

Department for Environment, Food and Rural Affairs

Progress on implementation of the Habitats Directive Implementation Review

June 2013

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Introduction

The Habitats and Wild Birds Directives Implementation Review ran from November 2011 to March 2012. The Review took a fresh look at how the Directives are implemented in England and relevant UK waters. The Review found that implementation generally works well with minimal burdens, while maintaining their environmental integrity. However it identified room for improvement in four areas:

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

28 measures were announced to improve implementation across these areas with a focus on the authorisation processes for plans and projects as this is where there is greatest potential to reduce delays and minimise costs to developers.

Progress

The Review set out a detailed timetable for delivery and 25 of the 28 measures have been implemented. The remainder will be completed by the middle of this year, while some will remain new ongoing functions such as the Major Infrastructure and Environment Unit (MIEU). Annex A provides a detailed update progress on each of the measures but highlights include:

- The MIEU works across Government and Defra's agencies and engages directly with developers to facilitate compliance with the Directives. It has assessed all Nationally Significant Infrastructure Projects (NSIPs) and is engaging with those at greatest risk of additional cost or delay to ensure issues stemming from the Directives are resolved in pre-application. Conversations with developers, industry groups, other Government departments, agencies and NGOs as part of an internal review have provided positive feedback on the MIEU's work. In particular they have valued the way the unit has got the right people talking to one another, is asking the right questions, and has brought focus to strategic issues such as those affecting offshore wind. A review of the MIEU's first year of operation can be found at <https://www.gov.uk/government/policies/protecting-biodiversity-and-ecosystems-at-home-and-abroad/supporting-pages/improving-the-way-we-implement-the-habitats-and-wild-birds-directives>
- A number of measures in the review relate to radically improving the guidance provided on how to comply with the Directives. This was needed due to the complexity of the legislation and the large, unstructured stock of more than 3,000 pages of existing Government and agency guidance. This made it very hard for the non-expert to understand their obligations under the Directives. A number of pieces

of new, clearer guidance have already been published e.g. the 10 page guidance on the key factors that need to be considered for a project to be deemed IROPI, including alternatives to a plan or project. Proposals to simplify more than 2,500 pages of guidance on the Directives were consulted on alongside the overarching guidance. In addition these measures have since been expanded into a pilot for the Smarter Environmental Regulation Review (SERR), using the transfer of government web content onto a single website as an opportunity to simplify all environmental guidance. Detailed proposals on how Government will improve guidance on the Directives and wider wildlife protection law will be published later in the summer.

- A key theme from the Review was the importance of early-engagement to ensure issues stemming from the Directives were identified and addressed as soon as possible. The MIEU has introduced a voluntary evidence plan process to formalise this approach for nationally significant infrastructure projects. It allows developers to agree their evidence needs with regulators at an early stage, ensuring the requirements are clear and proportionate and reducing the chances of late requests for additional information.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69601/pb13825-habitats-evidence-plans.pdf
- The Review identified that evidence in the marine environment is a particular barrier to efficient implementation of the Directives because the current state of the evidence base requires a precautionary approach creating uncertainty for developers. A Marine Evidence Group has been established (bringing together Government, agencies, The Crown Estate, industry, NGOs and academia) to help improve the quality and quantity of evidence relevant to protected sites and species and to ensure proportionality in evidence standards. The Group is working to agree both on the best evidence available now and on how to improve the evidence base over the mid-long term. A full report on the Group's work was published in May 2013 and can be found at <https://www.gov.uk/government/publications/report-on-the-work-of-the-habitats-and-wild-birds-directives>

Alongside implementing the Review, Defra has been monitoring projects more widely to assess the on-the-ground impact of the measures. Many projects currently seeking consent were initiated before the Review was finalised or its measures were implemented. It is therefore too soon to judge the impact of the Review. However performance and customer satisfaction data from Natural England shows the Review and wider improvement activities are having a positive impact:

- Last year 98% of all planning consultations and 97% of Habitats Directives cases were dealt with within statutory timetables
- For 2012/13 as a whole 92% of species licences dealt with within the 30 day target period. The total number of species licence applications received was 2783, an increase of 17% since 2011/12.
- Customer satisfaction with individual transactions is rising: for planning consultations it was 94% in May up from 90% in January.

Next steps

While the majority of Review measures have been fulfilled, for those with ongoing functions we will continue to deliver on these commitments, reporting on progress via the relevant key performance indicators and corporate reporting of Defra and its agencies.

