

<b>Title:</b> European Communities Act 1972 - Regulations to transpose the EU Wild Birds Directive  <b>IA No:</b>  <b>Lead department or agency:</b> Defra  <b>Other departments or agencies:</b> NE, EA, FCom, MMO	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 16/04/2012
	<b>Stage:</b> Final
	<b>Source of intervention:</b> EU
	<b>Type of measure:</b> Secondary legislation
	<b>Contact for enquiries:</b> Elaine Kendall
<b>Summary: Intervention and Options</b>	<b>RPC:</b> RPC Opinion Status

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£-0.02m	£0.0m	£0.0m	No

**What is the problem under consideration? Why is government intervention necessary?**

The UK is committed to maintaining and, where necessary and possible, restoring the populations of all wild birds in accordance with its obligations under EU Directives. After correspondence with the Commission, Defra has concluded more needs to be done to transpose certain provisions of the EU Birds Directive; in particular Articles 3(2)(b)-(d) which includes obligations to manage bird habitats, to re-establish destroyed biotopes and create biotopes outside protected areas; Article 4(4) - second sentence - which requires Member States to strive to avoid pollution or deterioration of bird habitat outside protected areas; and Article 10 to encourage research and any work required for the protection, management and use of the population of bird species.. This also includes transposition of the provisions of Article 3(1) to reflect the reference to maintain species populations under Article 2,

**What are the policy objectives and the intended effects?**

The policy objective is to ensure that the provisions of Articles 3(2)(b)-(d), 4(4), 10 and Article 3(1) in the marine area, are transposed with sufficient precision and clarity in relevant legislation. Obligations must be implemented so as to achieve the objectives of maintaining all wild bird populations at appropriate levels.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 0 - Do nothing. Rely on existing measures to deliver the obligations. Option 1 - Introduce a duty on specified authorities to take steps to secure the purposes of Article 3(2). Introduce a duty on all public bodies to strive to avoid pollution and deterioration of bird habitats outside protected areas to secure the purpose of Article 4(4) - second sentence and a duty on the Secretary of State and Welsh Ministers to take steps to encourage research and scientific work which necessary to deliver Article 10. Option 2- Introduce duties as Option 1 and a power for the relevant agency to impose management schemes for the purposes of meeting 3(2)(b)-(d) obligations. Option 0 would not address the problem and is unlikely to satisfy the Commission's concerns about transposition. Option 1 is preferred as implementation achievable with existing powers and voluntary approaches without requiring additional powers of compulsion. The new statutory guidance is expected to provide relevant authorities with clear information to meet obligations under the Birds Directive leading to improved (non monetised) outcomes for birds which are likely to more than offset the small additional costs of NE producing the guidance.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 12/2016					
Does implementation go beyond minimum EU requirements?				No	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> Yes/No	<b>&lt; 20</b> Yes/No	<b>Small</b> Yes/No	<b>Medium</b> Yes/No
				<b>Large</b> Yes/No	
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)				<b>Traded:</b> Nil	<b>Non-traded:</b> Nil

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.*

Signed by the responsible SELECT SIGNATORY: \_\_\_\_\_ Richard Benyon \_\_\_\_\_ Date: 20 July 2012 \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Introduce a duty on appropriate authorities to take such steps in the exercise of their functions to secure the purposes of Article 3(2) & 4(4) of Council Directive 79/409/EEC (as amended)

## FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -0.02m	High: -0.02m	Best Estimate: -0.02

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.02	Nil	0.02
High	0.02	Nil	0.02
Best Estimate	0.02	Nil	0.02

### Description and scale of key monetised costs by 'main affected groups'

New legislation will clearly transpose Article 3, 4 & 10 obligations. However implementing measures already exist so no additional costs result. Natural England duties to review and report to the SoS on implementation of Article 3(2)(b)-(d) and to provide guidance to other relevant authorities on the obligations will result in initial costs of £21k Other proposed amendments to regulations are cost neutral.

### Other key non-monetised costs by 'main affected groups'

Minimal ; choices made by land managers working within the guidance to deliver better outcomes for birds may result in some non-monetised costs, for example choosing to manage a certain habitat for a certain bird species may impact on benefits gained for other species in the habitat.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Nil	Nil	Nil
High	Nil	Nil	Nil
Best Estimate	Nil	Nil	Nil

### Description and scale of key monetised benefits by 'main affected groups'

None

### Other key non-monetised benefits by 'main affected groups'

Clearly transposing the Directive's obligations will focus attention on the obligations, thus ensuring effective implementation which will contribute to increasing populations of wild bird species. The new statutory guidance is expected to provide relevant authorities with clear information to meet obligations under the Birds Directive leading to improved (non monetised) outcomes for birds. Benefits of increased bird populations are not quantifiable economically, however we do know biodiversity is hugely important because of the benefits it provides including contributions to health and wellbeing.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

1. That local authorities' existing functions in relation to the identification and protection of certain land as nature reserves or through the development control system mean that they already have powers which are being used to identify areas or sites for priority habitat creation.
2. That the implementation of the Marine Conservation Zone provisions of the Marine and Coastal Access Act 2009 will deliver the requisite habitat required under Article 3(2).
3. "One In One Out" principle does not apply. Measures concern transposition of an EU Directive

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: Nil	Benefits: Nil	Net: Nil	No	NA

# Summary: Analysis & Evidence

# Policy Option 2

**Description:** Introduce a duty on appropriate authorities as described in Option 1 and introduce a power for Natural England to impose management schemes with prescribed criteria

## FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£0.02m	High: -£0.09m	Best Estimate: -£0.05m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.02	0.000	<b>0.02</b>
High	0.02	0.008	<b>0.09</b>
Best Estimate	0.02	0.004	<b>0.05</b>

### Description and scale of key monetised costs by 'main affected groups'

See option 1 - costs include NE guidance development of £21k. Where a voluntary agreement could not be reached and a management scheme were imposed, some costs could fall on NE, although intention is that such powers would be used as a last resort. Imposed schemes could result in costs to land owners depending on the nature of the scheme. The above costs are illustrations of costs of managing ten hectare units of upland habitat for birds assuming a maximum of three agreements in 10 yrs with a best estimate of

### Other key non-monetised costs by 'main affected groups'

As option 1, with risk of additional costs for land owners if management schemes more frequently imposed.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Nil	Nil	<b>Nil</b>
High	Nil	Nil	<b>Nil</b>
Best Estimate	Nil	Nil	<b>Nil</b>

### Description and scale of key monetised benefits by 'main affected groups'

None

### Other key non-monetised benefits by 'main affected groups'

As option 1, with additional benefits for birds through targeted action to improve certain habitats which will be managed to gain increases for particular species. Negotiations with land owners would begin by seeking voluntary agreements to manage habitat, as under option 1, but with regulatory imposition an option where voluntary measures are unsuccessful.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

1. As option 1.
2. That the power to impose a management scheme would be used rarely, as a last resort.
3. That the power would assist in persuading landowners to take advantage of financial incentives such as that available through agri-environment schemes where their land provides suitable habitat.
4. "One In One Out" principle would not apply as measures relate to the transposition of an EU Directive.

## BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: Nil	Benefits: Nil	Net: Nil	No	NA

## References:

No.	Legislation or publication
1	EU Wild Birds Directive <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:020:0007:0025:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:020:0007:0025:EN:PDF</a>
2	Making Space for Nature <a href="http://www.defra.gov.uk/environment/biodiversity/documents/201009space-for-nature.pdf">http://www.defra.gov.uk/environment/biodiversity/documents/201009space-for-nature.pdf</a>
3	UK Biodiversity Action Plan Costing Habitat Action for Widespread Countryside - The average annualised cost for Species 2120-2020 -(RPS Planning & Development in assoc with GHK Consulting) <a href="http://randd.defra.gov.uk/Default.aspx?Menu=Menu&amp;Module=More&amp;Location=None&amp;Completed=0&amp;ProjectID=17218">http://randd.defra.gov.uk/Default.aspx?Menu=Menu&amp;Module=More&amp;Location=None&amp;Completed=0&amp;ProjectID=17218</a>
4	Health Impact Assessment (attached)
5	Rural Proofing Analysis (attached)
6	Local Nature Reserves in England: A guide to their selection and declaration <a href="http://naturalengland.etraderstores.com/NaturalEnglandShop/NE301">http://naturalengland.etraderstores.com/NaturalEnglandShop/NE301</a>
7	Marine and Coastal Access Act 2009 and Marine Conservation Zones <a href="http://www.defra.gov.uk/environment/marine/mca/">http://www.defra.gov.uk/environment/marine/mca/</a>
8	The Natural Choice: securing the value of nature (Natural Environment White Paper) <a href="http://www.archive.defra.gov.uk/environment/natural/documents/newp-white-paper-110607.pdf">http://www.archive.defra.gov.uk/environment/natural/documents/newp-white-paper-110607.pdf</a>
9	England Biodiversity Strategy <a href="http://www.defra.gov.uk/publications/2011/08/19/pb13583-biodiversity-strategy-2020/">http://www.defra.gov.uk/publications/2011/08/19/pb13583-biodiversity-strategy-2020/</a>
10	CBD Aichi Biodiversity targets <a href="http://www.cbd.int/sp/targets/">http://www.cbd.int/sp/targets/</a>
11	Nature Improvement Areas <a href="http://www.defra.gov.uk/environment/natural/whitepaper/nia/">http://www.defra.gov.uk/environment/natural/whitepaper/nia/</a>

## Evidence Base (for summary sheets)

### 1. Problem under consideration:

Protecting the environment and enhancing biodiversity is one of Defra's top three priorities, as outlined in the Department's Business Plan. Biodiversity is hugely important because of the benefits it provides; it contributes to our economy, our health and wellbeing, and it enriches our lives. Bird populations are considered to be a good indicator of the broad state of biodiversity because birds occupy a wide range of habitats, they tend to be near or at the top of food chains and there is considerable long-term data on changes in bird populations which helps with the interpretation of shorter term fluctuations.

The EC Wild Birds Directive (Council Directive 79/409/EEC now codified in Directive 2009/147/EC) provides a mechanism for protecting all wild bird species naturally occurring in the European Union. It was adopted as a response to increasing concern about the declines in Europe's wild bird populations resulting from pollution and loss of habitats as well as their unsustainable exploitation. The Directive recognises that habitat loss and degradation are serious threats to the conservation of wild birds. It sets broad objectives for a wide range of activities designed to protect wild birds.

As with all other EU Directives it is for individual Member States to ensure that obligations contained in a Directive are clearly transposed into domestic legislation, and that powers are available to relevant bodies to ensure that such obligations are, in practice, met. However, each Member State has some discretion over the precise legal and other mechanisms that are necessary to achieve this.

Article 3 of the Directive addresses the protection of habitat and biotopes as follows:

*“Article 3:*

*1. In the light of the requirements referred to in Article 2, Member States shall take the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats for all the species of birds referred to in Article 1.*

*2. The preservation, maintenance and re-establishment of biotopes and habitats shall include primarily the following measures:*

*(a) creation of protected areas;*

*(b) upkeep and management in accordance with the ecological needs of habitats inside and outside the protected zones;*

*(c) re-establishment of destroyed biotopes;*

*(d) creation of biotopes.”*

Article 4(4) of the Directive requires that (but note that this IA is only concerned with the obligations contained in the last sentence of the Article):

*“Article 4(4):*

*.....Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. Outside these protection areas, member States shall also strive to avoid pollution or deterioration of habitats.”*

The Article 3(2) and 4(4) obligations are designed to ensure Member States preserve, maintain or re-establish a sufficient diversity and area of habitats for all the species of naturally occurring birds and to ensure that outside those areas which are specifically designated as important bird habitats, efforts are taken to avoid pollution or deterioration of habitats. The purpose of these obligations is to help to ensure that populations of wild bird species are maintained.

Article 10 of the Directive encourages research as follows:

*“Article 10:*

*1. Member States shall encourage research and any work required as a basis for the protection, management and use of the population of all species of bird referred to in Article 1. Particular attention shall be paid to research and work on the subjects listed in Annex V.*

*2. Member States shall send the Commission any information required to enable it to take appropriate measures for the coordination of the research and work referred to in paragraph 1.”*

Encouraging scientific work helps to ensure a robust basis for conservation measures to protect and manage bird species.

