The European Birds Directive
– safeguarding special places for people and wildlife
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‘The RSPB believes that the Birds Directive is working well in the broadest public interest – safeguarding special places for birds and people. This report provides the basis for this conclusion.’

Graham Wynne, Chief Executive

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Designation as an SPA has helped to conserve the Insh Marshes in Speyside as a naturally functioning floodplain that is important for many wetland species.
Foreword

It has been 25 years since the Birds Directive was adopted (in April 1979) and the RSPB thinks there is good cause for celebration. One of the main achievements of the Directive has been the creation of a network of Special Protection Areas (SPAs) across Europe, which help to protect the internationally important bird populations that use them. The SPA designation has saved some of these places from damaging development and they have benefited from better management. Birds are better protected and restoration work is underway to reverse a legacy of habitat destruction. We recognise that, at times, implementing the Directive has forced difficult decisions on government and society as a whole, especially when economic aspirations have conflicted with conservation. We believe the Directive has been successful because not only has it stopped ill-judged development proposals, but it has allowed developments to go ahead when there has been no alternative, there have been imperative reasons of overriding national interest, and with the incorporation of measures to compensate for the environmental damage caused.

The UK currently has 242 SPAs covering over 1 million hectares.

The UK supports 224,000 pairs of breeding gannets. This represents 57% of the world population. The most important breeding colonies are protected as SPAs.
Introduction

Habitats form inspiring landscapes and provide us with vital natural services: wetlands can buffer the impact of flooding, estuaries provide spawning grounds for commercial fisheries, and saltmarshes form natural sea defences. Some landscapes contribute to rural development, especially through tourism, and they sustain birds. This richness of wildlife adds immeasurably to our quality of life – from a jar of honey to a dawn chorus; riches that deserve the best legal protection.

This publication celebrates the successes of the Birds Directive, which was passed 25 years ago. When legislators catch the mood of the time there is the opportunity for a new approach and new thinking. Twenty-five years ago the Directive on the Conservation of Wild Birds 79/409/EEC (known for short as the ‘Birds Directive’) recognised that bird conservation needed to be addressed at an international scale, as birds know no national boundaries. Crucially, the Directive drew together the means to protect and restore the places that birds use to feed, live and breed. The justification for co-ordinated action at European level was simple: that no member state should gain a short-term economic advantage over another by destroying its environment. And, just as important, many birds are migratory, so loss of habitat in one country may have knock-on effects on the bird populations of another.

To those who love nature and wild places, such an approach is both logical and desirable. Inevitably, the application of the Directive on the ground has required decisions to be made about the future of protected sites. These have often been characterised as profound choices between development and conservation although, increasingly, these are being seen as choices about different kinds of development – between that based on rapid economic growth, or more sustainable development based on the natural assets of the area. Whichever, the passage of the Birds Directive has provided a robust framework within which these choices can be made. It has helped to level the playing field between development and conservation, providing very necessary safeguards to ensure that Europe’s wildlife is taken into better account when planning decisions are taken, so contributing to sustainable development.
What is the Birds Directive?

The Birds Directive addresses the conservation of all wild birds throughout the European Union. It includes terrestrial and marine areas, and covers their protection, management, control and exploitation.

It applies to the birds themselves, their eggs, nests and habitats. It places an overarching requirement on Member States to take whatever measures are necessary to maintain the populations of all wild birds at levels determined by ecological, scientific and cultural needs. In doing so, Member States must have regard for economic and recreational needs. The Directive divides into two main parts: habitat conservation and species protection.

The habitat conservation provisions of the Birds Directive

Article 3 requires Member States to preserve, maintain and re-establish sufficient diversity and area of habitats for all wild birds. This should primarily (but not exclusively) involve the creation of protected areas (not just SPAs under Article 4 – see below). Recognising the historic losses of wildlife, the Article also calls for the appropriate management of habitats both inside and outside protected areas, the re-establishment of destroyed habitats, as well as the creation of new habitats.

Article 4 sets out special conservation measures that should be taken further to those required under Article 3. Member States are obliged to take special action for a range of species, which are listed on Annex 1, taking account of their likely extinction, vulnerability to changes in their habitats and their rarity. These special measures must include the classification of the most suitable areas, both in number and size, for the conservation of these species on land and sea. However, the measures are not restricted only to this action, or exclusively to the most suitable areas. These areas are known as SPAs.

The bittern’s inclusion in Annex 1 of the Birds Directive has stimulated conservation action, which has increased bittern numbers in the UK from only 11 booming males in 1997 to 55 in 2004.
Introduction to the Birds Directive

The special measures, including the classification and protection of SPAs, must also be applied to regularly occurring migratory bird species. In doing so, Member States should have regard to their breeding, moulting and wintering areas, as well as staging posts along the migration routes. Particular attention must be afforded to the protection of wetlands, and especially (but not exclusively) the protection of wetlands of international importance.

Article 4.3 of the Birds Directive requires Member States to report back to the European Commission on the establishment of SPAs so that the Commission can consider whether further initiatives are required in order to ensure that, collectively, the sites form a coherent network that meets the conservation needs of the species concerned.

This concept of a coherent network for sites to protect Europe’s biodiversity is also reflected in a sister Directive on the conservation of natural habitats and of wild fauna and flora 92/43/EEC, also known as the Habitats Directive. Article 3 of the Habitats Directive states that an ecologically coherent network of Special Areas of Conservation (SACs) and SPAs shall be established, to be known as Natura 2000. This network enables the maintenance and, where appropriate, restoration to favourable conservation status, of the natural habitats and species’ habitats concerned. In doing so, Member States should endeavour to improve the ecological coherence of the network by maintaining and (where appropriate) developing features of the landscape that are important for wild plants and animals, which includes birds. These features include rivers and hedgerows as well as ‘stepping stones’ such as ponds and small woods essential for migration.

