK. Whilst new national legislation (The CRoW Act in England) will improve protection for some species, the measures taken to assess the impact of development on Directive-protected species outside the SAC network are considered inadequate (Article 12). Furthermore, the licensing system that may be used to permit otherwise damaging works (Article 16) is not applied rigorously enough. This is the subject of a recent European Commission Reasoned Opinion against the UK (see 1(ii)).</p>			
Complaints in Progress at the European level: How significant are current Commission complaints in progress against your Member State?			
No outstanding complaints 3	Some complaints not yet dealt with 2	Significant complaints not yet dealt with 1	Decisions of the ECJ not yet dealt with 0
<p>The UK is currently in receipt of a Reasoned Opinion from the Commission (dated February 2001) concerning its transposition and implementation of the requirements of Articles 12 and 16 of the Directive, regarding the protection of Annex-listed species outside <i>Natura 2000</i> sites. The Commission is particularly concerned that “the application of the licensing system used to grant exceptions to the Directive in the UK does not respect its strict conditions. In particular, licences seem to be issued as a formality after development consent for a construction or infrastructure project has already been given, and do not appear to involve a careful weighing of the arguments for and against allowing the damage to occur.”</p> <p>Whilst the contents of the Opinion are confidential to the Commission and the UK Government, it is</p>			

believed that the complaint concerns the protection of the great crested newt (listed on Annexes II and IVa). This species is quite widespread in the UK, but many populations lie outside identified SACs and are therefore vulnerable to development threats.

Given the wide distribution of Directive-listed species occurring outside the currently identified list of candidate SACs (especially in the marine environment), compliance with this part of the Directive is essential to achieving and maintaining their favourable conservation status.

Member State Response to Complaints: *How adequate do you consider your Member State's response to Commission complaints to be?*

Good response at stage of Letter of formal notice	Response before case was referral to the ECJ	Response only after ECJ case decided	No response
3	2	1	0

WWF-UK understand that the UK Government has responded to the complaint noted in 1(ii) above, although the content of that response is confidential. We anticipate that the UK Government and, as appropriate, the devolved Countries will take these matters into account as review(s) of the Habitats Regulations and planning guidance take place later this year.

II. Protecting Habitats and Species

Score: 7/12

Natura 2000: *How adequate is the list of proposed Natura 2000 sites for the protection of habitats and species?*

coherent national network	more than 50 % sufficient	less than 50 % sufficient	no list submitted
3	2	1	0

At the time of the Kilkee Moderation meeting in September 1999, the UK list of proposed or candidate SACs stood at some 344 sites. By late summer 2000, the list had increased to 576 sites. The additional sites included some of, or equivalent sites to, those included on WWF-UK's shadow list. This increase is to be welcomed. Nevertheless WWF-UK remains concerned that certain habitats and species still remain under represented. These include active raised and degraded bogs, some woodland habitats and marine habitats such as sandbanks covered by the tide. There is particular concern that marine species such as harbour porpoise have not been adequately covered by the SAC network, although this problem is common to other Member States whose coastal waters support this species.

Aside from the issue of numbers of SACs, WWF-UK believes that many sites have boundaries that are too tightly drawn around the features of qualifying interest. This could have severe implications for site integrity, as land/habitats outside a given SAC could be essential to the structure and ecological function of that site. Wetland sites are a good example, where the surrounding land can be critical to the quantity, quality and timing of water flows that are essential to these sites. In part, this problem flows from the fact that in the UK, with very few exceptions, SACs are based on the national network of Sites (or Areas) of Special Scientific Interest. These are notified on different criteria to SACs, and are not complemented by, for example, buffer zones or corridors. Whilst SACs may comprise one or more SSSIs/ASSIs, additional land in buffer zones could facilitate, for example, the regeneration of native woodland habitats, or permit managed re-alignment on the coast to take account of the impacts of sea level rise. It could be that these tightly drawn boundaries around UK SACs might compromise progress towards achieving and maintaining favourable conservation status over time for key habitats and species.

However, the government has shown reluctance to consider buffer zones and any area outside of the SAC. On the other hand, when it comes to marine sites, Regulation 33(2) requires that operations outside of sites which may have a damaging impact of the SAC, but are remote from it, must be considered and incorporated within the management plan. The same approach should be used across the SAC network.