In 2010 a global agreement was reached in Nagoya to protect the natural environment. Countries committed to taking effective and urgent action to halt the loss of habitats and species in order to ensure that by 2020 our natural environment is resilient and can continue to provide the essential services that we would otherwise take for granted. In England we have begun work towards this goal through our Natural Environment White Paper *“The Natural Choice: securing the value of nature”* published in June 2011 which sets out a bold and ambitious statement outlining the government’s vision for the natural environment, backed up with practical action to deliver that ambition. Delivery will be through the new England Biodiversity Strategy which was published in August 2011.

We need to ensure that legislation we have in place to protect our wild birds will be sufficiently robust to help deliver these commitments. We therefore propose to put forward legislative amendments (subject to Parliamentary scrutiny) to more clearly transpose the provisions of Articles 3(2)(b)-(d), 4(4) & 10 of the Wild Birds Directive, in order to give clear and specific duties to relevant bodies to meet the obligations in those Articles.



We believe that, for the most part, the authorities on whom the new duties will be placed already have sufficient powers to deliver the obligations. Therefore, save for some minor additional duties falling on Natural England, no new powers are needed by such authorities. This approach is entirely consistent with the policy that new burdens should be avoided or kept to an absolute minimum.

It is also worth noting that, under Article 2, in determining what measures are needed to meet the Article 3(2) obligations, it is possible to take economic considerations into account.

## **2. Rationale for Intervention:**

As referred to in section 1 above, the Wild Birds Directive provides a mechanism for protecting all wild bird species naturally occurring in the European Union and was adopted as a response to increasing concern about the declines in Europe's wild bird populations resulting from pollution and loss of habitats as well as their unsustainable exploitation. Article 3(2) and 4(4) obligations are designed to preserve, maintain or re-establish a sufficient diversity and area of habitats for all the species of naturally occurring birds and to ensure that outside those areas which are specifically designated as important bird habitats, efforts are taken to avoid pollution or deterioration of habitats. We need to ensure that legislation we have in place to protect our wild birds will be sufficiently robust to help deliver these commitments. After correspondence with the Commission, we therefore propose to put forward legislative amendments (subject to Parliamentary scrutiny) to more clearly transpose the provisions of Articles 3(2)(b)-(d) & 4(4) of the Wild Birds Directive, in order to give clear and specific duties to relevant bodies to meet the obligations in those Articles and to reduce the risk of infraction. Legislative amendments that transpose Article 10 will provide clearer transposition of the Wild Birds Directive to add legal underpinning to research already happening to meet the obligations of both the Wild Birds, and Habitats Directives.

There is a well established economic rationale for intervention in relation to the natural environment and biodiversity in particular. Environmental costs and benefits are often not fully factored into these decisions which tend to result in inefficiently high levels of resource depletion, pollution and damage (including biodiversity loss). On the other hand, many ecosystem services and biodiversity have public good characteristics which mean they are not properly or directly priced, or even marketed at all. Failure to take account of externalities and public good aspects of biodiversity may lead to biodiversity being undervalued which may mean appropriate action is not taken to conserve biodiversity beyond what is best for society as a whole. Furthermore opportunities for restoration and enhancement which delivers benefits to society may be missed

## **3. Policy Objective:**

The policy objective is to meet our obligations under Articles 3(2)(b)-(d), 4(4) – second sentence & 10 - of the Wild Birds Directive.

## **4. Description of options considered:**

### **Option 0: Do Nothing:**

Relying on existing measures not underpinned by statutory duties is unlikely to enable us to meet our commitments in the future which include those made in our Natural Environment White Paper and England Biodiversity Strategy (discussed in pages 11, 14 & 15), and would create a risk of infraction. We have in the past taken the view that we have a range of measures in the terrestrial area available to deliver the Article 3(2) and 4(4) obligations, including:

- the ability of Natural England, under s7 of NERC, to enter into a management agreement with any person to further its general purpose;
- s28 of the Wildlife and Countryside 1981 Act, as amended;
- Countryside and Environmental Stewardship Schemes and Environmentally Sensitive Area scheme;
- measures in the Conservation of Habitats and Species Regulations 2010 (as amended) and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 including Statutory Nature Conservation Order powers;
- action plans under the UK Biodiversity Action Plan.

However, our conclusion is that these measures need to be supplemented, and underpinned by statutory duties in order to fully transpose the obligations.

**Option 1: Introduce a duty on appropriate authorities to take such steps in the exercise of their functions to secure the purposes of Article 3(2) & 4(4) of the Birds Directive.**

*Article 3(2)(b)-(d) :*

Terrestrial area:

We propose to:

- place new duties on appropriate authorities (the Secretary of State [and Welsh Ministers], Natural England and the Countryside Council for Wales) to take such steps in the exercise of their functions as they consider necessary to ensure (so far as lies within their powers) the preservation, maintenance and re-establishment of a sufficient diversity and area of bird habitat, including by means of the upkeep, management and creation of such habitat. These duties will apply to relevant habitats outside of existing protected areas;
- place new duties on the Environment Agency, the Forestry Commission (England and Wales) and local authorities requiring them to take such steps in the exercise of their functions as they consider appropriate to contribute to the preservation, maintenance and re-establishment of a sufficient diversity and area of bird habitat, including by means of the upkeep, management and creation of such habitat;
- place an additional duty on Natural England. To review and report on implementation of Article 3(1) to the Secretary of State in England. This duty would oblige Natural England to take account of the extent of existing voluntary agreements, as well as any compulsory measures, when considering whether to recommend further action. The Secretary of State is to provide guidance to local authorities, the Environment Agency and the Forestry Commission in relation to:
  - the determination of the extent to which any diversity and area of bird habitat is sufficient; and
  - the measures that it may be appropriate to take for the purpose of fulfilling their duties.
- place a duty on appropriate authorities (the Secretary of State) to take any necessary steps to facilitate, co-ordinate or make arrangements to secure the taking of steps by other bodies to meet the UK's obligations under Article 3(2)(b)-(d).
- place a duty on appropriate and competent authorities, in exercising any of their functions, to have regard to the requirements of Birds Directive. (NB these authorities already have this obligation in respect of the Habitats Directive).

Although these are clearly new duties, we believe that the nature of the duties is closely aligned to the functions already undertaken by these bodies in relation to their existing obligations under the Habitats Directive, the general biodiversity duty that applies to all public bodies and other more general or specific environmental duties which apply to these bodies. Consequently the new obligations will not constitute a significant new burden on these authorities. In particular, the new duties on Natural England will not require the provision of additional grant-in aid to that organisation.

