

## **Habitats Directive: consultation on draft guidance on the application of article 6.4**

### **Response from UK Environmental Law Association's nature conservation working group.**

#### **Question 1**

The draft guidance sets out the circumstances in which Article 6(4) may apply. Do you agree with this overall approach?

*Generally yes. The content is consistent with the May 1998 Government position statement on the implementation of the Habitats Directive which proved to be effective.*

*Is this guidance to be a standalone document or will it be incorporated into the Overarching Guidance on the application of the Habitats Directive?*

*Consideration needs to be given to the application of the guidance with respect to marine Natura 2000 sites.*

*Examples would be useful to demonstrate application in marine and terrestrial environments.*

*Given the similarity of the tests for the protection of species, the article 6.4 guidance needs to be consistent with that for articles 12 – 16.*

#### **Question 2**

Do you agree that the approach linking alternatives and IROPI as set out in the guidance is sensible?

*No they are separate tests and should be treated as such.*

*The key element is the description of the plan or project as to judgements on alternatives.*

*An alternative need not be cost neutral. More expensive options (within reason) may be considered (see Barksore Marshes PI ).*

### **Question 3**

Do you agree with guidance on IROPI?

*The consideration of alternatives and IROPI together may be problematic and misleading. For example the consideration of a strategic or policy plan may conclude that there are no alternatives and that there are IROPI but without securing the necessary compensatory measures, the plan cannot be consented.*

*The more stringent test applied to Natura 2000 sites that host priority habitats and /or species needs to be emphasised. Examples would again be useful to demonstrate this robust test.*

### **Question 4**

Do you agree with the guidance on compensatory measures?

*The application of article 6.4 is with respect to Natura 2000 sites that is both SACs and SPAs. Why then is the designation of new sites restricted to SACs?*

*Note that under the relevant Directives, SACs are designated and SPAs are classified.*

*In making judgements on the adequacy of compensation to secure the overall coherence of the Natura 2000 network, the key element to consider is the contribution made by the site to maintaining or restoring those interest features hosted at a site at favourable conservation status. Another important consideration is the importance of the site in terms of connectivity (article 10 measures).*

*What would be the situation if compensation was not possible because the habitat is rare or requires specific physical conditions, for example damage to SACs designated for alkaline springs? Can a plan or project be consented? In our view as an integral component of Article 6.4, the answer is probably not.*