

Consultation on standing advice for protected species – Natural England’s response

Consultation start: 18 August 2010

Consultation end: 29 September 2010

Summary:

Natural England consulted on standing advice on protected species through a consultation document on our website. All local authorities were written to individually to alert them to the consultation. Meetings were also held with key stakeholders to present the standing advice and invite comments. The draft advice was based on standing advice pilot projects in the South East and East of England, which also went through consultation and feedback processes.

We are grateful for the responses that were received and these have been used to inform the revision of the standing advice. The scope of the standing advice has also been revised to comply with a recent Supreme Court ruling (*Morge (FC) (Appellant) v Hampshire County Council [2011]UKSC 2*). This means that the scope of the adopted version of the advice is different from the version that was consulted on. If the draft advice had been adopted, Natural England would only have provided individual responses where proposed development was likely to have significant impacts on populations of legally protected species. Following the Supreme Court ruling referred to above, the adopted advice provides guidance on the reasonable likelihood of protected species being present, survey requirements for protected species and how to assess mitigation proposals for applications affecting badgers, water voles, white-clawed crayfish, common reptiles, barn owls and other breeding birds not included in Schedule 1 of the Wildlife and Countryside Act. Natural England will continue to provide individual responses for mitigation proposals for other species protected under statute.

Summary of comments and Natural England’s response

Stakeholders	Comment	Natural England response
General	Lack of expertise within local authorities. Situation likely to get worse with spending cuts	We are developing a package to support the roll-out of the standing advice which includes: <ul style="list-style-type: none">• Training workshops and a free webinar which can be downloaded from our website• Investigating the production of an additional training package which we would charge for.• We will still be providing bespoke advice where developments are likely to affect European Protected Species (provided survey reports have been submitted).

	<p>Support for idea of standing advice but feel further work is required.</p> <p>Viewed as helpful start and something that could help expedite planning process but needs more work.</p>	<p>Support welcomed. The advice has been substantially revised to make it more user-friendly. As well as re-structuring the advice we have revised the technical content to provide more guidance in key areas.</p>
	<p>Structure of the advice is confusing, needs to be much easier to navigate and find information within it.</p>	<p>Agreed. The structure of the advice has been revised and an overview and contents list has been added.</p>
	<p>Audience for advice is unclear – too technical for planners, local authority ecologists would know all this anyway.</p>	<p>Partially agree. The advice has been substantially revised to make it more user-friendly. As well as re-structuring the advice we have revised the technical content to provide more guidance in key areas.</p>
	<p>Standing advice does not appear to cover county councils.</p>	<p>Agreed. The wording of the main page of the advice has been revised.</p>
	<p>Guidance needed on dealing with European Protected Species, especially the application of the 3 tests (favourable conservation status, no alternative solutions, the existence of imperative reasons of overriding public interest).</p>	<p>Partially agreed. The relevant detailed species sheets have been expanded; Natural England will continue to provide individual responses for development proposals that may affect European Protected Species, provided survey reports have been provided. In respect of the 3 tests it would not be appropriate for Natural England to advise local authorities on how to apply them. We will however be producing guidance that can be accessed from the standing advice on how Natural England applies the 3 tests when considering licence applications.</p>
	<p>Proposed revisions to content, particularly the flowchart and species sheets.</p>	<p>These have been incorporated where appropriate.</p>
	<p>Purpose of checklists unclear, although popular with a few respondents.</p>	<p>Agreed, the checklist has been removed from the revised version of the advice.</p>
	<p>Confusion about difference between national advice and South East pilot</p>	<p>The South East phase 2 pilot will not be taking place. England will be covered by one set of standing advice.</p>
	<p>Definition of mitigation & compensation required</p>	<p>Agreed. Definitions of mitigation and compensation are included within the detailed species sheets.</p>

	Need to make clearer links between local authority planning process & standing advice.	Agreed. The flowchart has been amended to make these links clearer.
	Needs to be more emphasis on biodiversity enhancement	Partly agreed. The standing advice has been designed to specifically deal with species protected by statute so this is its main focus. One of the FAQs does cover the policy and legislative requirements relating to biodiversity enhancements. The main page of the advice has also been revised to incorporate the key principles from Planning Policy Statement 9.
	Concern that the advice will undermine existing local arrangements.	Disagree. The standing advice is designed to provide a level of consistent advice which can be supplemented by local consultation arrangements. Links directing local authorities to local consultation arrangements have been included within the advice.
Local authority	Satisfied with the standing advice & happy to use it to support planning decisions.	Support welcomed.
	Guidance too technical for planners to understand, it needs to be much simpler.	Partially agree. The advice has been substantially revised to make it more user-friendly. As well as re-structuring the advice we have revised the technical content to provide more guidance in key areas.
	Advice is too general to be of use.	Disagree. The advice is based on 2 pilot projects in the South East and the East of England where the advice has been used successfully since 2009.
	Validation staff won't be in a position to understand the guidance.	Disagree – our experience of using standing advice in the South East pilot project showed that if validation staff are included in the training workshops provided by Natural England they can work with standing advice.
	More emphasis on pre-application stage	Agreed, the flowchart has been revised. Text has also been included in the main page of the standing advice.
	Advice is likely to lead to more surveys being required than necessary.	Agree that this is a risk. Wording has been added to the main page of the standing advice on the need to apply the advice proportionately. The detailed advice in the species sheets and the FAQs should also reduce the risk of this happening.