In terms of the powers and mechanisms, we believe that the relevant bodies already have sufficient means at their disposal to fully deliver these obligations. For example, in the case of Local Authorities we envisage the relevant functions to include but not be limited to:

- a) functions exercisable in connection with town and country planning functions; and
- b) the establishment of nature reserves under section 21 of the National Parks and Access to Countryside Act 1949.

The mechanisms available to other bodies who will have this duty include:

- a) powers under the Flood and Water Management Act 2010 to enable flood management authorities (local authorities and the Environment Agency) to manage flooding, water levels and erosion in the interests of, inter alia, nature conservation. These powers – which are still subject to Parliamentary scrutiny and approval - include the ability to compulsorily purchase land in relation to

works necessary for the purpose of enabling the UK to comply with its obligations under, inter alia, the Birds Directive;

- b) the ability to take the obligations of the Directive into account when imposing conditions on felling licences, assessing applications for grant under the Woodland Grant Scheme, and assessing Forest Design Plans; and
- c) powers for Natural England under section 7 of the Natural Environment and Rural Communities Act 2006 to enter into management agreements to further its general purpose.

### **How might the new duties interact with current powers?**

The above text makes it clear that with two exceptions (where (i) Natural England will have new duties to review and report on implementation of the obligations and where (ii) the appropriate authority will have a duty to provide guidance to relevant authorities), giving these duties to a number of authorities does not impose additional burdens on those authorities.

For example, local authorities have a range of planning powers that could be used to secure the maintenance of bird habitats, and avoid pollution or deterioration of habitats. Local Authorities also have existing powers to designate Local Nature Reserves which are frequently used. Section 21 of the National Parks and Access to the Countryside Act 1949 gives local authorities the power to acquire, declare and manage nature reserves. The term “Local Nature Reserve” does not appear in statute, but has become the name by which such reserves are generally described. Such reserves can only be declared after consultation with Natural England. Local authorities have powers of compulsory purchase to acquire land to establish an LNR, but can only use such powers as a last resort. There are no restrictions on the size of an LNR. Under these provisions LNRs can comprise land managed solely for a conservation purpose, such as the creation or re-establishment of bird habitat, although it is often the case that there is a recreational element to a reserve.

The nature reserve powers are already widely used by local authorities – currently there are some 1400 LNRs in existence of which some 400 have been declared in the last 7 years - and we anticipate that, in accordance with their statutory duty to manage, create and re-establish bird habitats, they could increasingly be used in future for the purpose of meeting the objectives of Article 3(2) of the EU Birds Directive. As we have emphasised earlier, this does not imply that local authorities will be required to increase the amount of resource they already put into declaring nature reserves; but it does mean that within their activities for the declaration and management of reserves, they factor in the new legal obligation and associated advice from NE.

Similarly the Environment Agency and the Forestry Commission (England) already have powers that can help to ensure that these obligations are met in England.

The exception referred to above is that Natural England will have new duties to review and report on the implementation of these obligations. We do not envisage that this will impose a significant new burden on the Agency. Any recommendation from the Agency that further action is required to deliver the obligations would need to be carefully considered and any resulting proposal that might increase burdens on any party would be subject to the usual consultation and assessment requirements, as necessary.

Similarly, any proposal by the Secretary of State to make arrangements to secure the taking of steps by other bodies to meet the UK’s obligations under Article 3(2)(b)-(d) would be subject to the usual consultation and assessment requirements, as necessary.

#### Marine area:

For the marine environment, it is considered that the provisions of the Marine and Coastal Access Act 2009 (referred to as the 2009 Act”), especially Part 5, can be used to deliver the obligations under Article 3(2). In particular creating an ecologically-coherent network of marine protected areas should encompass the protection required for bird habitat. In addition, a key principle of the Marine Policy Statement is that there will be no net loss of marine biodiversity and marine planning decisions will have to take account of Article 3 of the Birds Directive. The implementation of the Marine Strategy Framework Directive will also require measures for the achievement of good environmental status and will make a key contribution to habitat used by birds.

However, in order to provide clarity to authorities of their responsibilities regarding the Birds Directive, we propose to make legislative amendments. These amendments will clarify and specify the role the 2009 Act will take in delivering this obligation. . This will form part of our work to identify and designate MCZs



to contribute to a network of marine protected areas required under Part 5 of the 2009 Act. We expect that this review mechanism will fall within scope of the current marine monitoring and surveillance programme that JNCC carry out so will not incur any additional cost.

#### Article 4(4) second sentence: Terrestrial and Marine Areas

Again, we propose to introduce a statutory duty on all competent authorities (i.e. essentially public bodies) to meet the obligations in Article 4(4) second sentence to use all reasonable endeavours to avoid pollution or deterioration of habitats outside protected areas for both the terrestrial and marine environments. This will be achieved via an appropriate amendment to the Conservation of Habitats and Species Regulations 2010 (as amended) and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007. We believe that making all such bodies subject to this statutory obligation, when combined with all the existing powers at their disposal to deliver the obligation, will ensure the obligation is met.

In our view this new statutory duty will not impose any additional burden on such bodies, which are already under a duty (section 40 of the Natural Environment and Rural Communities Act 2006) to have regard to conserving biodiversity when exercising their functions. Consequently we do not consider that a duty to use reasonable endeavours to avoid pollution or deterioration of habitats imposes an additional burden. In the marine area, the Marine Management Organisation already considers the Birds Directive when considering marine licence applications, so it is not expected that there will be any additional burden imposed by the new duty.

#### Article 10: Terrestrial and Marine Area

We propose to place a duty on the Secretary of State to encourage research and scientific work relating to both the terrestrial and marine areas for the purpose of the protection, management and use of any population of wild bird. This will be achieved via amendments to the Conservation of Habitats and Species Regulations 2010 (as amended) and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007.

The new regulation in the Conservation of Habitats and Species Regulations 2010 (as amended) will also place a duty on the Secretary of State to take appropriate steps to encourage research and scientific work for the maintenance or restoration of habitats and species at favourable conservation status in accordance with Article 18 of the Habitats Directive. In the marine area, this duty is already contained in regulation 67 of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007.

The Secretary of State would also be required to share appropriate information with the European Commission, and, in the case of the Habitats Directive, other Member States to assist in the effective co-ordination of research.

These new duties will impose no additional burdens on other bodies as a wide range of research sufficient to meet the requirements of Article 10 of the Birds Directive and Article 18 of the Habitats Directive is already undertaken in the UK.