<p><i>Natura 2000: How does your Member State score on the putting in place of management measures?</i> (Article 6)</p>			
All of the above measures have been adequately addressed 3	Some of the measures have been adequately addressed 2	Very few measures are being addressed or are in place 1	Measures are non-existent 0
<p>There is no over-arching obligation to produce management plans for <i>Natura 2000</i> sites in the UK. However, those bodies involved in the use or regulation of marine sites “<i>may establish</i>” management schemes “<i>under which their functions...shall be exercised so as to secure in relation to that site compliance with the requirements of the Habitats Directive.</i>” This process is now underway and has fostered important working relationships between a wide range of statutory bodies, commercial concerns and local interest groups.</p> <p>There is no such obligation for terrestrial sites, although those which are already managed as nature reserves will have management plans that can address the conservation priorities associated with <i>Natura 2000</i> designation. The management schemes for marine sites are a way of promoting sustainable use of the SAC. The same cannot be said of the terrestrial sites.</p> <p>There is no UK-wide standard or protocol for monitoring <i>Natura 2000</i> sites, and it follows that monitoring schemes for any one site will tend to reflect the emphasis placed on monitoring in its management plan. Existing species and habitats datasets can of course assist in the monitoring process, and the gradual implementation of the UK Biodiversity Action Plan will help to prioritise monitoring effort.</p> <p>At present there is no clear view on what favourable conservation status for habitats and species might mean, either in theory or in practice. This clearly restricts the effectiveness of any monitoring strategy for Directive-listed habitats and species, and it is clearly critical that this work is developed in the UK and throughout the Community if the Directives objectives are to be met.</p>			
<p><i>Protection of species beyond Natura 2000: How adequate are non-site based measures for the protection of species?</i> (Article 12, 13, 14 and 16)</p>			
All of the requirements have been adequately addressed 3	Some of the of the requirements have been adequately addressed 2	Very few of the requirements are being addressed or are in place 1	Efforts to address the requirements are non-existent 0
<p>WWF-UK is concerned that the UK’s transposition of Article 12 does not fully reflect the intention of the Directive. There are three elements to this concern.</p> <p>Firstly, whilst the species listed on Annex IVa should be guaranteed strict protection, the UK Habitats Regulations create a loophole which could allow the killing of a protected species if “<i>the act was the incidental result of a lawful operation which could not reasonably have been avoided</i>”. This does not reflect any exception in the Directive.</p> <p>Secondly, we are concerned that the Regulations do not provide any remedy for the destruction or damage to sites by neglect.</p> <p>Thirdly we do not believe that adequate measures are in place to monitor the incidental capture and killing of the species listed in Annex IVa.</p> <p>As noted in Section 1 the UK Government is currently in receipt of a Reasoned Opinion from the Commission setting out the Commission’s concerns on the UK’s system of derogations under Article 16.</p> <p>The Commission is particularly concerned that “<i>the application of the licensing system used to grant exceptions to the Directive in the UK does not respect its strict conditions. In particular, licences seem to be issued as a formality after development consent for a construction or infrastructure project has already been given, and do not appear to involve a careful weighing of the arguments for and against allowing the damage to occur.</i>”</p> <p>Whilst the contents of the Opinion and the UK’s response are confidential to the Commission and the UK Government, it is believed that the complaint concerns the protection of the great crested newt (listed on Annexes II and IVa). This species is quite widespread in the UK, but many populations lie outside identified SACs and are therefore vulnerable to development threats.</p> <p>Given the wide distribution of Directive-listed species occurring outside the currently identified list of candidate SACs (especially in the marine environment), compliance with this part of the Directive is</p>			