	Not clear how the standing advice fits with validation lists and Association of Local Government Ecologists' guidance.	Agree, text has been added to the main page of the standing advice that clarifies makes the relationship between the standing advice and validation requirements.
	Put key messages from Planning Policy Statement 9 and Circular 06/2005 up front	Agree, text now included in the main page of the advice.
	Too much focus on buildings, not enough on minerals and waste or other types of development	Disagree. The advice is designed around the habitats and features present on or in the vicinity of a proposed development, rather than specific types of development.
	Lack of local/regional dimension to advice.	Disagree. It would be difficult to create a set of national standing advice that covered regional variation without making the advice extremely long. The advice does contain a local resources page with links to local or regional guidance or information that can be used to supplement the standing advice.
	Would like advice on conditions	Partially agree. Local authorities are actually better placed to decide on the wording of conditions than Natural England. We have however included text in the FAQ section of the advice that suggests possible wording for conditions.
Local authority/NGO	Doubt that planners could or should respond on protected species matters – should be properly qualified ecologists doing the work.	Natural England agrees that advice should be sought from appropriately qualified ecologists when dealing with protected species. However given that approximately two-thirds of local authorities do not have in house ecological advice, and anecdotal evidence suggests that we are not consulted on all the applications that could affect protected species, it is highly likely that non-ecologists are already making these decisions. The standing advice ensures that guidance is available which can be applied to any planning application.
	What do we mean by significant impacts on populations of protected species? Planners will not have the necessary skills to make these decisions and therefore won't know when to consult Natural England.	The advice has been revised so the issue of judging what constitutes a significant impact no longer applies.

	Concerns about extra workload for NGOs/local authority ecologists	The standing advice is based on 2 pilot projects in the SE and the East of England – we aren't aware that this led to any additional work for NGOs.
NGO	Risk that standing advice will be seen as only advice LPAs need to consider in relation to biodiversity.	The text in the main page has been revised to avoid misunderstanding. The addition of the overview, along with the text in the FAQs should also avoid this risk.
	Section 41 species should be viewed as protected species.	Disagree. The advice covers species listed on Schedules 2 & 5 of the Habitats Regulations, Schedules 1, 5 and 8 of the Wildlife & Countryside Act and the Protection of Badgers Act.
	Surveys shouldn't be asked for before permission is granted, they should be conditioned.	Disagree – this approach would not be in line with government policy (see Circular 06/2005).
NGO/Individual	Natural England should not be moving to standing advice – not in line with the requirements of the Habitats Directive.	Disagree. The revised advice has been checked to confirm that it is in line with our duties under the Habitats Regulations, based on the most recent legal rulings.

List of respondents

Four responses were also received from private individuals.

Amphibian and Reptiles Trust

Avon Wildlife Trust

Association of Local Government Ecologists (joint response with the Institute of Ecology and Environmental Management)

Baker Gillespie

Bat Conservation Trust

Buglife

Bury Council

City of Bradford Metropolitan Council

Cornwall Wildlife Trust

Country Land and Business Association

Cumbria County Council

Derbyshire County Council

Devon County Council

DLA Piper UK LLP

Doncaster Council

Dorset County Council

Dorset Bat Group

Dorset Wildlife Trust

Durham City Vision

Durham Wildlife Trust

Geckoella Environmental Consultants

Harrogate Borough Council

Herefordshire Council

Herts and Middlesex Wildlife Trust

Kirklees Council

Institute of Ecology and Environmental Management (joint response with the Association of Local Government Ecologists)

Leicestershire County Council

Merseyside Environmental Advisory Service

North Somerset Council

Northumberland County Council

Nottinghamshire County Council

Royal Society for the Protection of Birds

St Edmundsbury Borough Council

Shropshire Council

Somerset County Council

South Gloucestershire Council

South Tyneside Council

Staffordshire County Council

Sunderland City Council

Telford and Wrekin Council

Tees Valley Biodiversity Partnership

The Woodland Trust

Torbay Council

Wychavon County Council