#### Other amendments

In considering the correspondence with the Commission we also decided to review the clarity of our transposition more broadly and concluded that we should take this opportunity to make certain other amendments to the Regulations that either supplement the other Option 1 proposals or which amend the Regulations in other ways to make legislative provisions comprehensive, clearer or more consistent, thus making the Regulations easier to understand (and thus aiding compliance). These are:

(a) powers to be used by local authorities to deliver the obligations in Article 3(2) contained in sections 17, 18, 20 and 21 of the National Parks and Access to the Countryside Act 1949, relating to the establishment of nature reserves. To ensure that these powers are sufficiently wide to meet all the obligations contained in Article 3(2)(b)-(d) of the Directive, we propose to make a minor amendment to section 15(2)(b) of the 1949 Act to provide that "Land is managed for a conservation purpose if it is managed for the purpose of "preserving flora, fauna or geological or physiographical features of special interest in the area", including enabling the increase or recovery of that flora or fauna.

This will make clear that local authorities may establish nature reserves not just to protect those bird habitats that already exist on the site, but also to take action to re-establish such habitat where possible.

(b) we also propose to take this opportunity to bring some consistency to the legislative provisions covering the powers available to Natural England to control operations likely to damage the conservation

interests in protected sites, where a site is both a Sites of Special Scientific Interest (SSSIs) and a Natura 2000 site. Currently legislative provisions under the Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2010 (as amended) overlap and apply in the same set of circumstances.

We propose to revoke regulation 20 of the Conservation of Habitats and Species Regulations 2010 (as amended) and make further, minor consequential amendments to related regulations 18 – 23. The overall purpose of these amendments is to ensure consistency between the two regimes that impose controls on SSSIs and European protected sites. In particular, this would address one specific inconsistency that currently provides that, in circumstances where an owner or occupier has given the nature conservation body notice of a proposal to carry out an operation on land notified as an SSSI, and where the nature conservation body has not responded to that notification, after 4 months the owner or occupier may carry out the operation. Revoking this regulation will make the approach consistent with section 28F(2) of the Wildlife and Countryside Act 1981 as amended, which provides that where the appropriate nature conservation body does not respond to a notification from the owner or occupier within 4 months, consent to the operation is deemed to be refused. This change will not make any difference in practice to the controls that are applied because, mindful of this inconsistency, the nature conservation body currently use the powers available under section 28F(2) of the 1981 Act to control operations.

Additionally, revoking regulation 20 will also remove a criminal offence that is duplicated within the Wildlife and Countryside Act 1981 but which carries inconsistent penalties.

These changes will not, therefore, result in any additional burdens, but will have the benefit of removing redundant and inconsistent provisions to provide clarity for owners and occupiers affected by these provisions.

(c) we also propose to make amendments to regulation 60 to provide that the appropriate assessment provisions apply to any plan or project which a competent authority proposes to undertake or give consent to. At present, the Conservation of Habitats and Species Regulations 2010 (as amended) provide that the appropriate assessment provisions are applied to all those consenting regimes listed in Chapters 2 to 8 of the Regulations. For other plans or projects the need to undertake appropriate assessments is covered by the general duty to comply with the Directive, as set out in regulation 9. This amendment would be entirely consistent with the Directive.

(d) we propose to make some technical amendments to extend certain provisions in the regulations to Northern Ireland (NI). These would include (i) amending regulation 8(2)(a) to refer to UK instead of GB, so that an appropriate assessment would have to consider the effects on sites in NI, as well as GB; and (ii) extending the regulations to cover plans or projects relating to reserved matters in NI and extending the provisions relating to the appropriate assessment of the Marine Policy Statement to NI in respect of reserved matters.

(e) regulation 38 of the Conservation of Habitats and Species Regulations 2010 allows the Marine Management Organisation (MMO) to make byelaws for the protection of a European marine site in England under section 129 of the Marine Act 2009. This helps us to meet our obligations to protect special areas of conservation (SAC) under Article 6 of the EC Habitats Directive and special protection areas (SPA) under Article 4 of the EC Wild Birds Directive.

We propose to remove regulation 38(5) of the Conservation of Habitats and Species Regulations 2010 (as amended) to ensure that the MMO has byelaw making powers which are consistent with those of the Inshore Fisheries Conservation Authorities (sections 155 to 162 of the Marine and Coastal Access Act 2009) and consistent with the MMO's powers to make byelaws in respect to Marine Conservation Zones. Achieving management of marine activities through a byelaw enables a proper byelaw consultation process to be followed (except in the case of emergency byelaws).

(f) amendment to regulation 6 of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 and to introduce regulation 9A(3) to the Conservation of Habitats and Species Regulations 2010 (as amended) to ensure that the existing duties in relation to the preservation, maintenance and re-establishment of habitat for wild birds has regard to the purposes of Article 2 that relates to measures to

maintain populations of bird species. The amendment provides clearer transposition of the obligations under Article 3(1), that refer to Article 2.

(g), technical amendments are being made to Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 to ensure Special Protection Areas classified by Scottish Ministers under regulation 12A are treated in the same manner as those classified by the Secretary of State under regulation 12.

(h) We propose to amend regulation 58 of the Conservation of Habitats and Species Regulations 2010 (as amended) to make it clear that the offence of breaching a licence condition applies to anyone authorised to carry out activities under the licence.

We believe that the proposals set out in (a) to (h) above will not have any significant impact on any person or body and will impose no significant additional burdens on business or any other stakeholder. Proposal (a) simply facilitates achievement of the Article 3(2) obligations. Proposal (b) eliminates an inconsistency in regulatory provisions which should be regarded as welcome clarification, particularly as it will not lead to any change in the way the controls operate in practice.

Proposal (c) simply clarifies the existing regulatory position which will lead to greater certainty. Proposal (d) entails a minor extension to the scope of the regulations to ensure that (i) competent authorities consider the impacts of plans or projects undertaken in GB on European sites in NI and (ii) an assessment of impacts is undertaken in circumstances where the consenting regime relates to a reserved matter in NI or where the Marine Policy Statement (MPS) covers a NI reserved matter. In reality, extension (i) above will have no significant impact as there will be very few plans or projects in GB whose scope would require assessment of the impacts on sites in Northern Ireland and, in practice, such assessments are likely already to consider these impacts. The extension at (ii) above includes marine licensing proposals related to defence matters, and any MPS linked to such reserved matters. It is unlikely that this extension will capture a significant number of plans or projects etc and, in practice, it is likely that any such plans or projects would already be assessed for their impacts on European sites by the relevant competent authority.

