

RELEVANT LEGISLATION AND POLICY

Ecological features are protected under various United Kingdom (UK) and European legislative instruments. These are described below. European legislation is not included as it is incorporated in UK legislation by domestic provisions.

Legislation

The Conservation of Habitats and Species Regulations 2017 (as amended)

The Habitats Directive (Council Directive 92/43/EEC)¹⁷ came into force in 1992 and provides for the creation of a network of protected wildlife areas across the European Union (EU), known as 'Natura 2000'. The Natura 2000 network consists of Special Areas of Conservation (SAC) designated under the Habitats Directive and Special Protection Areas (SPA) designated under the Birds Directive (Council Directive 79/409/EEC)¹⁸. These Sites are part of a range of measures aimed at conserving important or threatened habitats and species.

The Conservation of Habitats and Species Regulations 2017¹⁹ (commonly known as the 'Habitats Regulations') transposes the Habitats Directive into national law and set out the provisions for the protection and management of species and habitats of European importance, including Natura 2000 Sites. The 2017 bill consolidated all previous versions of the regulations and subsequent amendments since initial transposition, bringing them all under the single heading, and made some minor amendments. It extends to England and Wales, and to a limited extent Scotland and Northern Ireland. Further amendments were made via The Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018²⁰ to ensure they reflect recent European case law (C-323/17 People Over Wind and Sweetman v Coillte Teoranta) in relation to the assessment of plans and projects on Sites protected under Council Directive 92/43/EEC on the conservation of natural habitats of wild fauna and flora (the 'Habitats Directive'). In Scotland, the Habitats Directive is transposed through a combination of the Habitats Regulations 2010 (in relation to reserved matters) and the Conservation (Natural Habitats &c.) Regulations 1994. The Conservation (Natural Habitats, &c) Regulations (Northern Ireland) 1995 (as amended) transposes the Habitats Directive in relation to Northern Ireland.

In addition to providing for the designation and protection of Natura 2000 Sites, the Habitats Regulations provide strict protection for plant and animal species as European Protected Species. Derogations from prohibitions are transposed into the Habitats Regulations by way of a licensing regime that allows an otherwise unlawful act to be carried out lawfully for specified reasons and providing certain conditions are met. Under the Habitats Regulations, competent authorities have a general duty, in the exercise of any of their functions, to have regard to the Habitats Directive and Wild Birds Directive including in the granting of consents or authorisations. They may not authorise a plan or project that may adversely affect the integrity of a European Site, with certain exceptions (considerations of overriding public interest).

The Conservation of Habitats and Species Regulations 2017, as amended by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019, require the Secretary of State and Welsh Ministers to secure compliance with the requirements of the Nature Directives. Any new powers in the 2019 Regulations must be exercised in line with the Directives and retained EU case law up to 1 January 2021.

¹⁷ European Commission, 1992. Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

¹⁸ European Commission, 1979. Council Directive 79/409/EEC on the conservation of wild birds.

¹⁹ Her Majesty's Stationery Officer (HMSO), 2017. The Conservation of Habitats and Species Regulations 2017. HMSO.

²⁰ Her Majesty's Stationery Officer (HMSO), 2018. The Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018. HMSO.

The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019²¹

SACs and Special Protection Areas (SPAs) in the UK no longer form part of the EU's Natura 2000 ecological network. The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 have created a national Site network on land and at sea, including both the inshore and offshore marine areas in the UK. The national Site network includes:

- existing SACs and SPAs; and
- new SACs and SPAs designated under these Regulations.

Any references to Natura 2000 in The Conservation of Habitats and Species Regulations 2017, as amended and in guidance now refers to the new national Site network. Maintaining a coherent network of protected Sites with overarching conservation objectives is still required in order to:

- fulfil the commitment made by government to maintain environmental protections
- continue to meet our international legal obligations, such as the Bern Convention, the Oslo and Paris Conventions (OSPAR), Bonn and Ramsar Conventions

Designated Wetlands of International Importance (known as Ramsar Sites) do not form part of the national Site network. Many Ramsar Sites overlap with SACs and SPAs, and may be designated for the same or different species and habitats. All Ramsar Sites remain protected in the same way as SACs and SPAs.

The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 establish management objectives for the national Site network. These are called the network objectives.

The UK Government and devolved administrations (in Wales, Northern Ireland and Scotland) will cooperate to manage, and where necessary, adapt the network to contribute towards meeting the network objectives.

Any references in the 2017 Regulations to meeting the 'requirements of the Directives' includes achieving the network objectives.

The appropriate authorities may publish guidance relating to these requirements. The appropriate authorities are the Secretary of State for Environment, Food and Rural Affairs in England and the Welsh Ministers in Wales.

