CALL FOR EVIDENCE

Response provided by Richard Harris, Ecology Manager on behalf of Sheffield City Council.

Natural England

Question 4.

How well has Natural England fulfilled the mandate that it currently has? How well do its wide-ranging functions fit together, and does it have the appropriate powers and resources to perform these functions?

4.1 Natural England’s (NE) mandate is taken to be advising government on the natural environment in England, helping to protect England’s nature and landscapes for people to enjoy and for the services they provide.

4.2 There appears to be overall a lack of communication and lack of clear guidance between Natural England and Local Authorities. For example the new Conservation 21: Natural England’s conservation strategy for the 21st century was produced recently but Local Authorities were, largely, not made aware of it.

4.3 If an issue is raised with the enquiries helpline the response is good. However, there is too much reliance on Standing Advice, which is open to interpretation. Clarification is often sought from NE on points made in the Standing Advice.

4.4 In the past seminars/workshops were held by NE on key issues. It would be beneficial if these could be reinstated.

4.5 Guidance/Guidance notes are not up to date. For example:

4.5.1 Explanatory Note Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006 - Habitats and Species of Principal Importance in England. This should be revised and updated (See response to 7. below).

4.5.2 Under NE Guidance Ancient woodland and veteran trees: protecting them from development

• Protection for ancient woodland through planning appeal decisions. Only one example is given post NPPF so the value ascribed to this is limited.
• ‘Keepers of time’ policy statement. This is still a live document but refers to Government Policy in 2005. It is open to question the weight that should be afforded to this. Is this still in sync with existing policy?
4.5.3 Although a DEFRA document - e.g. ‘The Habitats and Wild Birds Directives in England and its seas Core guidance for developers, regulators & land/marine managers December 2012 (draft for public consultation)’; Natural England are a consultee in the Habitats Regulation Assessment process and have advised that this is the relevant guidance to be used, however, this document is still in draft form (2012).

4.5.4 Responsibilities need to be clarified and established for each organisation in relation to each other i.e. JNCC, Natural England, Defra.

4.5.6 It is still unclear about the implications of Natural England's new European Protected Species licencing policies, particularly with respect to Great Crested Newts (Protected species). Clarification needs to be provided on how they should be applied by Local Authorities.

**Sustainability and biodiversity**

**Question 7.**

Is the duty to ‘have regard’ to biodiversity, which is contained within the Act, well understood by those bodies to whom it applies? Is any further work required to raise awareness of the duty?

7.1 No, the Act is unclear and the guidance on interpretation on how to have regard is equally unclear on how it should be applied in practice. Direction needs to be provided by NE on what Local Authorities must do to meet their requirements under the NERC Act.

7.2 The Explanatory Note Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006 - Habitats and Species of Principal Importance in England is difficult to interpret. Only a limited number of 943 priority species and habitats are specifically mentioned by name. A significant number of priority species are not mentioned and the impression is that not equal weight/consideration is given to all S41 species equally. And yet under Section 40 Duty to conserve biodiversity, Part (3) states ‘Conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat’. This refers to the entire S41 list. This needs to be revisited and clarified.

7.3 Would it be reasonable and proportionate to identify all priority species on a site?

7.4 In certain sectors referenced in the Explanatory note e.g. Forestry and Freshwater, no mention is made of Local authorities but we do have involvement in these areas e.g. flood and water management and forestry operations.

7.5 Specifically in relation to Question 7. In our view awareness raising generally falls to Ecology service to raise the profile of the Duty. Within Local Authorities without
Ecologists how it is envisaged that the Duty is communicated? This is particularly relevant in a climate of local government staff and resource reduction. Direction needs to be provided by NE on what Local Authorities must do to meet their requirements under the NERC Act.

7.6 In relation to Question 7. Part ii above, further guidance on implementation of the Duty to Local Authorities and a recommendation/directive from NE to incorporate Biodiversity consideration into Committee reports.

7.7 From NE’s website under the heading Section 41 Species - Priority Actions Needed (B2020-008) it states:

In England many of our rarest and most threatened species are listed under Section 41 (S41) of the 2006 Natural Environment and Rural Communities (NERC) Act. Outcome 3 of the Government’s Biodiversity 2020 strategy contains an ambition to ensure that ‘By 2020, we will see an overall improvement in the status of our wildlife and will have prevented further human-induced extinctions of known threatened species.’ Protecting and enhancing England’s S41 species is key to delivering this outcome.

and provides a list of actions to support the recovery of England’s s41 species.

It goes on to state:

PLEASE NOTE – the actions highlighted represent the considered view of species experts from a range of organisations. They do not replace or necessarily reflect any existing Government policy nor that of its agencies.

This last statement does not encourage commitment to practical actions to support the recovery of England’s s41 species.

8. What has been the practical impact of the 2006 duty? Is any modification to the duty required as a result of developments in our understanding of the value of ecosystems and biodiversity since 2006?

8.1 Limited practical impact.

9. How does the English duty to ‘have regard’ to biodiversity compare to the Scottish duty to ‘further’ biodiversity and the enhanced biodiversity duty introduced in Wales in 2016?

9.1 Strictly ‘have regard’ is to the purpose of conserving biodiversity which includes restoring or enhancing a population or habitat. However, using the term ‘further’ biodiversity feels stronger, as this would set in the mind of public bodies that they must reduce any negative effects on biodiversity, and look for ways of helping biodiversity in their day-to-day business. However, reference to restoring or enhancing a population or habitat should be retained.
9.2 The Wildlife and Natural Environment (Scotland) Act 2011 external site came into force on 01 January 2012 and introduced a requirement for all public bodies to make publicly available a report on their compliance with biodiversity duty. We would welcome a reporting mechanism providing it was taken notice of. For example there is the SDL160 but this is only reported on by a proportion of local authorities despite this being an obligation on local authorities.

ENDS

11 September 2017