Protection of SPAs

Since the introduction of the Birds Directive in 1979, the duty to protect SPAs set out in Article 4.4 of the Birds Directive has largely – but not entirely – been replaced by the requirements set out in Articles 6.2 to 6.4 of the Habitats Directive.

Article 6.2 of the Habitats Directive provides a general protection provision for SPAs. Member States must take appropriate steps to avoid habitat deterioration and the disturbance of species for which the site has been designated (insofar as such disturbance would prove significant). It is not permissible to wait until deterioration or disturbance has occurred before taking action.

Articles 6.3 and 6.4 provide more detailed procedures in relation to plans and projects, which are aimed at ensuring the objective of Article 6.2 is met. Only those plans and projects (or parts thereof) that are considered connected with, or necessary for, site management of the SPA, are exempt. Where a plan or project – either alone or in combination with other ‘plans and projects’ – is likely to have a significant effect on the SPA, then an appropriate assessment must be undertaken. An appropriate assessment must consider whether it is possible to say that the integrity of the SPA will not be affected. If the integrity of the SPA will be adversely affected (or it is not possible to say it will not be), then a plan or project can only proceed if there are no less damaging alternatives and it is imperative that it goes ahead for reasons of overriding public interest (the ‘IROPI’ test). For SPAs, consideration of public interest can include socio-economic factors, other factors that may be of benefit to the environment, as well as other matters that the European Commission consider to be of overriding public interest.
Where a Member State does allow a damaging plan or project to proceed, then it must take all compensatory measures necessary to ensure that the overall coherence of the Natura 2000 network is protected.

Other than for ‘plans and projects’, the Habitats Directive does not specify how the objectives of Article 6.2 should be met. However, it is logical that the general principles that must be applied to ‘plans and projects’ should also apply to other activities. These principles include undertaking an appropriate assessment, only allowing damaging activities to proceed under exceptional circumstances and the provision of compensatory habitat in order to secure the overall coherence of the Natura 2000 network.

In addition to the detailed protection requirements set out in the Habitats Directive, the last sentence of Article 4.4 of the Birds Directive also requires Member States to strive to avoid the pollution or deterioration of habitats outside SPAs.

**The species protection provisions of the Birds Directive**

This report focuses on the habitat conservation provisions of the Birds Directive. However, the Directive also contains important species protection measures. As a general rule, the Birds Directive requires Member States to ban the deliberate killing or capture of all species of wild birds naturally occurring in their European territories. This ban also applies to damaging nests and eggs and the taking or keeping of eggs. The keeping of wild birds and the deliberate disturbance of birds is also contrary to the Birds Directive, particularly during the breeding season.

There are exceptions. Certain species, listed in Annex II, may be hunted if national legislation of the Member State concerned permits it. Species in Annex II/I may be hunted throughout Europe; species on Annex II/I may only be hunted in named States. However, hunting may only be carried out provided it does not jeopardise conservation efforts anywhere in the distribution area of the species, and follows the principle of ‘wise use and ecologically balanced control of the species concerned’, and it does not compromise the
The RSPB regularly makes the case for the protection of SPAs from damaging development. We have sought to prevent the extraction of peat from the Thorne and Hatfield Moor SPA.

overarching requirement to maintain species at a level corresponding to their ecological requirements. The Directive also requires Member States to prohibit hunting during the rearing season, reproductive season and, for migratory species, the period of return migration, ie spring shooting is prohibited. It also places strict controls on the sale, transport for sale, keeping and offering for sale of live or dead parts of wild birds, or their parts or derivatives.

Article 9 of the Directive allows Member States to permit exceptions from these provisions in certain circumstances: for public health and safety; air safety; to prevent serious damage to crops, livestock, fisheries and water; for the protection of plants and animals, and for the purposes of research. It also allows, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of wild birds in small numbers. These exceptions or ‘derogations’ are only permitted where there is no other satisfactory solution, and annual reports on their use have to be made to the European Commission to check that their use is not incompatible with the Directive.

Implementation of the Birds Directive in the UK

We do not analyse further the operation of the species protection provisions of the Birds Directive in the UK, other than to note that the Directive drew heavily on the approach adopted in the British Protection of Birds Act 1954. The laws in the UK were already structured to meet the Directive’s requirements, although some improvements have been (and continue to be) made to ensure full compliance. Far more significant changes were required to bring the habitat conservation requirements of the Directive into effect. The principle vehicle for the implementation of the Birds Directive (both in terms of site protection and species protection) was the Wildlife & Countryside Act 1981 in Great Britain, and the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 and the Wildlife (Northern Ireland) Order 1985 in Northern Ireland. This legislation did much to improve the protection of Sites of Special Scientific Interest (SSSIs) in Britain, and Areas of Special Scientific Interest (ASSIs) in Northern Ireland – the main mechanism that underpins the protection of SPAs. By the mid-1990s, it became apparent that this legislation required improvement, especially to address deterioration in the ecological condition of sites through management neglect. However, the Countryside & Rights of Way Act 2000 in England and Wales, the Nature Conservation (Scotland) Act 2004 and the Environment (Northern Ireland) Order 2002 have significantly changed the protection regime afforded to SSSIs in England, Wales and Scotland and ASSIs in Northern Ireland. Although the detail of the legislation varies by country, all greatly improve the protection of sites, and provide measures to secure positive site management.

The Birds Directive in action

The RSPB makes representations to planning authorities and others on some 500 development proposals affecting protected areas each year. Of these, about a third affect internationally important areas designated as SPAs and the remainder affect SSSIs/ASSIs of national interest for birds. Proposals include applications for housing and industrial development, afforestation, transport infrastructure (roads, ports, airports), energy generation and flood defence works.
Most of these developments only pose a problem for conservation because of their proposed location. The RSPB’s representations aim to influence the location or design of developments so that they do not have an adverse effect on wildlife. Over the last decade, we have found developers are generally very willing to enter into negotiations with statutory and voluntary conservation bodies to seek positive outcomes for wildlife and people. In the minority of cases, where a satisfactory outcome cannot be found through negotiation, the RSPB will carry its objection through to planning inquiry or, in extreme cases, the courts, in the hope and expectation that the proposal will be refused. The logic of this is straightforward: where development and conservation cannot be reconciled, then it is important the case for both is heard in an open and transparent way, so that society can decide where the balance of advantage lies.

