

In Depth – Biodiversity Legislation

The legal protection of nature has its roots in the 19th century, based around the protection of wild birds. Legislation for species and subsequently habitats and special sites has been intermittent, but we now have a raft of different laws, both national and international, protecting our important species and habitats that need to be considered when undertaking activities that could affect wildlife.

The following is a synopsis of the main pieces of wildlife legislation currently in place. Further information on these, including full citations, can be found on the Joint Nature Conservation Committee (JNCC) website: <http://jncc.defra.gov.uk/> and the individual websites referenced below.

1. European

EC Council Directive 2009/147/EC (codified version) and 79/409/EC on the Conservation of Wild Birds 2009 (Birds Directive)

A framework for the protection and conservation of Wild Birds in Europe, also implementing the Bern Convention. It places great emphasis on the protection of habitats for endangered and migratory species through the establishment of SPAs (see Natura 2000 sites) and bans activities that threaten birds such as deliberate capture and killing, destruction of nests and taking of eggs. More information can be found at: http://ec.europa.eu/environment/nature/legislation/birdsdirective/index_en.htm

EC Council Directive 2004/35/EC on Environmental Liability with Regard to the Prevention and Remedying of Environmental Damage (the Environmental Liability Directive) 2004

Specifically defines environmental damage so as to include damage to protected species and natural habitats listed in the Birds and Habitats Directives and any other species or habitats that a Member State designates for the purposes equivalent to the Birds and Habitats Directives' purposes. It establishes a framework based on the polluter pays principle and includes, amongst other pollution prevention and remedial requirements, provisions for remedying environmental damage on sites classified under the Birds Directive (SPAs) and designated under the Habitats Directive (SACs). More information can be found at <http://ec.europa.eu/environment/legal/liability/index.htm>

Environmental Assessment Directives (EC Council Directive 2001/42/EC on the Assessment of the Effects of Certain Plans and Programmes on the Environment (Strategic Environmental Assessment) and 85/337/EEC on the Assessment of the Effects of Certain Public and Private Projects on the Environment (Environmental Impact Assessment))

Requires assessments for environmental impacts on certain plans, programmes or projects to be undertaken. The principle of the Directives is to ensure that plans, programmes and projects likely to have significant effects on the environment are made subject to an environmental assessment, prior to their approval or authorisation. Practical guidance on these assessments has been published by the Environment Agency: www.environment-agency.gov.uk and more information on the Directives can be found at: <http://ec.europa.eu/environment/eia/home.htm>

European Landscape Convention 2000

Aims to promote landscape protection, management and planning and to organise European co-operation on landscape issues. More information can be found at www.coe.int/t/dg4/cultureheritage/landscape/default_en.asp

EC Council Directive 2000/60/EC Establishing a Framework for the Community Action in the Field of Water Policy 2000 (Water Framework Directive)

Sets objectives for water protection through a holistic approach with an aim that all water bodies reach 'good status' quality by 2015. The Directive requires member states to adopt a single system of water management through River Basin Management Plans – using natural geographical and hydrological units rather than administrative and / or political boundaries. Key priorities are the general protection of aquatic ecology, specific protection of unique and valuable habitats, protection of drinking water resources and protection of bathing water. It is implemented in the UK by the Environment Agency. More information can be found at: http://ec.europa.eu/environment/water/water-framework/info/intro_en.htm

EU CITES Regulations (Council Regulation (EC) No 338/97 The European Union Wildlife Trade Regulation (1997) and Commission Regulation (EC) No 865/2006

Regulations which strengthen import and export controls to protect globally threatened species and regulate international trade. They implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) whose purpose is to ensure that no species of wild fauna or flora becomes, or remains subject to, unsustainable exploitation because of international trade. More information can be found at: http://ec.europa.eu/environment/cites/legis_wildlife_en.htm and <http://www.cites.org>

United Nations Environmental Programme Convention on Biological Diversity 1992

Establishes three main goals: the conservation of biological diversity; the sustainable use of its components; and the fair and equitable sharing of the benefits from the use of genetic resources. More information can be found at www.cbd.int

EC Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora 1992 (Habitats Directive)

Implementing agreements of the Bern Convention, the objective of the directive is to protect biodiversity through the conservation of natural habitats and species of wild fauna and flora. It requires the maintenance and restoration of these species and habitats at favourable conservation status, laying down rules for their protection, management and exploitation, and protects them through a suite of designated sites known as Natura 2000 sites (Special Areas of Conservation – SACs – and Special Protection Areas for Birds – SPAs) and a strict system of species protection. There is also a requirement for the implications of any proposed developments, plans or projects on or near to Natura 2000 sites to be assessed to ensure no likely significant harm is done to any protected features – known as a Habitats Regulations Assessment. More information on the directive can be found at:

http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm

The Bern Convention on the Conservation of European Wildlife and Natural Habitats 1979

