



**Defra:
Environmental Liability Directive – Consultation on options for
implementing in England, Wales and Northern Ireland**

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Environmental Liability Directive: consultation on options for implementing in England, Wales and Northern Ireland

Response from the Joint Nature Conservation Committee

1. Introduction

- 1.1 The Joint Nature Conservation Committee (JNCC) is the statutory adviser to Government on UK and international nature conservation. Its work contributes to maintaining and enriching biological diversity, conserving geological features and sustaining natural systems.
- 1.2 The JNCC delivers the UK and international responsibilities of the Council for Nature Conservation and the Countryside, the Countryside Council for Wales, Natural England and Scottish Natural Heritage. The functions that arise from these responsibilities are principally to:
 - advise Government on the development and implementation of policies for, or affecting, nature conservation in the UK and internationally;
 - provide advice and disseminate knowledge on nature conservation issues affecting the UK and internationally;
 - establish common standards throughout the UK for nature conservation, including monitoring, research, and the analysis of results;
 - commission or support research which it deems relevant to these functions
- 1.3 These functions are pertinent to the implementation of the Environmental Liability Directive because JNCC has a key role in advising government on the implementation and interpretation of the EC Birds Directives and EC Habitats Directive.

2. Favourable conservation status

- 2.1 The JNCC is currently preparing for government the draft report under Article 17 of the Habitats Directive on the implementation of the Directive in the UK. This will include an assessment of the conservation status of all the habitats and species listed in the Annexes to the Directive that are relevant to the UK. The assessment for the 162 habitats and species will be completed later this year and placed on the JNCC website.
- 2.2 The JNCC was actively engaged with the European Commission and other Member States in the interpretation and application of the concept of conservation status, which resulted in the reporting framework document approved by the EC Habitats Committee and the supplementary guidance and notes produced by the Commission. The definition of conservation status contained in Article 2.4 of the Environmental Liability Directive is the same as that in Article 1 of the Habitats Directive.
- 2.3 The assessment of conservation status of habitats and species addresses status within the UK and not just the contribution made by the network of Special

Areas of Conservation (SACs) designated under the terms of the Directive. In any event SACs are only designated for habitats and species listed in Annexes I and II of the Directive and not for those species listed in Annexes IV and V. (Note that Annex V species are not included in the definition of protected species for the purposes of the Environmental Liability Directive).

- 2.4 In addition, the contribution made by the network of SACs to securing the conservation status of the listed habitats and species varies considerably depending on the proportion of the total habitat extent or species population that is found within sites. For example, the network makes a small contribution to the conservation status of widely dispersed species such as otter but a higher contribution for habitats such as chalk grassland where a high percentage of the UK area is found within SACs. **Undue emphasis on the SAC network as providing the threshold for determining biodiversity damage is therefore misleading.**
- 2.5 **It also needs to be stressed that the inference that the condition of a SAC will be indicative of the contribution that the site makes towards the conservation status of the habitats and species it hosts is erroneous.** The parameters of site condition and conservation status are very different. To give an example, the condition of a bat roost may be favourable but the bat population may have declined or even disappeared.
- 2.6 The definition of protected species and natural habitats in Article 2.3 of the Directive includes:
- species listed in Article 4(2) of the EC Birds Directive
 - habitats of species listed in Article 4(2) or listed in Annex I of the EC Birds Directive.

All the work undertaken on assessing conservation status has been undertaken in the context of the Habitats Directive. The concept of conservation status does not occur in the Birds Directive, neither is there a requirement to report on the status of listed birds. Whilst there has been some discussion of this issue at the EC Birds Committee (ORNIS Committee) and its scientific working group, it has not been indicated that an assessment of the conservation status of listed birds is required. **The Environmental Liability Directive clearly requires that the conservation status of birds and their habitats as listed above should be used as a threshold for determining biodiversity damage. Work on this is currently not planned but requires urgent attention.**

3. Response to specific consultation questions

Question 3.1

Bearing in mind that an assessment must be made of damage which may have a significant adverse effect on reaching or maintaining FCS outside sites, should the Government, in respect of the elements of damage that occur on sites

- (i) *apply a test of significant adverse effect on reaching or maintaining FCS which focuses on damage to Natura 2000 sites, but which takes account of the significance of the particular site or sites to the conservation status of the habitats or species over its natural range? or*
- (ii) *apply a test of significant adverse effect on reaching or maintaining FCS, such that any damage to a Natura 2000 site which affects the integrity of that site would trigger liability under ELD?*

The integrity of a site is defined as:

‘the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which its has been designated.’

The emphasis is on the site and not on the contribution it makes to the conservation status of the habitats and species it hosts. The use of site integrity as a threshold for determining biodiversity damage is misleading and erroneous (see 2.4 above). The only meaningful and legal option is (i) above.