essential to achieving and maintaining their favourable conservation status.			
<p>Complementary measures: <i>Is your Member State giving adequate attention to complementary measures, such as for research, planning and species reintroduction?</i></p> <p style="text-align: right;">(Articles 10, 11, 18 and 22)</p>			
Good effort to implement complementary measures 3	Mixed effort to implement complementary measures 2	Poor effort to implement complementary measures 1	No effort to implement complementary measures 0
<p>There are wide range of research and monitoring programmes in the UK which, whilst they are not specifically designed to meet the requirements of the Directive, do contribute to the monitoring of <i>Natura 2000</i> sites and Directive-listed species. The implementation of management plans for marine <i>Natura 2000</i> sites should help to co-ordinate monitoring programmes for these sites, although progress on terrestrial sites is not formalised.</p> <p>The implementation of the UK Biodiversity Action Plan will also assist in this process.</p> <p>The incorporation of Habitats Directive obligations into planning and other key sectors has met with mixed success, and some areas give serious cause for concern in the UK. The following highlights four key areas:</p> <ul style="list-style-type: none"> The land-use planning system has inevitably had to deal with the implications of the Directive at UK, devolved Country, regional and county/district levels. Government policy and guidance has put in place and informed various statutory decision-making processes, but the impact and efficacy of these is inevitably driven by case law, both in the UK and in Europe. Experience to date has highlighted the need for review of various aspects, for example, the Habitats Regulations of 1994 and Planning Policy Guidance on Nature Conservation. Transport infrastructure proposals often have the potential for major impacts on designated sites. After a period when additional roads provision was not considered desirable, a number of potentially damaging schemes have now been re-instated. The lack of strategic environmental assessment of the roads programme on <i>Natura 2000</i> (and other) sites gives considerable cause for concern, as does the treatment of individual roads schemes. The UK's agricultural sector is highly stressed in the aftermath of BSE and the foot and mouth crisis. Whilst the links between agricultural support and the Directive have been weak to date, and in some cases lead to degradation of important habitats, there is a major opportunity ahead to tie agri-environment support to restoring and maintaining favourable conservation status of priority habitats and species. Commercial coniferous forestry has historically had a major impact on the status of some key habitats in the UK, reducing their extent, quality and increasing fragmentation. Many of these changes pre-dated the introduction of the Directive, and the forestry industry now has a major role to play in restoring open ground habitats (such as lowland heath, bogs and upland heath) and promoting the management, restoration and sustainable management of native woodlands. 			
III. Putting Plans into Practice			Score: 6/9
<p>Finance: <i>Is your government devoting adequate human and financial resources to implementation of the Directive?</i></p>			
Significant additional resources dedicated to implementation of the Directive 3	Some additional resources dedicated 2	Very few additional resources dedicated 1	No additional resources dedicated 0
<p>The identification and eventual designation of SACs has led to a significantly increased workload for the relevant Government Departments at UK and devolved Country level, and especially for the Country Agencies for England, Scotland, Wales and Northern Ireland. This has been supported by extra resources</p>			

(staff and funding), however there is evidence that the work on SACs has taken away time from other work in the Agencies. Furthermore, the *Natura 2000* series has inevitably produced an increase in new and complex planning casework, which has led to new staff resources in key parts of the UK. In England at least, a Regulatory Impact Assessment will be undertaken to examine the “costs” associated with implementing the SAC programme.

Despite the wide range of funding opportunities available, the promotion of the links to the Habitats Directive has been relatively poor, and to some extent has depended on particular organisations or partnerships taking the initiative at a regional or local level. The Community LIFE fund in particular has supported a number of species or habitat-based projects around the UK, and has significantly supported much valuable work on marine SACs.

Overall, the implementation of the Directive in the UK has led to an increase in resources for the designation process, but there is a need for a more pro-active promotion of funds at a strategic level. Clearly the possibility of major changes in policy, such as re-directed support for agriculture and rural development may benefit Directive-listed habitats and species inside and outside the *Natura 2000* network.

There are no common standards for stakeholder involvement across the UK. There is a potential risk that the devolved countries may develop different SAC management schemes and allocate variable corporate priorities and resources to these.

Information and Awareness Raising: Is your government doing enough to provide information and raise awareness about Natura 2000 and biodiversity conservation?

Good information and awareness raising activities 3	Some good activities 2	Few information and awareness raising activities 1	No information and awareness raising activities 0
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To date, dissemination of information on the Habitats Directive has been mostly associated with the identification of *Natura 2000* sites. This has ranged from generic information distributed by the various Country Nature Conservation Agencies, to site-specific material associated with particular SACs. Inevitably the audiences receiving this information have been relatively restricted – including interest groups, landowners, managers and users of sites identified in the SAC selection process. The Country Nature Conservation Agencies all provide information on the *Natura 2000* programme on their web sites.

Wider public recognition of the Directive is probably very low, except where, for example, LIFE-funded projects have promoted the importance of particular sites to local landowners, managers and users. Otherwise the public may only be aware of the international importance of those sites specifically managed as nature reserves by the Statutory Conservation Agencies, Local Authorities or voluntary bodies.

In summary understanding and debate about the Directive is largely restricted to those organisations and individuals who either are directly affected by it or have a particular interest in its implementation. There is a very significant need for greater public understanding, and hopefully support for the aims of the Directive.