Over recent decades, the balance drawn by society has changed. As man’s impact on the environment has grown, and has been more widely recognised, developments that would have been permitted in one decade have been rejected in the next.

The Birds Directive itself is a product of greater environmental awareness as there is now an understanding that there are limits to development if we are not to lose irreplaceable environmental assets. The next nine pages summarise some of the key cases in the UK where the Birds Directive has been influential in determining where the balance between development and conservation lies. We have presented these in four categories.

1. Cases where development did not go ahead, as it was determined the wildlife interest of the site was more important.

2. Cases where development was permitted with the provision of necessary mitigation or compensation measures, as it was determined that there was no alternative and there were imperative reasons of overriding national interest.

3. Cases where the RSPB believes the decision making framework provided by the Birds Directive was applied inappropriately in some way.

4. Current cases where the outcome is yet to be determined.
Cases where development did not go ahead

1 Holton Heath, Dorset. 1996–2002: a proposed new settlement of 1,350 houses and associated transport improvements allocated in the local development plan, which would increase urban pressures from people and domestic pets on parts of the Dorset Heathland SPA (of importance for woodlarks, Dartford warblers and nightjars). The allocation was rejected following a lengthy public inquiry.

2 Fox Farm, Hampshire. 1995: application for a housing estate next to Yateley Common, part of the Thames Basin Heaths proposed SPA (of importance for ground-nesting heathland birds such as woodlarks and nightjars). The Secretary of State upheld the Council’s rejection of the application due to likely damage to the integrity of the site from disturbance. The applicant also failed to prove lack of alternatives or imperative reasons of overriding public interest.

3 Gruinart Flats and Laggan Bay, Islay, 1998–9: The then Scottish Office issued licences to farmers within these two SPAs to shoot barnacle geese to assist their scaring programmes. The RSPB was unconvinced that the Government’s assessment was correct – it was claimed that such shooting and scaring policies would have no significant effect on the population of Greenland-breeding barnacle geese as a whole. The RSPB believed this to be the wrong test and that Article 6.2 required the prevention of significant disturbance within SPAs – otherwise SPAs were, in effect, no different from anywhere else. On appeal, the Scottish courts held the site-based approach to be correct.

4 Duich Moss, Islay. 1984–1987: proposal to extract peat within the Duich Moss SSSI, before the site was designated as an SPA. This would have impacted on the internationally important population of Greenland white-fronted geese using the site. Permission was granted, but following an RSPB complaint to the European Commission the developers agreed to extract peat from a suitable site nearby instead.

5 Duich Moss, Islay. 1995: proposal for five wind turbines overlooking Duich Moss SPA. The planning authority was minded to approve the project, but following inquiry the Secretary of State refused permission, because of the risk of collision particularly by Greenland white-fronted geese and hen harriers. This risk meant he could not conclude that there would be no adverse effect on the integrity of the site.

6 Barksore Marshes, Medway, Kent, 1997: the planning authority was required to review an extant 1964 consent to use Barksore Marshes for the disposal of river dredgings. It had to decide if it should be revoked because of its adverse effect on the Medway Estuary and Marshes SPA, an important site for wintering and breeding wildfowl and wading birds. The Council determined that the partially unimplemented consent would have an adverse effect, and the Secretary of State upheld this decision after inquiry, noting that there were viable and less damaging alternative solutions for disposing of the dredgings.

7 Magheramorne Quarry, Co Antrim, 1994–1997: proposed use of a quarry next to Larne Lough SPA for landfill. Concerns focused on whether leachate from the site would impact on feeding ducks and geese, and whether breeding terns would be affected by predation and disturbance caused by gulls attracted to the waste site. The Department of Environment (Northern Ireland) refused permission due to the probable adverse effect on the SPA, and because lack of alternatives and imperative reasons of overriding public interest had not been shown.
8 Portsmouth Stadium, Hampshire, 1993: proposed new Portsmouth Football Club stadium on playing fields used by feeding brent geese from the nearby Chichester and Langstone Harbours SPA. The planning authority was minded to approve the project, but following inquiry the Secretary of State refused permission, due to the likelihood of an adverse effect on the integrity of the SPA, through a reduction in feeding habitat on which the SPA birds relied.

9 North Duffield Carrs, North Yorkshire, 1980–1984: proposed Internal Drainage Board (IDB) pump drainage scheme of flood meadows that were used by wintering and breeding ducks, geese and wading birds and formed part of the then proposed Lower Derwent Valley SPA. The scheme was to permit conversion to arable cropping, which would have destroyed the wildlife interest of the site. Application for grant-aid was rejected by MAFF, following which the IDB decided not to proceed with the scheme.

10 Penbreck windfarm, East Ayrshire, 2004: proposal for a 12 MW wind farm overlapping the Lowther and Muirkirk Uplands SPA. The proposal had the potential to adversely impact breeding hen harriers and golden plovers through collision mortality and disturbance. Following a public inquiry, the proposal was rejected due to the potential for adverse impacts upon the SPA.

11 Dibden Bay, Hampshire, 1996–2004: proposal for a large container port which would have destroyed inter-tidal habitat within the Solent and Southampton Water SPA, with knock-on effects on wading birds and populations of ducks and geese. After a public inquiry, the Secretary of State refused permission because of the potential environmental impact of the project and the fact that potentially less damaging alternatives to the scheme existed.

