

RSPB Scotland response to Public Audit and Post-Legislative Scrutiny Committee's scrutiny of Biodiversity and Biodiversity Reporting Duties

Introduction

RSPB Scotland welcomes the scrutiny of biodiversity reporting duties. The Biodiversity Duty was introduced as an important measure to ensure compliance with the 1992 Convention on the Conservation of Biodiversity (CBD). The requirement on public bodies to further biodiversity conservation continues to be a key tool to help Scotland meet the 2020 Aichi targets, and permits their effectiveness to be scrutinised.

Unfortunately, there is little indication that our international obligations are being adequately met¹. All biological evidence suggests that biodiversity isn't improving. Notably, we are unlikely to meet Aichi Target 5 on habitat loss, Target 9 on control of invasive species, or Target 12 on preventing extinction of species, unless we significantly increase our efforts ahead of 2020. There is therefore an urgent need to streamline efforts to tackle biodiversity loss and ensure that policy and funding frameworks incentivise delivery of practical action on-the-ground, which will directly further species and habitat conservation. Current indications point, however, to a strong shift in government and NDPB focus in the opposite direction, away from biodiversity. This is partly due to an assumption that work on Natural Capital and Ecosystem Services is a proxy for, and alternative to, biodiversity conservation. We contend that this assumption is misdirected.

Since the introduction of the biodiversity duty there has been some progress from the Scottish Government and public bodies in reporting on and carrying out the duty. However, the introduction of the additional requirement – by the WANE act in 2011 – on public bodies to report on the actions they have taken in pursuance of its biodiversity duty, while a positive step, will not achieve its intended outcomes on its own. The current requirement does not specify what those actions ought to be, therefore losing the functional link between the duty and the biodiversity strategy. This means that public bodies could simply identify existing actions, for instance from their corporate strategies, that might be framed as relating to the conservation of biodiversity and report on these actions. There is no legal requirement for public bodies to take action to further biodiversity conservation above and beyond any actions they are already taking under a 'business as usual' scenario, or indeed link those actions to the Aichi targets or the strategy. As a result the duty has had limited effectiveness in delivering gains for biodiversity.

As outlined below, we welcome the publication of additional guidance documents by Scottish Natural Heritage (SNH) and Scottish Government, outlining the type of actions public bodies can take, and providing example case studies. We believe this has contributed to an improvement in 2015-17 reports, however, there are still some shortfalls in this functional link. Therefore, we believe that the biodiversity duty needs to be strengthened to link activity to outcomes for habitats and species to ensure compliance with international obligations and streamlined integration of biodiversity into public decision-making across all sectors.

¹ <https://www.rspb.org.uk/our-work/stateofnature2016/> ; <https://www.nature.scot/sites/default/files/2017-11/Aichi-Targets-Interim-Report-September-2016-A2098126.pdf>

Consultation Questions

1) How well do you believe public bodies understand the biodiversity and reporting duties placed upon them?

Initial Reporting

The low initial reporting as outlined in the *Evaluation of the Compliance and Quality of Biodiversity Duty Reports 2015*² suggested that public bodies were unclear on precisely what they should be reporting on regarding the biodiversity duty, and how. Reasons given for lack of reporting included lack of awareness, the belief that the biodiversity duty was not relevant to them, and a general fatigue in relation to reporting (box-ticking exercises). It is likely that both the lack of awareness and understanding of relevance was down to the absence of clear guidance on actions that could be taken, resulting in ambiguity over what actions constitute 'furthering biodiversity'.

In this initial reporting schedule, for some public bodies where there appeared to be less clarity on the requirement to undertake and report on *additional* biodiversity actions, reporting tended to focus on sustainability activities. Activities in this category tend to already be undertaken as part of corporate strategies or in line with reporting duties on climate change. Indeed, a quarter of reports were part of another document, rather than a standalone report.

Post-2015

The publication of the 2016³ guidance, which provided clarity and recommendations on specific activities that public bodies may take was therefore welcome. This was a useful complement to the *Scotland's Biodiversity: A Route Map to 2020*⁴.

However, as this is a guidance document it is unclear how effective it will be in encouraging organisations to go above and beyond existing action or to ensure actions focused on key biodiversity needs and the achievement of the Aichi targets, given there is no statutory compliance, nor penalties if suggested actions are not taken. However, this will be interesting to reflect on following publication of the 2015-17 round of Biodiversity Duty Reports and forthcoming Scottish Government evaluation. It is notable, however, that so far only 42 bodies are listed on the SNH website⁵ as having published their report, with a number of key public bodies' reports not yet released for the January 2018 deadline.