The network objectives are to:

- maintain or, where appropriate, restore habitats and species listed in Annexes I and II of the Habitats Directive to a favourable conservation status (FCS)
- contribute to ensuring, in their area of distribution, the survival and reproduction of wild birds and securing compliance with the overarching aims of the Wild Birds Directive

The appropriate authorities must also have regard to the:

- importance of protected Sites
- coherence of the national Site network
- threats of degradation or destruction (including deterioration and disturbance of protected features) on SPAs and SACs

The network objectives contribute to the conservation of UK habitats and species that are also of pan-European importance, and to the achievement of their FCS within the UK.

²¹ Secretary of State (2019) The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019. Her Majesty's Stationery Office (HMSO)

The Countryside and Rights of Way Act 2000

The Countryside and Rights of Way Act 2000²² primarily extends to England and Wales. It provides a new statutory right of access to the countryside and modernises the rights of way system, bringing into force stronger protection for both wildlife and the countryside.

The Act is divided into five distinct sections, Part III is of relevance to ecology:

- Part III – Nature Conservation and Wildlife Protection: The Act details measures to promote and enhance wildlife conservation. These measures include improving protection for Sites of Special Scientific Interest (SSSI) and increasing penalties for deliberate damage to SSSIs. Furthermore, the Act affords statutory protection to Ramsar Sites which are wetlands designated under the International Convention on Wetlands²³.

The Wildlife and Countryside Act 1981 (As Amended)

The Wildlife and Countryside Act 1981 (as amended)²⁴ forms the basis of much of the statutory wildlife protection in the UK. Part I deals with the protection of plants, birds and other animals and Part II deals with the designation of SSSIs.

This Act covers the following broad areas:

- Wildlife – listing endangered or rare species in need of protection and creating offences for killing, disturbing or injuring such species. Additionally, the disturbance of any nesting bird during breeding season is also noted as an offence, with further protection for species listed on Schedule 1. Measures for preventing the establishment of non-native plant and animal species as listed on Schedule 9 are also provided;
- Nature Conservation – protecting those Sites which are National Nature Reserves (NNR) and SSSIs;
- Public Rights of Way – placing a duty on the local authority (to maintain a definitive map of footpaths and rights of way. It also requires that landowners ensure that footpaths and rights of way are continually accessible; and
- Miscellaneous General Provisions.

The Act is enforced by local authorities.

Natural Environment and Rural Communities Act 2006

Under Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006²⁵, public authorities must show regard for conserving biodiversity in all their actions. Public authorities should consider how wildlife or land may be affected in all the decisions that they make. The commitment to the biodiversity duty must be measured by public authorities.

Section 41 also requires the Secretary of State to publish a list of habitats and species that are of principal importance for the conservation of biodiversity in England.

Protection of Badgers Act 1992

²² Her Majesty's Stationery Officer (HMSO), 2000. The Countryside and Rights of Way Act 2000. HMSO.

²³ United Nations Educational, Scientific and Cultural Organization (UNESCO), 1971. Convention on Wetlands of International Importance especially as Waterfowl Habitat, as amended in 1982 and 1987. Ramsar, Iran Published in Paris, 1994.

²⁴ Her Majesty's Stationery Office (HMSO), 1981. The Wildlife and Countryside Act 1981 [as amended in Quinquennial Review and by the Countryside and Rights of Way Act 2000 and the Natural Environment and Rural Communities Act 2006]. HMSO.

²⁵ Her Majesty's Stationery Office (HMSO), Natural Environment and Rural Communities Act 2006. HMSO.

The Protection of Badgers Act 1992²⁶ consolidated previous legislation relating specifically to badgers. The Act makes it an offence to kill, injure or take a badger, or to damage or interfere with a sett unless a licence is obtained from a statutory authority (i.e. Natural England).

Wild Mammals (Protection) Act 1996

The Wild Mammals (Protection) Act 1996²⁷ makes it an offence for any person to mutilate, kick, beat, nail or otherwise impale, stab, burn, stone, crush, drown, drag or asphyxiate any wild mammal with intent to inflict unnecessary suffering. There are certain exemptions including acts of mercy and acts made lawful by means of hunting, shooting, coursing or pest control activities

Policy

Biodiversity in the Planning Process

Administrative and policy guidance on the application of some of these statutory obligations is provided through relevant government policy guidance and advice. In England, this includes National Planning Policy Framework 2012, National Planning Practice Guidance, Circular 06/2005: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System, Biodiversity 2020 and Natural Environment White Paper The natural choice: securing the value of nature.

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National Planning Policy Framework (2019)

The National Planning Policy Framework (NPPF)²⁸ sets out the Government's planning policies for England and how these are expected to be applied. Objective 15 - Conserving and enhancing the natural environment' states that the planning system should contribute to and enhance the natural and local environment by:

- "...protecting and enhancing valued landscapes, geological conservation interests and soils;
- recognising the wider benefits of ecosystem services; and
- minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures..."