12 Mersey Barrage, Merseyside, 1986–1993: proposed barrage across the estuary for electricity operation. Detailed feasibility studies highlighted the adverse impact that the scheme would have on wintering ducks, geese and wading birds, for which the estuary was proposed as an SPA. Plans for the barrage were put on hold: subsequently an integrated Mersey Estuary Management Plan has given full recognition to the estuary’s wildlife importance.

13 Cliffe Airport, Kent, 2002–2004: as part of its consultation on the future of aviation in the UK, the UK Government identified several options for airport expansion, including the option of constructing a new airport at Cliffe. This development would have caused the loss of some 6,200 hectares of SPA – of importance for breeding and wintering ducks, geese and wading birds. Following a vigorous campaign by the local community and the RSPB, the Cliffe option was rejected in the Aviation White Paper on economic, financial, passenger safety (due to bird strike hazard) and wildlife conservation grounds. The Government acknowledged that the Habitats Directive ‘tests’ would have been difficult to pass, as other less damaging sites were available, and it would have been difficult to secure adequate compensatory habitat.

14 Creag Meagaidh, Highland, 1983–1984: proposals to afforest the Creag Meagaidh SSSI (prior to its designation as an SPA), which holds internationally important breeding upland bird populations. Although the RSPB objected to the application, permission was granted for half of the afforestation to take place, despite the site’s conservation importance. The site was subsequently bought by the then Nature Conservancy Council and designated as a National Nature Reserve, thus saving it from development.
Cases that went ahead after proper application of the process

1. **Cavenham Quarry, Suffolk, 1997:** An extension to the existing sand and gravel extraction was proposed at the site, which held more than 1% of the UK’s breeding stone-curlew population, and part of the proposed Breckland SPA. Discussions between English Nature, the RSPB and the owner provided for quarrying to be done in a way that maintained the breeding habitat. After the quarrying was complete, there was agreement that the worked area would be restored to suitable stone-curlew habitat. As there would be no adverse effect on the SPA, the planning authority granted permission.

2. **Immingham Outer Harbour, North Lincolnshire, 2001–2004:** The port company proposed extending the Humber International Terminal to create a new roll-on, roll-off ferry terminal, which would have caused direct loss of 22 hectares of inter-tidal mudflats within an area proposed as an extension to the Humber Flats, Marshes and Coast SPA. In discussion with the Environment Agency, English Nature and the RSPB, the port accepted that there would be an adverse effect on the integrity of the site, and entered a legal agreement with the conservation organisations to provide adequate compensation to maintain the integrity of the network. The developer also produced the necessary information to inform the Government’s consideration of alternative solutions, and imperative reasons of overriding public interest. This allowed the RSPB and English Nature to withdraw their objections to the scheme.

3. **Harwich channel deepening, Suffolk, 1997–1998:** The port authority proposed to deepen the approach channel to Felixstowe to allow the dock to accept larger container vessels. The RSPB objected, as reduced sediment supplies in the estuary would be likely to lead to increased erosion of the inter-tidal mudflats that are used by feeding wintering ducks, geese and wading birds in part of the Stour and Orwell Estuaries SPA. The developer proposed mitigation of this potential impact by supplementing the sediment supply, and providing 17 hectares of replacement habitat within the estuary. The experimental nature of these proposals meant the developer could not demonstrate that there would be no adverse effect on the SPA. In the event, the Secretary of State approved the scheme, having determined that there was no alternative to the project and it was in the overriding public interest. The developer was required to provide the 17 hectares of habitat as compensation, not mitigation.
4 Humber urgent flood defence works, Humberside, 2000–2001: the Environment Agency brought forward a programme of urgent sea defence works to reduce flood risk to land next to the estuary. The Environment Agency accepted that there would be an adverse effect on the Humber Flats, Marshes and Coast SPA, which is of international importance for wintering ducks, geese and wading birds. In discussion, all parties agreed that there was no alternative, and that there were reasons of overriding public interest. The planning authority approved the works with the provision of compensatory habitat at Paull Holme Strays, using a planning agreement to link the delivery of the schemes in different local authority areas.
Cases where the RSPB believes the decision-making framework provided by the Birds Directive was flawed include:

1. **Lappel Bank, Medway, Kent, 1989–1993**: In 1989, Medway Ports Authority sought and received planning permission for the reclamation of Lappel Bank, for a car and cargo park, but this was not immediately implemented. In 1993, the Secretary of State designated the Medway Estuary and Marshes as an SPA, but left out Lappel Bank on economic grounds, despite its value for wintering feeding ducks, geese and wading birds. The RSPB challenged this decision on the grounds that the Birds Directive did not allow economic considerations to be taken into account in SPA designations. The subsequent Judicial Review was referred to the European Court of Justice, which agreed the UK Government had acted illegally. As the planning application had been implemented and the site destroyed, the UK Government was obliged to compensate for the loss. This had still not been delivered at the time of writing, but is now being brought forward.

2. **Cardiff Bay, Glamorgan, 1986–1993**: Following earlier failed attempts, in 1989 the Cardiff Bay Development Corporation proposed a barrage in the bay to create a recreational lagoon and remove ‘unsightly’ mudflats as part of a dockside redevelopment. Despite the destruction of the nearly 200 hectare Taff/Ely Estuary SSSI and the adverse effect on the Severn Estuary pSPA (due to the loss of intertidal mudflats used by wintering and passage ducks and wading birds), the Cardiff Bay Barrage Act was passed by Parliament in 1993, citing economic need. The Government funded a 439-hectare compensatory wetland creation project on the nearby Gwent Levels. Despite this, the RSPB still finds it difficult to understand how Parliament concluded there was no alternative to the barrage, given expert evidence and experience elsewhere that mudflats are not a barrier to economic development.