2) Do you believe that public bodies are adequately resourced to comply with the biodiversity and reporting duties?

In some instances, public bodies are already adequately resourced to comply with biodiversity and reporting duties; however, others may benefit from redirection of resources to ensure public money is deployed for public good.

In other instances, where there are more biodiversity conservation-focused actions that could be suggested by Scottish Government, such as for example non-native species management, additional resources to enable effective solutions will be needed in order to secure significant progress.

Taking agriculture as an example, if we reform the way in which we distribute funding—focusing the system to deliver public goods and services such as biodiversity, pollination and water quality rather than the more traditional conceptualisations of productivity provided by the EU Common Agricultural

² <http://www.gov.scot/Publications/2016/10/9295/1>

³ <http://www.gov.scot/Resource/0050/00508611.pdf>

⁴ <http://www.gov.scot/Resource/0048/00480289.pdf>

⁵ <https://www.nature.scot/scotlands-biodiversity/biodiversity-duty-reporting>

Policy, while still supporting farmers—resources could go further in delivering for biodiversity by incentivising high nature value farming approaches. With agriculture facing the challenges raised by Scotland's likely exit from the EU, now would be an ideal moment to review how to deliver wider public benefit with this significant budget.

The Scottish Government could therefore produce more specific guidance stating: here are the actions we would like to take, here are some that could be done under current budgets, here are more that may require extra resources, and here are some that would require re-allocation. This could, in effect, prioritise high-value actions, and Scottish Government could then provide additional resource for those likely to deliver the most significant impacts.

Lack of resource is the most commonly cited reason and challenge for lack of action on biodiversity conservation by those agencies/NDPBs most closely engaged with delivery against Aichi targets. Some 2015-2017 reports from local authorities have continued to cite lack of funding for projects as a challenge to undertaking work in line with the biodiversity duty.

Resource gaps may also go beyond simply financial and could refer, for example, to the capacity to develop knowledge to appropriately understand their biodiversity duties, which as demonstrated above is lacking. We detect a shift away from research and research funding that will underpin conservation efforts among government research providers, and would caution that this may negatively impact future initiatives and imperatives. Biodiversity is complex, and therefore knowledge, support and expertise has to be developed to allow public bodies to deliver the advancement of biodiversity conservation.

Making the 'right decisions'

Deploying resources efficiently to make the 'right decision' for biodiversity can be challenging. For example, planning cases where there may be probable negative impacts habitats and species, significant time and resources are often spent on interrogating different positions.

The planning system should aim to deliver a net gain for biodiversity through all development. This is not currently happening, and developments are leading to an overall net loss to biodiversity. This indicates that planning authorities are not sufficiently exercising this duty, or that the duty is not sufficiently linked to net gain as a goal. If the biodiversity duty is unable in its remit to prevent the actual decline of biodiversity then it is arguably ineffective, and can lead to public bodies making the 'wrong decision' for biodiversity.

Indeed, a few local authorities in their 2015-17 reports have identified the challenge to biodiversity that development poses to habitats and species. If that is the case, then developments where potential significant harm is identified should either be rejected far earlier in the process, or be able to conclusively provide evidence that mitigation measures they will take will provide a net gain for biodiversity. This would both prevent negative impacts on important areas for biodiversity and reduce the level of resources used in assessing and debating such developments.

3) Do you think the requirement to report on the biodiversity duty leads to effective actions for improving and conserving biodiversity by public bodies?

It is important to note that there is a high level of variation in the intensity and constructiveness of actions undertaken by public bodies in the interest of furthering biodiversity conservation. There is a noticeable subjectivity on what measures constitute actions to improve biodiversity—some are simplistic, and in many cases do not relate directly to outcomes for habitats and species.

As mentioned above, the guidance on actions to be taken for biodiversity progress is limited in as much as it is non-statutory in nature, and monitoring and evaluation of some actions are difficult to assess. In addition, there is little evidence that many of these actions would not be undertaken anyway, in line with other legislation, in the absence of this duty.

Therefore, we feel effectiveness could be improved by creating a statutory action plan, with potentially tailored actions and guidance on evaluation and monitoring, so that reports are focussed on delivering measured change on the ground. The *Route Map to 2020*⁶ and 2016 guidance document⁷ are in a sense prototype action plans that are a positive start. Nevertheless, because they are not part of statutory compliance they are limited in impact.