It furthermore advises local planning authorities to conserve and enhance biodiversity when considering planning applications, by applying principles aimed at protecting and enhancing biodiversity and designated Sites and incorporating biodiversity in and around developments

Planning Practice Guidance (2019)

The Planning Practice Guidance²⁹ is a web-based resource launched in June 2019 (last updated 1 October 2019). This guidance is divided into sections, of which Natural Environment: Biodiversity,

²⁶ Her Majesty's Stationery Office (HMSO), 1992. Protection of Badgers Act 1992. HMSO.

²⁷ Her Majesty's Stationery Office (HMSO), Wild Mammals (Protection) Act 1996. HMSO.

²⁸ Ministry of Housing, Communities and Local Government, 2019. National Planning Policy Framework (NPPF), last updated 19 June 2019. London: HMSO.

²⁹ Ministry of Housing, Communities & Local Government, 2019. Planning Practice Guidance [online]. Available at: <http://planningguidance.planningportal.gov.uk/>

Ecosystems and Green Infrastructure provides information on biodiversity issues within planning and guidance on where to find further information on biodiversity issues.

Circular 06/2005: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System

This circular³⁰ provides administrative guidance on the application of the law relating to planning and nature conservation as it applies in England. It complements the national planning policy in the NPPF and PPG.

Natural Environment White Paper. The Natural Choice: Securing the Value of Nature

The Natural Environment White Paper³¹ outlines the Government's vision for the natural environment over the next 50 years, shifting the emphasis to an integrated landscape-scale approach. It describes the actions that will be taken to deliver that goal.

Biodiversity 2020

The Biodiversity 2020³² strategy for England builds on the Natural Environment White Paper and provides a comprehensive picture of how England is implementing its international and EU commitments. It sets out the strategic direction for biodiversity policy on land (including rivers and lakes) and at sea.

The mission for this strategy 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.

It is anticipated that this will be delivered through:

- a more integrated large-scale approach to conservation on land and at sea;
- putting people at the heart of biodiversity policy;
- reducing environmental pressures; and
- improving our knowledge.

Biodiversity Action Plans (BAP)

In 1994, the Government produced the UK Biodiversity Action Plan (BAP)³³, a national strategy for the conservation of biodiversity. This led to the creation of the UK Biodiversity Steering Group, which has listed 1,150 Species Action Plans (SAPs) and 65 Habitat Action Plans (HAPs). Regional and District/Borough BAPs apply the UK BAP at a local level.

From July 2012, the 'UK Post-2010 Biodiversity Framework'³⁴ succeeds the UK BAP. This is a result of a change in strategic thinking following the publication of the 'Convention on Biological Diversity's Strategic Plan for Biodiversity 2011-2020'³⁵ and its 20 'Aichi targets'³⁶, at Nagoya, Japan in October 2010, and the launch of the new EU Biodiversity Strategy (EUBS) in May 2011.

The UK Post-2010 Biodiversity Framework constitutes the UK's response to these new 'Aichi' strategic goals and associated targets. The Framework recognises that most work which was

³⁰ Office of the Deputy Prime Minister, 2005. Circular 06/2005: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System. Available at: <https://www.gov.uk/government/publications/biodiversity-and-geological-conservation-circular-06-2005>

³¹ Department for Environment, Food and Rural Affairs (Defra), 2011. Natural Environment White Paper. The natural choice: securing the value of nature. Available at: <https://www.gov.uk/government/publications/the-natural-choice-securing-the-value-of-nature>

³² Department for Environment, Food and Rural Affairs (Defra), 2011. Biodiversity 2020. Available at:

<https://www.gov.uk/government/publications/biodiversity-2020-a-strategy-for-england-s-wildlife-and-ecosystem-services>

³³ Her Majesty's Stationery Office (HMSO), 1994. Biodiversity: The UK Action Plan. HMSO.

³⁴ JNCC and Defra (on behalf of the Four Countries' Biodiversity Group), 2012. UK Post-2010 Biodiversity Framework. July 2012.

jncc.defra.gov.uk/pdf/UK_Post2010_Bio-Fwork.pdf

³⁵ <https://www.cbd.int/sp/>

³⁶ <https://www.cbd.int/sp/targets/>

previously carried out under the UK BAP is now focussed on the individual countries of the UK (and Northern Ireland) and delivered through each countries' own strategies.

Following the publication of the new Framework, the UK BAP partnership no longer operates. However, many of the tools and resources originally developed under the UK BAP remain of use. The UK list of priority species has been used to help draw up statutory lists of priorities in England, Scotland, Wales and Northern Ireland. For England, this is in line with Section 41 of NERC.