3. **Mostyn Dock, Flintshire, 1994**: Extension of the dock, including a new quay, foreshore land claim and dredging to deepen the access channel. The RSPB objected because of the impact on the Dee Estuary SPA, one of the UK’s most important sites for wintering ducks, geese and wading birds. After an inquiry, the Secretary of State consented to the proposal, as the impact on the SPA would be insignificant and there would not be an adverse effect. The tests of alternatives and imperative reasons for overriding interest were therefore not relevant and no compensation was required. We find it difficult to see how
the Secretary of State reached this conclusion, given the evidence showing the impact of habitat loss on estuarine birds.

4 Pentland Road windfarm, Isle of Lewis, 2002: a proposal for six wind turbines within the Lewis Peatlands SPA, presenting potential collision risks for golden eagles. In March 2004, the application was referred by the council to Scottish ministers on aviation grounds. At this point, the RSPB and others became aware of the application and registered objections with the Scottish Executive, but the case was referred back to the council. The proposal was approved in August 2004. We find it difficult to see how the council were able to conclude that there would be no adverse impact for golden eagles given the poor quality of information that was available to them.
Windpower generation can make an important contribution to limiting the production of greenhouse gases. However, better strategic planning is needed to prevent developments that adversely affect SPAs.

1 Lewis Windfarm, Isle of Lewis, 2002: a proposal for 234 wind turbines within the Lewis Peatlands SPA. This has the potential to adversely affect internationally important populations of breeding wading birds including dunlins and golden plovers, along with breeding golden eagles and merlins. These impacts cannot be overcome by mitigation and so the RSPB will object to the application.

2 Shell Flat Windfarm, off the coast of Lancashire, 2000: a proposal for 90 wind turbines on shallow sand banks. The area of the application coincides with an area used by one of the most important populations of wintering and moulting common scoters in the UK, which the RSPB believes should be designated as a marine SPA. There could be potential adverse impacts on this population through disturbance and collision mortality and the RSPB has objected to the application. A possible solution will be to move the windfarm area away from the scoter populations, and so avoid these impacts.

3 A11 trunk road between Mildenhall and Thetford, Suffolk, 2001: proposals for dualling of the carriageway on the remaining single lane section of the road. The road corridor passes through the proposed Breckland SPA, of international importance for its breeding stone-curlews, woodlarks and nightjars. The development could potentially cause disturbance to the stone-curlews, but these impacts may be mitigated by suitable habitat creation within the proposed SPA.

4 London Gateway, Essex, 2001: application for a large container port next to the Thames Estuary and Marshes SPA, which would result in damaging changes to intertidal habitats and knock-on effects on wintering wading birds. The RSPB has objected to the scheme, although agreement has been reached with the developer regarding appropriate compensatory and mitigation measures, should the scheme be consented. A decision is awaited.

5 Bathside Bay, Essex, 2001: application for a large container port next to the Stour and Orwell Estuaries SPA, with potential loss of intertidal habitat within the estuaries, leading to adverse effects on wintering ducks, geese and wading birds. The RSPB objected to the proposal because of the loss of the proposed Bathside Bay extension to the SPA. However, agreement has been reached with the developer regarding appropriate compensatory and mitigation measures, should the scheme be consented. A decision is awaited.

6 Queen Elizabeth II Barracks, Hampshire, 2000: application for 1,132 houses on surplus Ministry of Defence land. The site is within half a kilometre of the Thames Basin Heaths SPA. There is potential for adverse impacts on breeding nightjars, woodlarks and Dartford warblers through increased recreational disturbance and fires. The RSPB has objected to the application. However, there is potential for the impacts to be mitigated through the provision of a considerable area of open space within and adjoining the development site, and through management of existing access to the SPA.

7 Cardiff Eastern Bay Link, 2003: proposal to build an eastern distributor road around the south and east of Cardiff, which would impinge and impact upon intertidal habitat, and so wintering birds, of the Severn Estuary SPA. The proposal has been a long-time aspiration of the local council, although it does not presently have funding allocated to it. The RSPB objected to the proposal in the emerging Unitary Development Plan (UDP). However, due to planning reform in Wales, the draft
UDP is now likely to be superceded. The RSPB will press hard for the scheme to be dropped in the new Local Development Plan.

8 **Ouse Washes, Cambridgeshire and Norfolk, 1975**: deterioration of the Ouse Washes SPA washlands has occurred through more frequent summer flooding and longer, deeper winter flooding. This has led to adverse impacts on breeding wading birds, such as black-tailed godwits, snipe and wintering wigeons. Flood mitigation to restore the SPA is not feasible due to the scale of flooding. The Ouse Washes flood defence function is so important that a case could be made for continuing the current flood regime, in which case approximately 1,000 hectares of compensatory habitat would be required to safeguard the SPA interest features.

10 **Cley Salthouse, Norfolk, 1998**: proposals to lower and re-profile a shingle ridge, and so restore an SAC feature – which is also the primary sea defence – to favourable condition, will have an adverse effect on the North Norfolk Coast SPA. The freshwater reedbed habitat, which is used by breeding bitterns, would suffer from saline degradation. The RSPB is in discussion with the agencies involved, but is concerned that the present proposals will not protect the SPA habitat long enough for compensatory sites to be implemented nearby.

11 **Little Cheyne Court, Kent, 2003**: application for a 26-turbine wind farm near the Dungeness to Pett Levels SPA and potential SPA extension. This development would potentially impact on wintering Bewick’s swans (in particular) through collision mortality and disturbance. The RSPB objected, as we believe potential impacts cannot be mitigated adequately and that alternative solutions exist. A decision is awaited.

12 **Wing Water Treatment Works, Rutland, 1998**: an application for an extension to a water treatment works to allow up to 30% increased abstraction from Rutland Water SPA. During peak demand, this could lead to significant draw-down events, leading to adverse impacts in the reservoir on the internationally important wintering populations of ducks and geese. The RSPB has objected to the scheme, but the potential exists for impacts to be mitigated and compensated for through appropriate habitat enhancement and creation.