In relation to proposal (e), the MMO currently has powers to control potentially damaging activities through amendments to marine and fisheries licences so the only additional activities that the byelaw power could affect are unregulated activities (such as recreational activities). However we expect that the effect of applying the new byelaw power to these unregulated activities is fairly minimal and, therefore, do not expect any significant cost associated with this amendment. Proposal (f) clarifies that the existing obligations to preserve, maintain and re-establish habitat in light of obligations to maintain populations of bird species has regard to the requirements of Article 2. Proposal (g); the Offshore Marine Conservation Regulations were amended in 2010 to executive devolve certain Secretary of State functions to Scottish Ministers in the Scottish offshore area. Amendments are needed to certain provisions to ensure they apply (as they would have pre-2010 amendments) in the Scottish offshore area. Proposal (h) provides legal clarity on the scope of this regulation and does not increase any burden.

**Option 2: Introduce a duty on appropriate authorities as per Option 1 and, in addition, introduce a power for Natural England to impose management schemes within prescribed criteria.**

We have considered whether introducing additional powers of compulsion into the arrangements proposed in Option 1 would assist in delivering our obligations under Article 3(2)(b)-(d) of the Directive.

All the proposals set out in Option 1 would still be needed under Option 2. Under Option 2, however, Natural England would be given extended powers to compel landowners and occupiers in certain cases to enter into management schemes which Natural England considers would make an important contribution to meeting the Article 3(2) obligations – particularly those related to the creation or re-establishment of bird habitat.

There is considerable evidence that voluntary agreements with landowners and occupiers are effective in delivering these obligations. For example, a similar power has been available to Natural England since the Countryside and Rights of Way Act (CROW) was introduced in 2000 which allows them to impose management schemes for Sites of Special Scientific Interest (SSSIs). Since that time, it has been necessary for just three such schemes to be imposed, compared to over 4,000 Higher Level

Stewardship schemes that have been agreed between Natural England and occupiers on SSSIs which specifically relate to the management and/or restoration of bird habitat.

To avoid the creation of an open-ended power, which could potentially apply to any area of land, we would identify transparent criteria for selecting individual pieces of land to establish where this power could be exercised. The criteria would need to identify habitats that are or could be particularly important for maintaining or increasing bird populations. Due to the diversity of bird habitats, and the wide range of types of land that might be relevant – rural, urban, terrestrial, water, marine, woodland etc. it would be challenging to prescribe criteria to define key habitats that might be important for birds. Consequently individual land owners might strongly challenge why their land had been chosen for this purpose, rather than some other, similar, piece of land.

An imposed scheme could be perceived to place a disproportionate burden on those landowners involved and the criteria developed would need to be sufficiently robust to pass Parliamentary scrutiny. Government would intend that imposition of schemes would be rare but this discretion would lie with Natural England. However having the power to do this would be an additional lever to encourage voluntary participation.

## **5. Costs and benefits of each option (including administrative burden):**

Action already being planned as a result of commitments made in the Natural Environment White Paper (NEWP) “*The Natural Choice*” published in June 2011 and the England Biodiversity Strategy (EBS), published in August 2011, includes a commitment to an ambitious programme of wildlife habitat expansion and is expected to deliver benefits for birds. Some funding is available for this within specific delivery projects to meet those commitments and which will benefit from the new statutory duties and guidance which will become available as a result of this policy intervention.

### **Option 0:**

#### Costs:

No additional costs for businesses or individuals over and above current commitments.

#### Benefits:

This does not clarify the transposition, nor provide the legal underpinning for the measures being taken to deliver the obligations and therefore creates a risk of infraction.

### **Option1:**

#### Costs:

This option involves the SoS, Environment Agency, Natural England, Forestry Commission and local authorities having a duty to ensure (as far as lies within their powers) the preservation and maintenance of the requisite habitat for birds. It provides a basis of statutory duties on the relevant authorities’ activities which already take place when they carry out their existing biodiversity functions and, as a result, no additional costs are anticipated. Clearly the existence of a legislative obligation carries more weight than where the obligation is undertaken as a matter of policy. The introduction of the statutory duties will underpin a range of measures already underway on the ground,

Natural England (part of the Defra family) will incur costs in producing guidance for other authorities on how to meet their obligations, and in carrying out monitoring to measure how far the appropriate authorities are complying with the duty placed on them and then reporting their conclusions. This has been estimated at £21K which is based on a total 140 man days to develop the guidance.

For the marine area this option clarifies and specifies the role the Marine and Coastal Access Act 2009 will have in meeting Article 3(2) obligations. If further MCZs are identified to meet any shortfall in our Article 3(2) obligations this will fall within the scope of our current work under the 2009 Act to identify and designate MCZs that will contribute to a network of ecologically coherent marine protected areas. We expect that the review mechanism for Article 3(2) will fall within scope of the current marine monitoring and surveillance programme that JNCC carry out so will not incur any additional cost.

#### Benefits:

This option involves the SoS, Environment Agency, Natural England, Forestry Commission and local authorities having new duties to ensure (so far as lies within their powers) the preservation and



maintenance of the requisite habitat for birds. It involves introducing a statutory duty to underpin the activities already undertaken by the relevant bodies when they are carrying out their existing biodiversity functions. Delivery of the obligations will be achieved using powers the relevant bodies already have at their disposal and which, for the most part, are already used to deliver outcomes relating to birds, their habitats and other biodiversity outcomes. As a result of this, it is not anticipated that any significant additional costs will result from the introduction of the new legislative obligations.

The statutory guidance will

- i. set out what the priorities are and which species (or groups) need particular attention;
- ii. inform the relevant authorities about how much habitat they might need to create/manage to achieve a certain result;
- iii. show the relevant authorities what sort of actions they can take to meet their obligations in respect of the priority species; and
- iv. guide them as to the types of habitats or specific locations where action could best be taken.

This will have the benefit of giving the relevant authorities clear information when looking at the existing functions they carry out to see how they can be tailored to meet the obligations under the Birds Directive. For example when creating or restoring habitat, authorities will have a duty to ensure birds interests are considered and guidance available to them will set out specific considerations to work through which are likely to secure good outcomes for birds and encourage growth of populations given time. Existence of the guidance is a significant contributory factor in underpinning the achievement of our obligations under several articles of the Birds Directive.