In addition wider Defra work will ensure our agencies offer a quality service to developers, and that requirements on business are appropriate and proportionate. For example the Triennial Review of the Environment Agency and Natural England is currently looking at her the functions carried out by the bodies. It will publish preliminary conclusions in due course on how the agencies delivery models and value for money can be improved. A key consideration will be ensuring any changes lead to further improvements in customer service for businesses and planning authorities.

Annex A

Habitats and Wild Birds Implementation Review: summary of measures

Facilitating nationally significant infrastructure				
Measure	By when	Who	Progress	Status
1. Establish a cross-Government Major Infrastructure and Environment Unit (MIEU) to work at the pre-application stage with 'top 40', and other nationally significant infrastructure projects.	April 2012	Defra	The MIEU has been operational since April 2012. The unit has assessed all Nationally Significant Infrastructure Projects (NSIPs) and is engaging with those with the greatest issues to ensure they are resolved in pre-application. A review of the MIEU's first year of operation is published alongside this update.	Measure complete. Ongoing function hosted by Defra.
2. Publish advice on the circumstances that a competent authority may, or should, adopt the reasoning or conclusions of another competent authority.	July 2012	Defra	Advice published in July 2012. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69580/pb13809-habitats-guidance.pdf	Measure complete.
3. Produce guidance on the key factors that need to be considered for a project to be deemed IROPI, including "alternatives" to a plan or project.	Consult July 2012; publish November 2012	Defra	Guidance was published in December 2012. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69622/pb13840-habitats-iropi-guide-20121211.pdf	Measure complete.

4. Identify which of the 'top 40' infrastructure projects, IROPI considerations and "alternatives" to a plan or project are likely to apply.	Case by case	Defra	Being considered as part of MIEU work on individual projects	Measure complete. Ongoing function within the MIEU.
5. Consider which of the "top 40" infrastructure projects would benefit from a "lead" competent authority being identified.	Case by case	Defra	Being considered as part of MIEU work on individual projects	Measure complete. Ongoing function within the MIEU.
6. Set up a Multi-Stakeholder Infrastructure and Habitats Group.	July 2012	Defra	The group has met twice to discuss the impacts of the Habitats Directives on infrastructure. It has focussed on: <ul style="list-style-type: none"> • Offshore wind • Improving the perception of the Directives • Work of the Natural Capital Committee The group will next meet in early autumn.	Measure complete. Ongoing function hosted by Defra.
Improving implementation processes and streamlining guidance				
Measure	By when	Who	Progress	Status
7. Produce a new customer-focussed overarching guidance manual.	Consult November 2012; publish March 2013	Defra	Consultation on new overarching guidance manual setting out simple plans to improve the existing body of guidance documents closed 5 February. The overarching guidance has been included within the SERR pilot	Good progress made and will complete over the next few months. Deadline summer

			explained under measure 8.	2013. Linked to measure 8
8. Undertake a stock-take of over 1,600 pages of current guidance and make proposals for simplification.	March 2013	Defra	<p>Proposals to simplify more than 2,500 pages of guidance on the Directives were consulted on alongside the overarching guidance.</p> <p>This work has been chosen as a pilot for the Smarter Environmental Regulation Review (SERR), which will streamline all Defra's environmental guidance. High level guidance and proposals for more detailed information on the Directives and wildlife law will be set out in July.</p>	Good progress made and will complete over the next few months. Deadline Summer 2013. Linked to measure 7
9. Provide customer-focussed and up-to-date information on the Directives on one website with sign-posting to point businesses and others to detailed guidance.	August 2012	Defra	Website went live on 29 August 2012 pointing to key pieces of guidance. Information will be transferred to www.gov.uk	Measure complete. Ongoing function within Defra to maintain/update website content.
10. Ask the Law Commission to consider recommending a new right for an applicant for a European Protected Species licence to appeal against a decision to refuse a licence or to attach unreasonable conditions to a licence.	Ongoing	Law Commission.	Law Commission set out their final recommendations in spring 2013. Defra ministers are currently considering whether to continue with the project and if so on what basis.	Measure complete. Ongoing work for Law Commission.
11. Implement vigorously the Penfold Review measures to streamline non-planning consents	Ongoing	Natural England (NE),	Ongoing. Penfold recommendations are being reported against separately. Further information can be accessed via the	Measure complete. Statutory guidance on species offences

processes.		Environment Agency (EA), Dept. for Communities and Local Government	improvement plans for NE and EA. http://www.naturalengland.org.uk/images/nea/utumstatementimprovementplan_tcm6-31060.pdf http://www.environment-agency.gov.uk/research/planning/138225.aspx x	being led by Defra and will be considered as part of the wider guidance rationalisation.
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Improving the quality, quantity and sharing of data