13 **Slieve Beagh Windfarm, Co Tyrone, 2004**: proposal for 12 wind turbines, in conjunction with another 12 adjacent to the site in the Republic of Ireland. Both applications relate to an area used by breeding hen harriers, which should be designated as an SPA. The RSPB has objected to the scheme due to adverse impacts on the breeding hen harriers through disturbance and collision mortality.

14 **Derry Airport, Co Londonderry, 1999**: an application to extend the runway safety area over inter-tidal habitat, part of which is managed as an RSPB reserve, within the Lough Foyle SPA. This would lead to loss of habitat for...
Current cases where the outcome is yet to be determined (continued)

wintering wading birds and increased disturbance to birds using the SPA. The RSPB objected to the application but consent was granted without a public inquiry. At the RSPB’s request, a judicial review of the decision has been undertaken; the outcome is awaited.

15 Mostyn Dredge, Flintshire, Wales, 2003: an application to increase maintenance dredging to 200,000 m³ (+/-50%) of sediment per annum within the Dee Estuary SPA. This has the potential to increase erosion on inter-tidal sand banks, which are used by feeding wintering wading birds such as redshanks and dunlins. The RSPB believes that there are less damaging alternative solutions to meet the project need and has objected to the application. A decision is awaited.

16 Gruf Hill, Orkney, 2002: a proposal for a small-scale wind farm (three turbines) on Orkney, which presents a potential collision risk to hen harriers. The RSPB objected to the development and lodged written submissions for the public inquiry, which was held in mid-December 2004. Relocation of the turbines would significantly reduce the impacts on the SPA.

17 Leith Docks Development Framework, Edinburgh 2004: this Framework document is being produced as supplementary planning guidance for the local plan. The framework applies to a 87-hectare site and includes proposals for residential, commercial, educational and industrial uses. Depending on the design and layout of the proposal, it could have an impact on the Firth of Forth SPA and the Imperial Dock Lock SPA. Negotiations are ongoing with the Council to ensure any potential impacts are reduced or removed.

18 Kircaldy Esplanade, Fife, 2004: application for outline planning permission for a large development on inter-tidal land to be reclaimed from the Firth of Forth SPA (see also case 17 above potentially affecting the same SPA). The RSPB has objected to the proposal and a decision is awaited.

As cases 17 and 18 both impact on the Firth of Forth SPA the Directive requires that their affects be considered in combination with each other.

Hen harrier – a species at risk from windfarm construction, such as that at Gruf Hill, which is part of the Orkney Mainland Moors SPA.
Analysis of the Case studies

Although selective, we believe some conclusions about the role and value of the Birds Directive in the UK can be drawn from these case studies.

- That the Birds Directive has made a positive contribution to sustainable development. Developments that would have had an adverse impact on SPAs have been halted either where there was an alternative or no imperative reasons of overriding public interest. Conversely, developments have been permitted where adverse effects could be mitigated (eg through modifying the design, changing working practice or altering the location), or where it has been found there was no alternative and there were imperative reasons of overriding public interest.

- The process is participatory and allows all stakeholders to be involved and put across their views – including developers, the general public, statutory bodies and non-government organisations. Implementation of the Aarhus Convention will further improve the ability of the public and others to participate in and influence environmental decision making.

- In general, the Government and local planning authorities in the UK have applied the legislation implementing the site protection provisions of the Birds Directive rigorously. There are a few cases where the Directive’s ‘tests’ have been inappropriately applied to permit development.

- Set against the number of planning applications as a whole (some 625,000 in England in 2003 alone), those affecting protected sites are relatively few, suggesting that the impact of the Directive is not disproportionate to its benefits to wildlife and human quality of life.

- Conserving habitat in situ remains by far the best option. From an ecological perspective, it is still difficult to re-create or create many habitats within a reasonable timescale. For those where there are reliable habitat recreation techniques such as inter-tidal, reedbed, wet grassland and heathland, the practical difficulties of locating, financing and delivering compensatory habitat of an adequate functional match for that lost are considerable. The UK Government has still not delivered compensatory inter-tidal habitat for Lappel Bank, nearly nine years after a European Court of Justice judgement required it to do so, although a site has now been identified and habitat creation work should begin soon.

The North Norfolk Coast SPA, of which the RSPB’s Titchwell reserve is a part, makes an important contribution to the economy of the area through green tourism. It attracts some £1.8 million visitor spending per annum, supporting more than 41 full time jobs.
Inevitably, the Directive has added to the regulatory requirements faced by developers. However, we consider this reasonable, given the high wildlife interest of the land, and that many of the decisions being made within the framework of the Directive, whether to permit development or not, are irreversible.

Some industries are more likely than others to be able to demonstrate ‘no alternative solution’ and ‘imperative reasons of overriding public interest’ in respect of development proposals that would have adverse effects on Natura 2000 sites. A good example is the ports industry, which operates largely within estuarine areas, many of which have been designated as SPAs by virtue of their importance for wintering ducks, geese and wading birds. Port expansion is difficult to achieve without adverse effects on the SPA network. Over the years, port companies have come to work with the Directive, increasingly acknowledging that developments may have adverse effects on protected areas and, where they do, putting in place robust provision for compensatory habitat, and presenting their alternatives and IROPI case for consideration at public inquiry. We see this as a considerable advance from the situation where companies would seek to deny adverse effects on protected sites. Other industries, such as housing, energy and aviation, where the choice of location is far wider, are likely to find it much harder to construct such a compelling case. Even for ports the rigour of the alternatives and IROPI tests means that a strong case for development is required if a project is to gain approval. The evaluation of the strength of individual competing proposals has been hampered by the absence of a Government ports strategy for the development of the overall industry.