#### Example 1:

Natural England has assessed the needs of farmland birds and has defined with a reasonable degree of precision the amount and types of habitats needed to reverse current declines of farmland birds within arable and mixed farmed landscapes. For example, in the past five years 115k hectares of arable field margins have been delivered through Agri-environment Schemes, which are important for farmland birds. NE has projected that an additional 65k hectares of arable field margin combined with additional in-field options will lead to a reversal in the current downward trend and should lead to an increase in farmland bird populations of 1% per annum. The guidance will be able to highlight that this is a priority area for attention, to give an indication of what specific habitat might be necessary to achieve this desired outcome and where it might be created. NE is able to relate these requirements to options available to farmers through Agri-environment Schemes in the Entry Level Scheme (ELS) and Higher Level Scheme (HLS) targeting uptake at those farmers most able to deliver that requisite habitat.

#### Example 2:

Local authorities already have powers to designate Local Nature Reserves (LNRs) using Section 21 of the National Parks and Access to the Countryside Act 1949. Such reserves can only be declared after consultation with Natural England who has produced guidance "*Local Nature Reserves in England: A guide to their selection and declaration*". The considerations to be worked through when declaring a LNR include looking at the habitats and species of interest and considering the value of the site as a place where people can enjoy contact with wildlife. By introducing this new duty, we will make it mandatory to take account of the specific considerations for birds outlined in Article 3(2) to upkeep and manage habitats outside of protected areas, to re-establish destroyed biotopes and to create biotopes, but guidance will be adjusted and this will simply be part of the consideration processes which already exist. In addition local authorities will be able to use the statutory guidance (described above) to determine for what species they should take action and the extent and type of habitat they should be aiming to create, manage or re-establish.

Biodiversity is known to have positive benefits for health and well-being; screening questions were undertaken for a Health Impact Assessment, however this indicated that a full assessment was unnecessary as the benefits are all positive. Whether there would be any effects on rural communities was considered using the Rural Proofing Toolkit developed by the Commission for Rural Communities in 2009 and in consultation with the Defra Rural Proofing Team. The themes, questions and prompts outlined in the guidance were considered and no disproportionate effects on rural communities were found. There may be some small economic benefits to rural communities from richer biodiversity in the area.



## Option 2:

### Costs:

As for Option 1.

If a similar model to the SSSI regime is adopted, then where a landowner complies with a management scheme imposed by Natural England on agricultural land, agri-environment funding could be available to the landowner to offset any additional costs. However, where a SSSI landowner fails to act upon an imposed management scheme, Natural England may enforce compliance and the landowner may have to bear the costs himself related to the actions necessary to implement the management scheme, as agri-environment funding is unlikely to be available. There is also likely to be increased legal and administrative costs incurred by Natural England in relation to an imposed scheme and potentially legal costs incurred by the landowner. It is worth noting that even after a management scheme and ultimately a management notice has been served, the landowner still has the option to accept the offer of a voluntary management agreement.

It is not anticipated that there would be many imposed schemes under option 2 as the power is intended to be used very much as a last resort, when other solutions (voluntary agreements and serving management schemes) have failed. Since the introduction of the CROW Act, Natural England has confirmed three management schemes. The costs for this impact assessment have been estimated assuming a similar number of schemes as a maximum in a ten-year period, the best estimate is that one such scheme would be entered into. It is impossible to quantify accurately an amount as each scheme would be so individual. It is also the case that the amount of money devoted to schemes would not be open-ended, and it would be a case of Natural England deciding where the priorities lay.

An example which might help to illustrate some of the potential costs is the concern that, despite conservation efforts for biodiversity, the number of farmland birds has continued to decline over recent years, as noted through the recently published Farmland Birds Index. Agri-environment schemes including Higher Level Stewardship can contribute to positive outcomes for bird habitats on arable land, and investment in the land through such schemes is hoped to deliver a reversal in the downward trend for farmland bird species. Previous work commissioned by Defra from GHK estimated the resource costs involved in restoring or creating a hectare of each type of priority habitat as defined in the UK Biodiversity Action Plan. As an illustration, costs for managing one hectare of habitat in Higher Level Stewardship have currently been estimated to be between £358 (Lowland) & £404 (Uplands). A typical project might involve a management agreement to manage somewhere in the region of ten hectares for birds.

#### Example 1: (low costs)

Landowner A voluntarily agrees to manage 10ha of upland habitat for lapwings in the course of action he is taking under an agri-environment scheme. There are no additional costs as the landowner would be in receipt of agri-environment funding.

#### Example 2: (best estimate)

Landowner B has failed to comply with a management scheme imposed by Natural England. Landowner B will be required to manage 10ha of upland habitat for lapwings; this could have costs of £4,040 in the first year. Anticipating that the scheme would continue for a period of ten years to achieve benefits for birds, costs can be projected at present value to amount to £30,000 over a ten-year period.

#### Example 3: (high costs)

Landowner B has failed to comply with a management scheme imposed by Natural England. Over the course of a ten-year period, Natural England may enter into three such schemes with different landowners; Landowner B in the first year, Landowner C in the fourth, Landowner D in the seventh.

### Benefits:

As described in Option 1, with specific benefits realised as a result of targeted action for certain species if habitat is managed particularly for their benefit. It is likely that managed habitat will take some time to deliver improvements for birds which could be tracked through improvements in the Farmland Birds Index.

## 6. Risks and Assumptions:

### Option 0: Risks

Taking no action could result in appropriate and competent authorities being unaware of their obligations under the Wild Birds Directive and failing to use their existing powers to meet these obligations and is unlikely to satisfy the concerns of the Commission about our transposition.

### Option 0: Assumptions

None

### Option1: Risks

Additional marine conservation zones may be required, leading to restrictions on certain activities, although economic and recreational considerations can be taken into account (as allowed by Article 2 of the Directive).

### Option1: Assumptions

That no significant issues will be raised in Parliamentary scrutiny.

In the Marine area, work being carried out to identify and designate MCZs to contribute to the network of marine protected areas required under Part 5 of the 2009 Act, together with provisions of Parts 1 to 4 and 6 of the 2009 Act will be sufficient to meet the requirements of Article 3.