Measure	By when	Who	Progress	Status
12. Introduce a new process for agreeing upfront evidence requirements for 'top 40', and other nationally significant infrastructure projects.	September 2012	Defra	Guidance on the evidence plan process was published in September 2012. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69601/pb13825-habitats-evidence-plans.pdf	Measure complete. On-going function for MIEU to oversee process, work closely with first few cases to ensure it is fit for purpose. Subsequent amendments to guidance may be necessary.
13. Introduce new consistent standards on the acceptable range and quality of evidence that will enable statutory agencies to provide their	Consult November 2012; publish	NE with EA, Marine Management Organisation	Guidance on the evidence required from developers is being prepared through a consultative process. Informal consultation on high level evidence principles ended December 2012. Stakeholder workshops	Good progress being made. This measure will feed into measures 7 & 8.

advice.	March 2013	(MMO), JNCC	<p>were held in March 2013 to inform drafting of both the high level principles and the receptor specific standards.</p> <p>Guidance on evidence requirements will be incorporated into the package of detailed guidance (measure 8).</p>	
14. Publish new approach to increasing the information on the conservation objectives of protected sites.	June 2012	NE with JNCC	<p>Approach published 29 June 2012.</p> <p>http://www.naturalengland.org.uk/Images/action-14-announcement_tcm6-32928.pdf</p> <p>Informal consultation to improve the content of the conservation objectives ended in January 2013. Delivery is planned for 2013-2016. Sites under development pressure will be given priority wherever possible.</p>	Measure complete. Follow-up work to produce new conservation objectives ongoing.
15. Establish a Habitats and Wild Birds Directives Marine Evidence Group to address marine data sharing, research gaps, and post-construction monitoring.	July 2012	Defra	<p>These measures were addressed by the Marine Evidence Group which met for the first time on 20 July 2012.</p> <p>The group is taking forward a number of actions to ensure:</p> <ul style="list-style-type: none"> • Gaps in the evidence base are clearly identified • Fill evidence gaps that have already been identified • Existing evidence is available to relevant parties 	Measure complete. Ongoing function within Defra to provide Chair and secretary for the Marine Evidence Group.
16. Explore the practical implications on operating capacity with MEDIN, the MEDIN Data Archive Centres and other equivalent data sharing facilities.	October 2012	Defra		Measure complete. (Slipped to November 2012). This work is being kept under review.

<p>17. Commit to managing data consistently and sharing priority data not yet publicly accessible; ensuring data can be identified through MEDIN and accessed from the MEDIN Data Archive Centres or equivalent data sharing facilities.</p>	<p>December 2012</p>	<p>Industry, NE, EA, JNCC, MMO, The Crown Estate</p>	<p>The group reviewed progress on implementing the actions on sharing of data. Good progress is being made to ensure relevant data is more accessible from government organisations. The Crown Estate's Marine Data Exchange is a major step forward in supporting access to data collected by offshore wind developers. Further discussions are needed to ensure data is of maximum benefit to developers and regulators and not withheld unnecessarily due to commercial considerations. There do not appear to be immediate resource implications for the operation of MEDIN, but this is being kept under review.</p>	<p>Measure complete. Ongoing work to make all data publically available will continue into 2013/14.</p>
<p>18. New rolling programme of post construction monitoring reviews on priority marine sectors.</p>	<p>Ongoing</p>	<p>Cefas, MMO</p>	<p>Update on progress from the Marine Evidence Group published on 3 May 2013.</p> <p>https://www.gov.uk/government/publications/report-on-the-work-of-the-habitats-and-wild-birds-directives</p> <p>Offshore wind farm post-consent monitoring review due to be published July/August 2013.</p>	<p>Measure complete. The need for post consent monitoring reviews for other sectors is being kept under review by the Marine Evidence Group.</p>
<p>19. Identify priority terrestrial data and put programme in place for sharing priority data not yet publicly accessible.</p>	<p>December 2012</p>	<p>NE, JNCC</p>	<p>Priority species and sites datasets have been identified including bats and great crested newts. Making more of our terrestrial data publicly accessible has two elements: a) key datasets that are not yet publicly accessible and b) mechanisms for making data more</p>	<p>Measure complete. Ongoing work to deliver programme for sharing priority data.</p>

