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### Habitats and Birds Directives – additional information for the Environment Committee

This paper is to provide some additional information regarding two European Directives of particular relevance in the RSPB's response to the Wildlife and Natural Environment Bill (WNEB). It is subsidiary to the RSPB's main response submitted to the Committee following consultation. The majority of the paper supports our existing comments, but one aspect of the European Commission case against Ireland (case C-418/04) indicates that Northern Ireland may also require a direct transposition of Article 10 of the Birds Directive. This could be achieved through the WNEB.

#### **The Birds Directive**

The original Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds had been modified several times, and so was recently codified. We refer in this paper to the new version, Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds.

#### **The Habitats Directive**

Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora is commonly known as the Habitats Directive.

#### **Hunting and game issues**

*Article 7(1)* of the Birds Directive places an onus on Member States to ensure that the hunting of species in Annex 2 does not jeopardise conservation efforts for those species in their distribution area.

*Article 7(4)*, together with the overall requirement from Article 2 for Member States to take the requisite measures to maintain wild bird populations, encourages sustainable hunting and good practice:

*“the practice of hunting...complies with the principles of wise use and ecologically balanced control of the species of birds...and...is compatible as regards the population of these species, in particular migratory species”*

We believe this offers Directive support for:

- 1) full protection of curlew from shooting (WNEB clause 25 and schedules I and II);
- 2) licensing of game shoots (further to WNEB clause 31);
- 3) no change to the shooting seasons, as already proposed; and
- 4) the additional requirement for bag returns for the Department to monitor the sustainability of hunting (further to WNEB clause 31)

*Article 9(1)* of the Birds Directive offers very specific derogations from the protection of birds from legal and illegal activity (articles 5-8) under certain circumstances and “*where there is no other satisfactory solution*”.

*Article 9(3)* requires Member States to report to the Commission on the derogations.

We believe Article 9 supports our call for a review of general licence procedures including:

- 1) a requirement for licence applicants to demonstrate that their circumstances meet the derogation requirements for a lethal licence, that there is no other satisfactory solution and that lethal control will be effective; and
- 2) a mechanism for the Department to be able to monitor the number and species of birds killed/taken under the licences.

Section C2 (Annex 1) of our full response list further recommended changes in line with Article 9.

This is also relevant to clause 17. We believe there is a need to ensure that damage ‘as an incidental result of an otherwise lawful operation’ does not go beyond those derogations under Article 9 e.g. public health and safety. Otherwise lawful operations could include, for example, hedgerow cutting by Roads Service for visibility reasons.

#### **Requirement for proactive measures to avoid pollution or deterioration of habitats and species**

*Birds Directive Article 4(4)* states that, inside protected areas, “*Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds*”. Outside protected areas, “*Member States shall also strive to avoid pollution or deterioration of habitats*”.

*Habitats Directive Article 6(2)* states “*Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated*”.

European caselaw has further indicated that agri-environment measures are insufficient, as they are insufficiently targeted, voluntary and do not cover entire protected areas. The Poitevin Marsh judgement is referred to in section D (Annex 2) of our full response, and similar comments were made regarding agri-environment measures in Ireland (paragraph 185 case C-418/04).

Furthermore, in case C-418/04 the judge stated “*Although the second sentence of Article 4(4) of the Birds Directive does not require that certain results be achieved, the Member States must nevertheless make a serious attempt at protecting those habitats which lie outside the SPAs*” (paragraph 179 – own emphasis). (SPAs are Special Protection Areas designated under the Birds Directive).

It is further made clear that steps must be taken proactively, i.e. before deterioration has occurred: “*Moreover, those provisions do not ensure protection of SPAs against the activities of individuals, as such protection requires that the individuals be prevented in advance from engaging in potentially harmful activities*” (paragraph 208).

We believe this offers a clear need for temporary stop notices and protection of SPAs with no ASSI underpinning by:

- 1) applying Environment Order powers to Natura 2000 sites;
- 2) introducing a mechanism similar to nature conservation orders (NCOs) and special nature conservation orders (SNCOs) (e.g. Scotland); and
- 3) requiring SNCOs for all Natura 2000 sites with features that are not also features of a coincident ASSI.

We discuss this in detail in Annex 2 section D of our full response.

### **Monitoring and research**

Various articles in both the Birds and Habitats Directives call for adequate monitoring and research for species and habitats.

*Birds Directive Article 2* requires Member States to “take the requisite measures to maintain the population of [Annex 1] species”, which in turn supports *Article 10* for Member States to “encourage research and any work required as a basis for the protection, management and use of the population of all [wild birds]”.

*Habitats Directive Article 11* says that Member States “shall undertake surveillance of the conservation status of...habitats and species...” while Article 18 provides for the encouragement of “the necessary research and scientific work” and “...transboundary co-operative research”.

Case C-418/04 (the case against Ireland) makes it clear that that Article 10 needs specific transposition and refers to all species of birds referred to in Article 1 i.e. all wild birds (paragraphs 266-275).

This could apply equally in Northern Ireland, where a direct transposition does not exist either. This is an additional point to the RSPB’s response to the WNEB consultation. These Articles clearly support the RSPB’s calls for adequate monitoring and research put forward in our response, and through our other work with the Department.

### **Special conservation measures**

*Birds Directive Article 4(1)* states that Annex I species “shall be the subject of special conservation measures concerning their habitat”. This includes, but is not limited to, designation of SPAs.

We believe this offers support to our call for additional species to be added to Schedule A1, for nest protection outside the breeding season.

### **Habitat management in the wider countryside**

*Habitats Directive Article 2(2)* states “Measures taken pursuant to this Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species”.

This is the overarching support for a system of measures in the wider countryside to protect important habitats and species, undertaken for example in Northern Ireland to a certain extent by the establishment and management of the ASSI network.

We believe this is support for ensuring that our ASSIs are adequately designated, monitoring, managed and protected, and therefore is support for our additional recommendations for tightening the Environment (NI) Order 2002 provisions to that end. These are listed in Annex 2 section C of our full response.

### **Education**

*Habitats Directive Article 22* places an obligation on Members States to ‘promote education and general information on the need to protect species...and to conserve their habitats’

This supports our call for the inclusion of relevant text in the WNEB, as recommended in our response Annex 1 section C6.

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