### Option 2: Risks

A proposal to introduce new powers to enable NE to impose management schemes on any part of the country outside currently designated areas would be difficult to justify in circumstances where we are satisfied that the objective can be achieved by other (voluntary) means.

### Option 2: Assumptions

Suitable criteria for imposing schemes could be developed

## 7. Other additional interventions:

The introduction of the new statutory duties will underpin a range of measures already underway on the ground. In addition to those already described or proposed, the Government's **England Biodiversity Strategy**, published in August 2011, sets out how the NEWP will be put into action setting out a long term vision:

### ***A vision for England***

*By 2050 our land and seas will be rich in wildlife, our biodiversity will be valued, conserved, restored, managed sustainably and more resilient and able to adapt to change, providing essential services and delivering benefits for everyone.*

### ***2020 Mission***

*Our mission is to halt overall biodiversity loss, support healthy well-functioning ecosystems and establish coherent ecological networks, with more and better places for nature for the benefit of wildlife and people.*

Many of the outcomes being sought through the Strategy will have positive impact on birds and their habitats; for example we intend to deliver:

- Better wildlife habitats with 90% of priority habitats in favourable or recovering condition and at least 50% of SSSIs in favourable condition, while maintaining at least 95% in favourable or recovering condition;
- More, bigger and less fragmented areas for wildlife, with no net loss of priority habitat and an increase in the overall extent of priority habitats by at least 200,000 ha;
- At least 17% of land and inland water, especially areas of particular importance for biodiversity and ecosystem services, conserved through effective, integrated and joined up approaches to safeguard biodiversity and ecosystem services including through management of our existing systems of protected areas and the establishment of nature improvement areas;
- By the end of 2016 in excess of 25% of English waters will be contained in a well managed Marine Protected Area network that helps deliver ecological coherence by conserving representative marine habitats;

- 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

Defra is providing increased funding for Higher Level Stewardship in the coming years, growing by 80% between 2010 and 2014, which is aimed at delivering biodiversity benefits including improving habitats for wild birds. The Campaign for the Farmed Environment (CFE) - a voluntary, industry-led, initiative to attempt to recapture some of the ecological benefits lost when “set-aside” ceased is being supported by £1.5m funding from Defra over the next 3 years. The CFE “10 Most Wanted” initiative encourages farmers to take targeted action for the 10 species associated with arable farmland that have seen the worst declines.

Our proposals to support and enable local communities to create initially twelve new landscape-scale Nature Improvement Areas (NIAs) over a three-year period which started from 1 April 2012 will also benefit the habitats of a range of species, including birds. NIAs are expected to cover areas between 10,000 and 50,000 hectares each and £7.5m funding has been committed to the project. This new proposal was announced in the Natural Environment White Paper and responds to a recommendation from an independent review by Professor Sir John Lawton (*Making Space for Nature*) which found that our network of protected sites was not resilient to climate change and other threats. The voluntary nature of the NIAs implies that any costs incurred outside of the public sector will be related to delivery of specific benefits that groups (beneficiaries) are willing to pay for – so benefits should exceed costs or funding would not come forward. A competition was launched in July 2011 for the money to fund the initial twelve schemes with an announcement of the first twelve successful NIA bids made in February 2012. Funding commenced in April 2012. A monitoring and evaluation framework will be developed to assess the initial NIAs and provide lessons learnt for further roll out.

#### **8. Direct costs and benefits to business calculations (following OIOO methodology)**

Implementation of legislation to address EU obligations, and which does not impose additional costs on business (as is the case in the preferred option) is out of scope of the OIOO principle.

#### **9. Wider impacts:**

None anticipated

#### **10. Summary and preferred option with description of implementation plan:**

All options have a degree of risk that they will not result in sufficient action being taken to meet our obligations under the Wild Birds Directive. Option 0 carries the highest risk and as a result it has been concluded that it should be rejected.

Option 2 provides additional powers of compulsion but we believe that the benefits it would deliver can better be achieved through voluntary measures and co-operation with land owners within option 1. We would want to undertake public consultation to test whether it would be a proportionate response to the problem.

Option 1 provides an appropriate and proportionate solution to ensure clear transposition without imposing significant additional costs or other burdens on any person or body.

Implementation of Option 1 will be through a discrete project with the following milestones:

<b>Milestone</b>	<b>Date</b>
1. Development of Statutory Instrument	01/04/2012
2. Consultation with OGDs to agree Statutory Instrument	01/05/2012
7. Policy agreed	18/06/2012

8. SI laid	04/07/2012
9. SI Comes into force	26/07/2012

## 11. Specific Impact Tests

### Statutory equality duties

**Race Equality** : Defra concludes that the duties proposed do not impact on race equality.

**Gender Equality** : Defra concludes that the duties proposed do not impact on gender equality.

**Disability Equality** : Defra concludes that the duties proposed do not impact on disability equality.

### Justice system

**Legal Aid Impact Test** : Defra concludes that the duties proposed do not create any new criminal sanctions or civil penalties

**Human Rights** : Defra concludes that the duties proposed do not have a disproportionate impact on people of a different age, ethnicity, gender, disability, religion or belief, or sexual orientation and is consistent with the Human Rights Act 1998.

**Competition Assessment:** Defra concludes that the duties proposed do not raise issues of competition

**Small firms impact assessment:** Defra concludes that the duties proposed do not impact on small firms

### Environmental Impacts

**Greenhouse gas assessment** : Whilst improvement in habitats can increase carbon storage the impact is not likely to be significant at a national level.

**Climate Change adaptation** : If improvements are seen in networks of habitats it could aid adaptation to climate change.

**Wider environmental issues** : This policy aim helps in conserving the natural environment and as a result will have a positive environmental impact.

### Social Impacts

**Health and well-being** : Biodiversity is known to have positive benefits for health and well-being; screening questions were undertaken for the Health Impact Assessment however, this indicated that a full assessment was unnecessary as the benefits are all positive.

**Rural proofing** : Having discussed with the Defra Rural Proofing team and considered the specific issues outlined in the Rural Proofing Toolkit <http://www.defra.gov.uk/crc/files/rural-proofing-toolkit1.pdf> Defra concludes that the duties proposed do not impact disproportionately on rural communities. There may be some small positive impacts for example in the economic benefits derived by rural communities from richer biodiversity attracting visitors.

**Sustainable development** : Protecting biodiversity is an investment that benefits both present and future generations.