

<https://doi.org/10.37208/tgn28220>

Protecting Britain's wildlife laws: the need for vigilance, a saga for our times

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ABSTRACT

This paper describes how numerous conservation non-governmental organisations (NGOs) became aware of significant changes being made to the eligibility criteria of species currently (and in the future) afforded protection under the Wildlife and Countryside Act (1981) through the seventh Quinquennial Review (QQR7). The changes mean that an animal or plant species will be protected only when it is in imminent danger of extinction as defined by the highest categories in the IUCN red listing process, or those identified as European Protected Species, rather than being recommended for inclusion by experts either due to persecution, population decline or other threats. These changes, and the way they became known, stimulated a collaborative effort by NGOs to have the new eligibility criteria for the listing of species re-examined. This case also alarmed the conservation community over the way the U.K. government could use its new powers to review environmental legislation, following withdrawal from the European Union.

INTRODUCTION

Froglife is a wildlife conservation charity focused on the protection of U.K. reptiles and amphibians and their habitats. This is achieved through three main workstreams: (1) Transforming Landscapes - practical improvements to habitats including pond restorations and creations. (2) Transforming Lives - engagement with members of the public through projects to stimulate interest and activity in amphibian and reptile conservation. In 2022, Froglife worked directly with over 45,000 people through projects and a further 40,000 people through social media platforms. Froglife's USP (Unique Selling Point) is engaging diverse audiences that are new to conservation. (3) Transforming Research - projects that collect data on amphibians and reptiles, and collaboration with a variety of research institutions to carry out research into these species.

Although Froglife has been an active member of Scottish Environment Link for many years, the organisation has not otherwise been much involved with policy previously.

THE STORY

It is 40 years since the Wildlife and Countryside Act (1981) was brought into law. The Act provides primary legislation for wildlife protection in the U.K., and for many species it is the only legal protection that they receive. There are different levels of protection for different species and the species that are included are listed on two schedules: Schedule 5 is for animals, including species such as the red squirrel (*Sciurus vulgaris*), and Schedule 8 is for plants, including species such as the common bluebell (*Hyacinthoides non-scripta*).

On the morning of 17th June 2021, Froglife received an e-mail from Amphibian and Reptile Groups (ARG) U.K. drawing attention to changes that were being proposed in the latest Quinquennial Review (QQR). Every five years, the species listed in Schedules 5 and 8 of the Wildlife and Countryside Act are reviewed and that process is coordinated by the U.K. Joint Nature Conservation Committee (JNCC). (The Wildlife and Countryside Act was passed well before the devolution of the Scottish Parliament and the Welsh Assembly, which now have responsibility for environmental and conservation policies and practice.) JNCC works to ensure that wildlife conservation policy across the U.K. remains essentially unified.

Many of the species that are currently listed in Schedules 5 and 8 are included because experts have recommended their inclusion, usually due to their persecution, population decline or other threat. The e-mail came through on the morning of one of Froglife's Trustee meetings. The Trustees were discussing this before going into their formal meeting and were greatly alarmed by the fact that eight out of 13 U.K. amphibians and reptiles were set to lose the protection afforded by the Wildlife and Countryside Act. These species included many of our common and widespread species, e.g. grass snakes (*Natrix natrix*), common frogs (*Rana temporaria*), common toads (*Bufo bufo*), small newts (Pleurodelinae), and other species. The Froglife Trustees asked me if I could look into what was being proposed, what the details were, and how Froglife could get involved in opposing it. One of the first people that I then spoke to was Nida Al-Fulaij from the People's Trust for Endangered Species (PTES). Together, we first organised NGO meetings to find out what was known about the changes being made and the effects these would have. These meetings were useful to share knowledge and concerns and then devise a joint plan for the next steps.

In the latest review, QQR7 and, in a change to the normal process, the review group consisting of JNCC and the three country conservation bodies - Natural England, NatureScot and Natural Resources Wales (the Northern Ireland equivalent, the Council for Nature Conservation

and the Countryside, operates under different legislation, although it does co-operate with JNCC), changed the eligibility criteria by which species are currently, and in future will be, listed. This was presented in an Information Pack as a *fait accompli*. The decision to change the eligibility criteria was already in place and the consultation that they were then putting out was to obtain information from interested partners about the species that may be listed in the new version of the schedules. The way that the criteria were changing was that species would be protected only when they were in imminent danger of extinction as defined by the two highest categories of the International Union for Conservation of Nature (IUCN) Red List (CR = critically endangered and EN = endangered) (<https://www.iucnredlist.org/>), or those that are identified as European Protected Species. This was therefore a significant change from what had happened before (where experts could recommend any species to be listed, provided they could make a good case for why this was needed). This greatly concerned Froglife and many of the other organisations, because it meant that many species would lose their protection, and that the decision had been made without due consultation on the change to the eligibility criteria, and without consideration of the concerns raised by the NGOs that had been aware of the changes.

Looking at the problem in more depth, the Information Pack was highlighting that a large number of species would no longer have legal protection from killing or sale. The number of species losing protection was not quantified in the original Information Pack. It contained two lists of species that would be affected, represented only by their binomial scientific names. Because they did not match up as lists, it was not easy to see which species would lose their protection. I calculated that 334 species would lose their protection, including eight out of 13 amphibians and reptiles, as well as many iconic and persecuted species such as the mountain hare (*Lepus timidus*). This was obviously of great concern to Froglife and other groups such as PTES. What was not clear at that point was whether this was a known consequence or whether the changes had been made to benefit certain taxa without consideration as to how other taxa would be affected and which would then be lost from the Schedules. This appeared to greatly weaken our environmental protection at a time when we are facing both biodiversity and climate crises when our wildlife should be getting more protection rather than less.