This account has focused on individual sites. Obviously, sites do not exist in isolation from the wider environment, and although the protection of sites has improved, the context in which they exist has not. Site condition has deteriorated, sometimes because of poor site management, but more often as a result of external factors such as eutrophication (over-enrichment of water) from air- and water-borne pollution, coastal erosion, over-abstraction of water, or poor water-level management control due to flood management operations. Addressing these factors presents a major challenge for the future.
Benefits of the Birds Directive

The primary benefit of the European Union protected area network of Natura 2000 sites is to the biodiversity it protects, and the contribution it makes to the survival of wildlife for its own sake. We have a moral responsibility to ensure the good stewardship of our planet, and to prevent extinctions of plants and animals, independent of any social or economic benefit that it might provide.

Many people already acknowledge this responsibility, and place high intrinsic value on the natural environment and the continued existence of wildlife. Economic techniques allow for these values to be estimated and taken into account in the management of Europe’s natural resources. A recent report for the Scottish Executive examined the intrinsic values for Scotland’s network of Natura 2000 sites.

It estimated that the benefits of maintaining this network to residents and visitors was £210 million per year, and outweighed the costs of management by seven times ¹.

For those seeking a more tangible rationale for conserving wildlife, protected areas provide significant resource-use or utilitarian benefits to the economic and social aspects of human quality of life. These benefits include private and public economic benefits; benefits to health and benefits from sites providing valuable educational resources. A protected and well-financed Natura 2000 network can play an important role in solving two current public policy challenges: rural economic decline and improvement in our quality of life.

Local economic benefits

Many sites of high conservation value are found in remote, rural or deprived areas. Growing evidence shows that proper management of these sites regularly benefits areas that were previously reliant on activities generating low economic returns. Properly managed Natura 2000 sites are multi-functional and active in producing rural products, supporting employment and contributing to an economically diverse local economy.

Benefits of the Birds Directive

Employment opportunities

It is estimated that in the EU-15 125,000 jobs are supported in nature protection related activities. Direct employment in the natural environment sector in the UK is estimated at 18,000 jobs. Significantly, nature conservation is a growth sector, unlike agriculture and forestry, which have shed many jobs in the last decade.

Urban renewal

The value of a high quality local environment is increasingly being recognised as having an important role in urban regeneration, and attracting inward investment, employers and employees. A good example is at the Tees Estuary, where protection of the Teesmouth and Cleveland Coast SPA, and creation of a flagship nature reserve at Saltholme from derelict industrial land adjacent to the SPA, is an integral part of the regeneration of the area. Elsewhere, at Morecambe, celebration of the internationally important waterfowl population using the Morecambe Bay SPA has been built into the regeneration of the resort’s promenade.

Local spending

In addition to employment effects, significant amounts of direct spending are attributable to protected sites. For example, spending on local goods and services at the RSPB’s protected sites in the UK, both directly for site management and indirectly by the million-plus annual visitors, is more than £19 million each year. This spending increases income diversification in often agriculturally reliant economies. Direct and indirect local employment attributable solely to RSPB reserves (of which some 60% by area is SPA), is estimated at more than 1,000 jobs.

Growing tourism potential

Certain protected areas are suited to nature tourism. If sensitively developed, this has been shown to help diversify economies, supplement incomes, and maintain rural communities. A good example of this is the Exe Estuary, where pleasure cruises to view avocets and other estuary birds have extended the tourist season into autumn and winter, making a valuable contribution to the local economy.

Broader economic benefits of the environment

From a broader perspective, studies show that environment-related activities support significant parts of many remote regional economies. For example, environment-related economic activity in south-west England contributes approximately 100,000 jobs and some £1.4 billion to the regional economy. This represents 5–10% of the region’s GDP. A study for Scottish Natural Heritage, shows that almost 93,000 jobs and £2.2 billion each year are generated by Scotland’s natural heritage.
Public goods

The deterioration of sites with a variety of biodiversity is partly attributable to the failure of traditional economic assessments to capture the full benefits of biodiversity. Well-maintained, semi-natural and natural ecosystems provide services such as flood prevention, pollution capture, and recharging of groundwater. The cost of allowing these assets to degrade will impact on future generations, and is typically only recognised when natural disasters occur as a result of actions such as forest clearance.

The value of nature’s life support systems

Preservation of biodiversity protects the ecological ‘life-support’ systems that nature provides. A global study into the value of wild nature suggests that global expenditure of US$50 billion per year on conservation measures would help to preserve US$5,000 billion of such services. Translated to the country level, in Scotland such ecosystem services have an estimated value of £17 billion per year. Such figures can never be more than indicative but start to provide real order of magnitude estimates of the value of maintaining our natural systems. In the past, the conversion of natural habitats to seemingly more productive uses, such as agriculture and forestry often benefited society, but current evidence shows that conversion of remaining habitat to such uses fails to make economic sense.

Health benefits

Physical inactivity is a major preventable health risk that leads to increased levels of obesity and heart disease, costing the UK economy £8.2 billion per year (£1.7 billion to the NHS, £5.4 billion for work absence and £1 billion for early mortality).

A recent study commissioned by the RSPB shows the provision of public green spaces and natural places, such as Natura 2000 sites, has a key role in encouraging exercise. The study shows that the greater the natural diversity of a site, the more likely people will be to visit

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10 Dr W Bird (2004). Natural Fit. The RSPB.
Benefits of the Birds Directive

The Ribble Estuary SPA provides an exciting outdoor classroom where children learn parts of the curriculum and the importance of conserving Natura 2000 sites and biodiversity.

Barrie Cooper (RSPB)

Genevieve Leaper (rspb-images.com)

Full implementation of the Birds Directive in the marine environment is needed to secure the future of seabirds, such as the kittiwake.

it regularly and therefore maintain exercise regimes. The provision of managed access to sites of high biodiversity interest, close to population centres, represents good value for money for taxpayers and would integrate health and nature conservation policy goals.

