Peter Karner – written submission (NER0028)

Natural Environment and Rural Communities Act 2006 (NERC)

Written submission to the NERC Act 2006 Committee by Peter Karner

1. This submission is confined to views on question 11:

   **The changing context since 2006**

   11. Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?

2. **Summary**

   The Committee is invited to consider if the Secretary of State at Defra is missing an opportunity to place an Order to prescribe a number of illegally used pesticides, under Section 43 of the NERC Act, as a contribution towards protecting wildlife.

3. **Introduction**

   I am grateful to have the opportunity to provide my views on a specific part of the NERC Act to the Committee. These views are a personal submission and the views expressed are my own. I am not funded directly or indirectly by any government or non-government organisation.

4. I worked for Natural England and predecessor bodies for 33 years prior to my retirement in September 2016. I was a senior specialist in compliance and enforcement with particular responsibility for species issues. I worked on the Wildlife Incident Investigation Scheme (WIIS) for all of those 33 years and was technical lead in Natural England for the last two decades. The WIIS scheme makes enquiries into the death of wildlife and beneficial invertebrates where pesticides are thought to be involved.

5. **The Issue**

   The evidence shows that England continues to have a problem with the abuse of pesticides. The raw data is to be found at:


   This abuse of pesticides kills a number of birds of prey each year and is a contributory factor to the National Wildlife Crime Unit having raptor persecution as one of its national priorities. See: [http://www.nwcu.police.uk/how-do-we-prioritise/priorities/raptor-persecution/](http://www.nwcu.police.uk/how-do-we-prioritise/priorities/raptor-persecution/)
6. It has been a privilege in my working life to participate in the Raptor Persecution Priority Delivery Group for England and Wales which takes forward the national priorities set by the UK Tasking and Co-ordination Group. The membership spans a wide range of countryside management, game, government, conservation and policing organisations. It strives for attitude and behaviour change such that raptors are not subjected to illegal activity.

7. Under the Act, Section 43 to 46 gives the Secretary of State the power to issue an order making it an offence to be in possession of a named pesticide or prescribed ingredient if it was necessary or expedient to do so in the interests of protecting wild birds or wild animals from harm. No order has been placed.

8. For ease of reference, Annex 1 provides extracts of the Defra Post-Legislative Scrutiny of the Natural Environment and Rural Communities Act 2006 relevant to Section 43 of the Act. Annex 2 provides the “Explanatory Notes” provided with the legislation relevant to Section 43.

9. There is no “silver bullet” to resolve the issue of raptor persecution and solutions need to be found that reconcile the management of our countryside and the conservation of our biodiversity. Multiple measures are required and each organisation needs to make its contribution by encouraging all members to be vigilant and to report incidents to the police, or influence all contacts and peer groups with rural interests to adhere exclusively to the legal options.

10. One contribution that the Secretary of State at Defra could make is the placing of an Order with an appropriate list of prescribed pesticides. The potential substances are well known and is likely to mirror the list implemented in Scotland in 2004. (In Scotland, a number of individuals have subsequently been prosecuted.)

11. Poisoning raptors with pesticides is illegal and no organisation condones such activities. Indeed, in written submissions to the Environmental Audit Committee examination of Wildlife Crime in 2012 a number of organisations supported the prescription of a list of pesticides including Royal Society for the Protection of Birds Written Evidence 16; Moorland Organisation Written Evidence 4.2; Countryside Alliance Written Evidence Summary; Northern England Raptor Forum Written Evidence Eighth Paragraph. This measure was recommended by the Environmental Audit Committee - Wildlife Crime - Third Report, see Paragraph 36.

12. The placing of an Order would be a welcome measure by many and is overdue since the enactment of the 2006 Act. It should be reconsidered.

13. **Looking forward**

   If we are to protect our precious natural environment for future generations we need to do everything possible to influence those who might be considering acting in an illegal manner.
14. This small but important step offers in my view an opportunity to specifically safeguard and enhance England's biodiversity.

Peter Karner
Independent Adviser

Annex 1
Memorandum to the Environment, Food and Rural Affairs Committee about the Natural Environment and Rural Communities Act 2006.


41. Section 43 to 46 of the Act allowed the Secretary of State to issue an order making it an offence to be in possession of a named pesticide or prescribed ingredient if it was necessary or expedient to do so in the interests of protecting wild birds or wild animals from harm. The Act allowed for enforcement powers to inspectors and regard to any relevant codes of practice.

78. Sections 43 to 46 have not been implemented in England as no pesticides have been identified.

85. To date, no orders have been issued in England making possession of any named pesticides an offence under section 43.
NERC Act 2006 - Explanatory Notes
http://www.legislation.gov.uk/ukpga/2006/16/notes

Pesticides harmful to wildlife

Section 43: Possession of pesticides harmful to wildlife

116. The Secretary of State may, by negative resolution order, prescribe those ingredients of
pesticides that she believes could cause harm to wild birds and/or animals. An order under
section 43 could be made in relation to several pesticide ingredients that have been linked
with poisoned bait and that are known to be very dangerous to animals, in particular to
birds of prey. It will be an offence to possess a pesticide containing a prescribed ingredient
unless it can be shown that possession was for lawful use in accordance with relevant
pesticide, biocide or poisons legislation.

117. Existing legislation in Part 1 of the Wildlife and Countryside Act 1981 already provides
for an offence where it can be shown that a person has set or used a poisoned bait (sections
5(1)(a) and (b) and 11(2)(a) and (b)). However, in practice, it has been difficult to prove that
the person set or used the bait, and so under the new section 43 offence it will not be
necessary to show this.

118. A similar offence to that set out in section 43 has been introduced in Scotland by the

119. The offence in section 43 is not inserted in the 1981 Act partly for reasons connected
with enforcement powers. Section 43 needs to be read with section 44, which confers
enforcement powers in connection with the new offence, including certain powers
contained in Schedule 2 to the Food and Environment Protection Act 1985 (FEPA) that are
available in connection with other provisions regulating pesticides.

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