COP26 (Conference of the Parties 26) was approaching and Prime Minister Boris Johnson was very keen to show that the U.K. was at the very forefront of environmental protection and leading the way in the Climate Crisis. It was also a period of huge political upheaval with three successive Prime Ministers in a matter of months announcing new policies, such as Liz Truss's Investments Zones, which would have had serious consequences for U.K. countryside and wildlife.

In response to the QQR7 Information Pack and the changes being made, within around two weeks, the group of NGOs that had come together agreed on an open letter that was sent to the review group, opposing the changes and calling for a public consultation on the decision to change the eligibility criteria before proceeding with the planned timetable. Over 30 wildlife conservation NGOs supported this – including PTES, ARG UK, GNHS, Bumblebee Conservation, RSPB, RSPCA, Wildlife and Countryside Link, Wales Environment Link, Freshwater Habitats Trust, Scottish Environment Link, and the Wildlife Trusts. There was no earlier opportunity to question or oppose the fundamental changes that were being proposed: it was possible to comment only on which species should or should not be included. This first letter asked the review group to stop, pause the proceedings, and allow us to talk to them about these fundamental changes. We asked for the consultation period to be extended and for the scope of the consultation to be expanded to include that element. This action received some initial publicity including an article in *The Guardian* newspaper, as well as through the NGO websites and social media.

The QQR7 review group then held some NGO stakeholder meetings and began a dialogue with the NGOs who engaged with the process. The review group extended the consultation phase of QQR7 and broadened its scope, as we had asked. They also made exceptions for many of the species that would have lost their protection, so that they would remain listed. The NGOs, however, continued to insist that the criteria should not be narrowed to exclude vulnerable species that are still classed as in danger of extinction by the IUCN Red List. We wanted to establish a clear process that could be applied fairly to all species that are included in the Schedules now and in the future. It did not seem to make sense to initiate a new system at a time of biodiversity crisis when we know that some species require more protection, not less. We also know that for many species sufficient data are not available to determine their Red List status but this does not mean they are not in reality at risk of extinction.

The consequences of these actions were that the QQR7 Information Pack was updated to include the species where exceptions had been made, and the NGOs completed the consultation to feed in individual concerns about the review's new approach. A second open letter, signed by over 45 NGOs, was issued to formally state the agreed view that the proposed changes to the eligibility and decision criteria were not fit for purpose.

That terminated the JNCC process of consultation. Following this, a public consultation report was published by JNCC. This was disappointing in that it did not appear to acknowledge that there was any organised opposition to the changes that had been outlined. The reader would not know that 45 NGOs, including some of the leading British NGOs with largest

membership groups, were in opposition, had much background support, and had expressed a high level of concern. We therefore felt it was important that we alerted the Government Ministers that are responsible for making the decisions on whether to adopt JNCC's advice on these changes, so that they knew the full back story, and were aware of the concerns that we had highlighted. Froglife and PTES, on behalf of the NGOs, wrote to the Ministers in the three devolved nations and alerted them to what was going on. We were then invited to meet with Julie Jones MS from Wales and have been in an ongoing dialogue with Ministers since then. When we had the meeting with Julie Jones MS, Liz Truss had become Prime Minister and, the week before our meeting with Julie Jones MS, was talking about investment zones and various plans that would have undermined our environmental laws. It seemed that our concerns were coming true in that QQR7 would be the "canary in the mine" and the first test of reviewing environmental protection legislation, setting a precedent for future changes post-Brexit. It was in the midst of these new government changes that we took the opportunity to invite colleagues from the RSPB and Wildlife and Countryside Link to join the meeting with Julie Jones to discuss some of these broader issues, such as the Levelling Up and Regeneration Bill and the threat to the Habitat Regulations as well as the QQR7. It was a very positive meeting, and we were encouraged to continue the dialogue.

The Ministers are due to publish the advice from JNCC. None of the three Governments of the devolved nations have yet published this advice and we still do not know what JNCC's final advice was to those Ministers. In the meantime, during successive changes of Government and appointments of new Ministers we, as a group, continue to apply pressure.

CONCLUSIONS

In terms of what can be learned from this experience, the key points are that:

(1) Partnerships and collaborative working are essential. This brings together skills from different groups, and shares the load at a time when British wildlife laws are under threat on an unprecedented scale. Froglife now has to be involved in policy and has become a member of Wildlife and Countryside Link (in addition to Scottish Environment Link) as a result of working closely with the organisation on this issue. Organisations have to work together to spread the load; there are too many ongoing issues for any single organisation to lead on them all.

(2) Whatever your background, you can make a difference. "Naïve" questions from non-experts can lead to a productive release of information.

(3) Seize opportunities when you can.

(4) Keep applying pressure.

More information is available via the following links:

<https://www.froglife.org/changes-to-the-wildlife-and-countryside-act-1981/>

<https://jncc.gov.uk/our-work/qqr-7/>

<https://biaza.org.uk/news/detail/blog-what-nobody-is-saying-about-the-threats-facing-our-uk-wildlife-legislation>