Leisure opportunities

Many people enjoy birdwatching as a leisure pursuit, and many Natura 2000 sites serve a recreational purpose that can only be provided through their conservation. Studies have suggested that as many as 5 million people in the UK spend more than five hours per week pursuing their interest in birds 11.

Coincidentally, Natura 2000 sites contribute to the protection of some of our most valued landscapes, which are enjoyed by many other recreational users of the countryside.

Education benefits

Many Natura 2000 sites have the potential to be an excellent educational resource. Well-developed programmes on Natura 2000 sites across Europe have proved effective in providing children with real world learning experiences by attracting school groups to on-site classroom facilities, getting them to take part in site visits and to learn about nature outside. In the UK, 40,000 pupils visit RSPB reserves during school time every year. Promotion of, and investment in, these sites is therefore necessary to maximise this potential.

11 A 1995 Gallup poll done for EMAP publications.
Future development of the Birds Directive

Whilst the Birds Directive has contributed much to UK wildlife conservation, implementation of the Directive is far from complete. In particular:

- the RSPB considers the terrestrial network of SPAs to be incomplete. Several key species, such as the chough and corncrake, remain under-represented within the network. There are still important discrepancies between the areas designated as SPAs under the Birds Directive and those identified by BirdLife International as Important Bird Areas (IBAs). We believe IBAs are worthy of statutory protection as SPAs given that they are of international importance for birds. Completion of the network is especially important in Scotland.

- implementation of the Birds Directive in the marine environment has been lamentable. Only one marine SPA has been designated – for common scoters in Carmarthen Bay – and that was in the face of European Court action. The lack of certainty about the location of internationally important sites for birds at sea is now posing a major problem for conservationists and developers alike, as it is difficult to guide marine development away from sensitive areas much of the current SPA network is not in a favourable condition. A mixture of policy reform, regulatory improvements and more resources for positive land management agreements with owners and occupiers is required to achieve favourable condition. The decoupling of agricultural subsidies from production, and modulation of production payments to rural development schemes, including agri-environment schemes, should help to reduce the pressure on sites from agricultural intensification, and increase the money available for positive site management. However, further resources to bring land into favourable condition will be required.

In England, Defra’s Public Service Agreement with the Treasury to bring 95% of SSSIs into favourable condition by 2010 is helping to drive the delivery of better site condition, including of SPAs. English Nature published comprehensive data on site condition as a product of the first national assessment in December 2003. Sadly, similar data is not available for Wales, Scotland or Northern Ireland and currently the political commitment to delivering favourable site condition appears weaker.

Future development of the Birds Directive

Some parts of the Directive are still poorly implemented in the UK. For example, much effort has been put into the designation of SPAs under Article 4, but the wider habitat conservation requirements of Article 3 – which require the recreation of destroyed biotypes – have not been properly implemented. Measures to address site deterioration under Article 6.2 of the Habitats Directive are also poorly developed. This is especially relevant given the increasing impacts of climate change, coastal squeeze and diffuse pollution on protected sites.

Some commentators have suggested that the Birds and Habitats Directives provide for a too static approach to biodiversity conservation in the light of dynamic environmental change caused by climate change and sea level rise (itself the product of isostatic release – i.e., adjustment of land levels following the last ice age – and man-induced climate change). We do not share this view. We believe that, for site protection at least, the two Directives together provide a sound framework to address climate change – requiring mitigation measures to contain the greenhouse gas emissions, as well as adaptive measures to help wildlife adjust to climate change. In summary, we see conservation of existing wildlife interest in situ as being important in buying time in which to enable delivery of adaptive measures. In parallel, investment will be needed to create new habitats in areas corresponding to their migrated climate space. In addition, provision of habitat stepping stones and corridors, and the translocation of species may have a role in enabling species to migrate.

We believe this document demonstrates that the Directive has operated in the broadest public interest. It is an important tool in delivering sustainable development and providing solutions that achieve integrated economic, social and environmental objectives. We are in no doubt that the Birds Directive, and the Habitats Directive, will continue to play a full role in helping to deliver the European Union’s objective of halting the loss of biodiversity by 2010. It is reassuring to know that the special places it has created, and will continue to create, will be a proud legacy for future generations to enjoy.
Conservation

The RSPB’s role in the conservation of Special Protection Areas

The success of the Birds Directive has been possible as a result of many individuals and organisations efforts. Here we outline the role the RSPB has played in assisting with the development and implementation of the Directive.

- contributing to the development of the Birds and Habitats Directives, and their transposition into national legislation
- supporting bird surveys to identify Important Bird Areas for consideration for designation as Special Protection Areas
- assisting the UK Government, devolved administrations and statutory conservation bodies in the development of SPA site selection guidelines and their application
- promoting strong protection for SPAs in planning documents and other land use strategies. We also help to identify best practice policies and disseminate them between planning authorities
- acting as a watchdog to spot development proposals that might damage sites. We make representations on over 500 projects each year and, where appropriate, object to damaging developments. We also assist with site monitoring to help assess site condition; if deterioration in site quality is detected, we press for remedial action to be taken by the appropriate agencies.
- we support the protection and positive management of SPAs through the RSPB reserve network. The RSPB’s nature reserves cover over 134,000 hectares of land, 60% of which, some 80,219 hectares, has been designated as an SPA. In total, the RSPB helps to conserve 5.5% of the total SPA area of 1,447,557 hectares in the UK.

Through its acquisition as an RSPB nature reserve, we play a key role in the protection and management of Abernethy Forest SPA.
The RSPB believes that the Birds Directive is working well, in the broadest public interest, to safeguard special places for birds and people. This report provides the basis for this conclusion.

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The RSPB is the UK charity working to secure a healthy environment for birds and wildlife, helping to create a better world for us all. We belong to BirdLife International, the global partnership of bird conservation organisations.

www.rspb.org.uk