			accessible. NE programme for delivering these two elements is underway including the introduction of a new species licensing IT system in August 2013, and enabling sharing of licensing data externally including via the National Biodiversity Network (NBN).	
20. The Environment Agency will make available their information about the risks posed to protected sites by activities they regulate.	December 2012	EA	Environment Agency published a tool on the risks posed to protected sites by activities they regulate in November 2012. http://www.environment-agency.gov.uk/business/topics/permitting/143519.aspx	Measure complete.
21. Review the effectiveness of mitigation measures for species licences through evaluating post-licence monitoring data.	December 2012	NE	Great crested newts and bats have been identified as priority species for investigation; the two species which collectively make up 95% of licence applications. NE has identified specific situations to focus on in the review (e.g. bats in churches, the impact of wind turbines on bats, great crested newt mitigation). Seven research projects are underway and due to report between the end of 2013 and March 2014.	Measure complete. Ongoing work. NE has identified additional scenarios to evaluate once these studies have concluded.
22. Continue to work with NGOs to agree actions to improve the relevance and consistency of existing surveillance and monitoring schemes for species of European importance.	March 2013	Defra, NE, JNCC	Bats and great crested newt (GCN) identified as the focus for improvements. NE is working with JNCC and the Bat Conservation Trust (BCT) to support existing	Measure complete. Ongoing work – linked to measure 23.

<p>23. Work with NGOs such as the Wildlife Trusts, Amphibian and Reptile Conservation Trust (ARC) and the Bat Conservation Trust (BCT), to develop local pilot studies and initiatives, linked to Nature Improvement Areas where appropriate, to explore and develop new ways to improve monitoring of European Protected Species.</p>	<p>April 2013</p>	<p>Defra, NE, JNCC, Wildlife Trusts, BCT, ART and others</p>	<p>monitoring and surveillance work and take forward improvements.</p> <p>There has been considerable activity and strong engagement with Amphibian and Reptile Conservation Trust (ARCT) and related bodies. A large programme of great crested newt (GCN) research and surveillance, including improved modelling approaches and innovative DNA techniques to detect breeding ponds has been established and will run over three years. This work is aligned to the Defra-led GCN Task Force which will provide strategic leadership to help facilitate growth, whilst also promoting Favourable Conservation Status of the species.</p>	<p>Measure complete. Ongoing work across Defra/agencies to deliver research programme.</p>
<p>Improving the customer experience</p>				
<p>Measure</p>	<p>By when</p>	<p>Who</p>	<p>Progress</p>	<p>Status</p>
<p>24. Lead government agencies to commit in Corporate Plans to a culture of co-operation, transparency, openness and delivery focus, with appropriate key performance indicators (KPIs).</p>	<p>April 2012</p>	<p>NE, EA, MMO, JNCC</p>	<p>Commitment made in Corporate Plans with relevant KPIs in place.</p>	<p>Measure complete.</p>
<p>25. Defra ministers will host a stakeholder roundtable discussion in 6</p>	<p>Autumn 2012</p>	<p>Defra</p>	<p>Defra Ministers hosted a stakeholder discussion on 29 November 2012 to look at</p>	<p>Measure complete.</p>

months to look at how the recommendations are establishing the culture we want.			how the recommendations are establishing the culture we want.	
26. Establish staff interchange arrangements between businesses, SNCBs and regulators to improve partnership working.	Ongoing from April 2012 (progress report to Defra by Oct 2012)	NE Industry Development Group, MMO	Staff interchange pilot undertaken (including work placements, joint workshops and training with industry) in October/November 2012. Interchange work will be mainstreamed over 2013/14 as part of learning and development offered to NE staff.	Measure complete. Ongoing function L&D function within NE.
27. Welcome the industry-led development of professional standards. Defra, NE and other delivery bodies will work with the Institute of Ecology and Environmental Management (IEEM) to support them in the development of the Charter Mark for Ecologists	April 2012 onwards	Defra, NE, IEEM	IEEM received Royal Charter in April 2013. Defra agencies are working with CIEEM on criteria for certification of chartered ecologists.	Measure complete. Ongoing work within Defra agencies to support certification of chartered ecologists.
28. Defra workshop with the Institute of Ecology and Environmental Management and the Association of Local Government Ecologists (ALGE) to explore new ways to manage ecological expertise	September 2012	Defra, IEEM, ALGE	Workshop deadline has slipped but has been confirmed to take place on 5 July 2013. It now includes involvement of the Planning Officers Society.	Measure complete.

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