2015-17 Reports

From an initial look at a range of the 2015-2017 reports, there are some highly commendable actions being taken that are identified as contributing to key steps in the biodiversity strategy. However, monitoring sections, while valuable, do not generally include measurement of the actual impact of key steps taken so impact is difficult to ascertain. To be more effective, we would recommend that better mechanisms for facilitating effective measurement and evaluation would be required. This may require additional resourcing as outlined in the above section.

Additionally, 'contribution to targets' sections appear positive in linking towards strategic objectives, however, as above, there is little concrete measurement of the extent that these actions are linked to strategic outcomes for priority species and habitats. It is also disappointing that there is an absence in the reporting of actions of public bodies take to 'mainstream' biodiversity, despite this being a key section (Section 2) outlined in the Scottish Government guidance document.

Therefore, biodiversity reporting appears to be fairly high level and more of a rhetorical exercise in good practice. To address this gap, a three year report could alternatively be required to demonstrate: what actions were taken and whether they produced net gain for the species and habitats identified.

In relation to the guidance document, many of the recommended actions are varied in their potential impact on biodiversity. While they are all positive actions for organisations to be taking, many are activities that are 1) likely to be undertaken by organisation in line with corporate strategies or in line with an action plan to address climate change 2) unlikely to deliver meaningful direct impact on linking to identified habitats and species and 3) should already be considered by public bodies in line with other legislation such as the requirement for public sector climate change reporting, in line with the Climate Change (Scotland) Act 2009⁸. In addition, many of the suggested actions in the Climate Change Act mirror those in the biodiversity duty guidance document⁹.

4) Are there any changes that could improve the actions taken by public bodies in respect of the biodiversity and reporting duties?

The current guidance, as highlighted above, does not go far enough to ensure adequate reporting of biodiversity actions from public bodies. Additionally, there is not currently sufficient oversight to monitor and enforce reporting duties, and therefore the low initial level of reporting is likely to continue.

It may therefore be more beneficial to designate resources for actions and reporting towards those public bodies that have more of a stake in impacting biodiversity, or are key to the identified and priority species and habitats. This may vary over time and could be adjusted accordingly.

A wide range of public bodies exist, and it would be logical to focus on public bodies that are responsible for delivering actions for priority species. As detailed above, specific identified actions may only need to be done by a small numbers of public bodies to make a meaningful impact, as they would be direct and targeted at specific species and habitats.

⁶ <http://www.gov.scot/Resource/0048/00480289.pdf>

⁷ <http://www.gov.scot/Resource/0050/00508611.pdf>

⁸ <http://www.gov.scot/Topics/Environment/climatechange/howyoucanhelp/publicbodies/publicsector>

⁹ <http://www.gov.scot/Publications/2011/02/04093254/5>

With a more strategic approach, this may also reduce the view that the biodiversity duty reporting is simply a bureaucratic 'box-ticking exercise'. For example, if the National Ecological Network (NEN) was used as a spatial planning tool, this could direct resources from developers who need to mitigate and offset the biodiversity impacts of their projects or plans, to invest in strategic regional nature conservation projects such as habitat restoration, enhancement and connectivity.

There is as it stands a vital function link missing. In Section 2 of the 2004 act, it outlines the need to produce a strategy and report on it, but it does not identify actions linked to delivery of the strategy. This means that public bodies are reporting "in the dark" in relation to the actions they may or may not have taken. A statutory requirement could be added on Ministers to identify, and both Government and public bodies to take, more specific actions to further biodiversity. We support the assessment by Scottish Environment LINK¹⁰ that 'we see little point in producing an admirable strategy and plan of action if there is no parallel requirement to ensure the plans are carried out.'

For further information, please contact our Parliamentary Team

Thomas Quinn, **Parliamentary Manager** Email: Thomas.Quinn@rspb.org.uk | Tel: 0131-317-4172
Lyndsey Croal, **Parliamentary Officer** Email: Lyndsey.croal@rspb.org.uk | Tel: 0131-317-4138

RSPB Scotland, 2 Lochside View, Edinburgh Park, Edinburgh EH12 9DH

The Royal Society for the Protection of Birds (RSPB) is a registered charity: England and Wales
no. 207076, Scotland no. SC037654

¹⁰ <http://www.scotlink.org/files/publication/LINKReports/LINKEnvLawsRhetorictoReality.pdf>