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WILDLIFE AND COUNTRYSIDE BILL: CONSULTATION PAPER NO 4

CONSERVATION OF HABITATS

This is the fourth in a series of consultation papers relating to a proposed Wildlife and Countryside Bill. Any comments should be sent in time to reach the Department by 8 October 1979 and addressed to the Department of the Environment, Room 324, Tollgate House, Bristol BS2 9DJ.

Although present legislation gives protection to species of wildlife there is no legal protection outside the planning system, other than ownership, afforded to the habitats on which the future of these species is recognised to depend. As a result the Nature Conservancy Council and the voluntary bodies have concentrated their efforts on buying important sites where these became available or endeavoured to arrange voluntary agreements with landowners to protect the wildlife.

Whilst these actions have afforded some protection, the protection of other sites declared by the NCC to be of Special Scientific Interest is entirely dependent on information gathered incidentally or on voluntary notification by landowners and tenants of those proposed activities for which statutory approval is not required but which could result in the total and irrevocable destruction of the habitat. Such activities may include cutting down trees, drainage and changes in farming practice.

The NCC in their paper, published in 1977 "Nature Conservation and Agriculture" suggested that "very approximately 4% of the scheduled sites are severely damaged each year".

The Government has a duty to ensure that the most valuable wildlife resources can be conserved for the Nation. Furthermore the Government already has obligations internationally, principally derived from the "Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat" and the recently adopted EEC Directive 79/409 on the Conservation of Wild Birds, to protect habitats which are important to wildlife. In these circumstances it is proposed to take measures to ensure that practices which might threaten the most important sites are notified by the owner or tenant in order to avoid the possible destruction of habitats without the issues being carefully examined in the interests of the Nation as a whole.

The proposal is that the Secretary of State for the Environment should designate (in the light of advice from the Nature Conservancy Council and in consultation with the Minister of Agriculture or the Secretary of State for Scotland or Wales or such other Ministers as might be concerned) a small number of selected sites where landowners or tenants would have a legal obligation (subject to penalty) to give 12 months notice to the NCC of their intention to undertake practices which could be detrimental to the identified scientific interest and are not caught by planning controls. Quite clearly, therefore, it would be unrealistic for such designations to encompass every hectare of land possessing any, or even a high degree of scientific interest.

It must be recognised that the extent to which the Government can enable the Nature Conservancy Council to purchase land in order to protect wildlife is, of course, constrained by the state of the nations economy and competing financial requirements. Designation must have a potential effect on public expenditure and the greater the number of designations, the greater the potential effect. Nevertheless as a starting point it is proposed that any site must comprise all or part of a site identified by the NCC as a Site of Special Scientific Interest. Within this it is clearly sensible for the Secretary of State to consider designation

- (a) where a change in practice would imperil the future in Great Britain of one or more species of flora or fauna native to this country or
- (b) to meet an international obligation specific to a named site. (At present there are 13 such sites which, in the main, are owned by the NCC or subject to nature reserve agreement and include large areas of open water).

The above criteria are restrictive and it would be sensible to provide for the Secretary of State to be able to designate sites which are of particular national interest but are outside the scope of the first two categories. The recent Ribble Estuary case would not have fitted either category but was clearly of such national and international importance that it would have justified designation. Other cases might include fossil bearing geological strata of exceptional importance. New factors and influences create marked changes in public and national concern and it would be unfortunate if, having identified a new and serious threat, the Secretary of State was unable to make a designation because there was no legislative provision. A suggested third category might, therefore, be "Exceptional cases which merit special treatment in the National interest". Such rare cases could be the subject of affirmative resolution by Parliament. Views of recipients on this third category would be particularly welcome.

On receipt of notification, the NCC would be required to inform the landowner or tenant as early as possible but in any event within say 3 months whether or not the proposed action was in their view acceptable. If so, he would be free to go ahead. If not, the NCC would be expected to endeavour to negotiate an acceptable solution with the proposer. If these efforts failed, the NCC would, as now, be free to consider making a compulsory purchase order under powers which were provided in 1949 under the National Parks and Access to the Countryside Act. (In this respect it is worth noting that the NCC has never been forced to use its compulsory purchase powers for other than technical reasons although it came very close in respect of the Ribble). Should no agreement be reached or order made within the 12 month period, the owner or tenant would be free to proceed.

It is also proposed to introduce a legislative provision to make it illegal to destroy the value of a designated site or any other Site of Special Scientific Interest in respect of which the NCC has formally notified the owner of the initiation of compulsory purchase procedures. These provisions would apply until such time as the purchase is completed or the order rejected or otherwise withdrawn. It is proposed to amend the NCC Act to provide a duty for the Council to protect sites designated by the Secretary of State except where in any particular case he decides otherwise.

It will, of course, be necessary to build in appropriate provision for financial compensation for loss and other safeguards for the individual. Safeguards already exist for that part of the process covered by the existing compulsory purchase powers.

The intention is to provide the Government with a legislative power which will ensure that the limited number of habitats which it has acknowledged as being of vital importance either nationally or internationally cannot legally be destroyed without the Government first being given the opportunity to intervene.

Department of the Environment

August 1979