Stakeholder Participation: Is your government doing enough to involve stakeholders and the general public in the Natura 2000 process?

Significant amount of effort to consult stakeholders + public 3	Good efforts to consult stakeholders + public 2	Limited efforts of consult stakeholders + public 1	No consultations with stakeholders + public 0
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The relevant UK and devolved Country Government Departments and Statutory Nature Conservation Agencies have engaged in a thorough consultation exercise with landowners, managers, user groups and other interested parties in the process of SAC selection. Clearly the potential designation of parts or all of some sites is contested, and these discussions are ongoing. As noted above, consultation with the “general public” has been poor, and may not have been regarded as a high priority to date.

For marine SACs (and SPAs), key statutory authorities, organisations and user groups are included in the management groups drawing up management plans for these sites, but wider involvement on terrestrial sites is much less effective. Indeed in some instances there has been marked public hostility towards proposals for the restoration of *Natura 2000* sites (eg the felling of non-native conifers on lowland heathland), although subsequent discussion has often helped to promote the benefits of positive management.

In summary, consultation with stakeholders has generally been good (irrespective of site-specific issues), but apart from some notable examples, public understanding and involvement has been relatively poor.

IV. Political Will

In your opinion, has there been a change in political will or momentum in your Member State around implementation of the Directive? Describe the current political climate surrounding the Directive if you can.

The implementation of the Habitats Directive in the UK has been drawn out and contentious. The concern over, or in some instances opposition to, the Directive has centred on only two key issues to date – the SAC selection process and the implementation of Article 6. Progress on other key Articles has either not been significant to date, or has proved less problematic so far. This may not remain the case.

The UK and devolved Country Governments, and their Statutory Conservation Agencies have focussed largely, but not exclusively, on the SAC selection process. WWF-UK and many other NGOs were initially highly critical of the UK Government's progress on SAC selection. Following the Kilkee Moderation Meeting in 1999, significant progress was made in improving the list, which now stands at some 576 candidate SACs. Whilst there are likely to be significant omissions for some (especially marine) species/habitats, the progress so far is to be welcomed and WWF-UK will continue to lobby for the best possible SAC series in the UK.

The implications and practical application of Article 6 have proved difficult across the range of land use planning considerations, from strategic national and regional planning to site-specific issues at a local level. Experience has revealed some serious concerns about the transposition of the Directive through the national Habitats Regulations, and despite a growing body of case law, serious concerns exist and a significant debate is necessary on issues such as alternatives, mitigation and compensation and over-riding public interest.

Given the recent Reasoned Opinion against the UK Government under Article 16, there are clearly significant outstanding issues for the protection of species outside the *Natura 2000* network.

Nevertheless the devolved Country administrations either have already or are due to embark on a review of relevant legislation, regulations and guidance. It is essential that the UK Government ensures uniformity of coverage across the UK.

Whilst WWF-UK will continue to lobby Government for further progress and full implementation of the Directive in the UK, we believe that the Government has made significant progress in some areas, and we hope to maintain a positive working relationship with them, the devolved Governments and Statutory Agencies.

V. Conclusions and Recommendations

Key points for future progress on the Habitats Directive in the UK are:

- Completion of a genuinely representative series of *Natura 2000* sites across the UK and in UK territorial waters.
- The implementation of "buffer zones" around *Natura 2000* sites to safeguard site integrity and facilitate restoration.
- The development of a theoretical and practical approach to the delivery of favourable conservation status for Directive-listed habitats and species, inside *and outside* the *Natura 2000* network.
- Promotion of management plans for all *Natura 2000* sites.
- Review of monitoring schemes for *Natura 2000* sites and Directive-listed habitats/species outside these

sites. If found necessary, a *Natura 2000* monitoring strategy should be drawn up.

- Thorough review of regulations and planning guidance in England, Scotland, Wales and Northern Ireland to ensure proper implementation of the Directive.
- Ensure compliance across key sectors (eg agriculture, transport, forestry) to ensure delivery of aims of Directive.
- In particular, to re-direct agri-environment support to favour management for key habitats and species outside *Natura 2000* series.
- This should include the promotion of the economic benefits of protected areas in the wider countryside.
- Promote greater “general public” awareness of the aims and objectives of the Directive.
- Agree a common definition for ‘favourable conservation status’ and make this practicable.

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