Contains obligations to conserve wild plants, birds and other animals, with particular emphasis on endangered and vulnerable species and their habitats. The provisions of the Convention underlie the EC Habitats Directive as well as the UK's wildlife legislation. More information can be found at

www.coe.int/t/dg4/cultureheritage/nature/bern/default_en.asp

The Bonn Convention on the Conservation of Migratory Species of Wild Animals 1979

A framework convention requiring the protection of endangered migratory species listed in its appendices. It encourages separate international agreements covering particular species. For example, an agreement covering the Conservation of Bats in Europe deals with the need to protect bats and their feeding and roosting areas. More information can be found at www.cms.int

The Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat 1971

Requires the conservation of wetlands, especially sites listed under the Convention. More information can be found at www.ramsar.org

2. England and Wales

The Conservation of Habitats and Species Regulations 2010 (as amended)

Transposes the provisions of the EC Habitats Directive into UK law and (since 2012) Article 2 of the Birds Directive. These regulations consolidate and update the previous Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 and Conservation (Natural Habitats, &c.) Regulations 1994. They also contain new provisions to implement aspects of the Marine and Coastal Access Act 2009. It is the main piece of legislation protecting biodiversity and requires the designation of UK Natura 2000 sites, their protection and management and the strict protection of European Protected Species, listed in schedules 2 and 5. The regulations can be read in full at:

www.legislation.gov.uk/ukxi/2010/490/contents/made

The Town and Country Planning (Environmental Impact Assessment) Regulations 2011

Transposes the requirements of the Directive on the Assessment of the Effects of Certain Public and Private Projects on the Environment 85/337/EEC into UK law. The regulations require an Environmental Impact Assessment (EIA) to be carried out before a decision is taken on whether development consent should be granted for certain types of project which are likely to have significant environmental effects. It sets out which types of development are likely to require EIA as either schedule 1 (mandatory) or schedule 2 (discretionary). It can be read in full at

www.legislation.gov.uk/ukxi/2011/1824/contents/made

The Environmental Damage (Prevention and Remediation) Regulations 2009

Impose obligations on operators of economic activities requiring them to prevent, limit or remediate environmental damage – the ‘polluter pays’ principle. The regulations apply to serious environmental damage to land, water, species and habitats. More information can be found at: www.legislation.gov.uk/ukxi/2009/153/memorandum/contents

The Marine and Coastal Access Act 2009

Establishes, amongst other things, the Marine Management Organisation to regulate and manage the marine area around England and to undertake certain nature conservation licensing functions (under the Conservation of Seals Act 1970 and the Wildlife and Countryside Act 1981). It also provides enforcement powers for Marine Enforcement Officers to investigate certain nature conservation offences in the marine area and makes provision for the establishment of an English coastal walking route and rights of access to land near the English coast and enables the making of assembly measures in relation to Welsh coastal routes and rights of access. The Act can be read in full at: www.legislation.gov.uk/ukpga/2009/23/contents.

The Offshore Marine Conservation (Habitats, &c.) Regulations 2007

Transposes the provisions of the EC Habitats and Birds Directives relating to UK offshore waters (the sea beyond 12 nautical miles from the coast) into UK law. The regulations can be read in full at: www.legislation.gov.uk/ukxi/2007/1842/contents/made

Natural Environment and Rural Communities (NERC) Act 2006

Implements the Government’s Rural Strategy (2004) and addresses a range of other issues relating broadly to the natural environment including regulatory bodies and rights of way. It makes provision in respect of biodiversity, pesticides harmful to wildlife and the protection of birds and Invasive Non-Native Species. It also alters enforcement powers in connection with wildlife protection. Section 40 of the act places a biodiversity duty on public bodies to have regard to the purpose of conserving biodiversity and section 42 requires the publication of a list of habitats and species of principal importance for the conservation of biodiversity in Wales (section 41 for England) used to guide decision makers in implementing their duty under section 40. More information on the act can be found at: www.legislation.gov.uk/ukpga/2006/16/notes/contents

The Environmental Assessment of Plans and Programmes (Wales) Regulations 2004

Transposes the requirement of EC Council Directive on the Assessment of the Effects of Certain Plans and Programmes on the Environment 2001/42/EC. The regulations require environmental assessment to be carried out before certain plans or programmes which are likely to have significant environmental effects are adopted or submitted to the legislative procedure for their approval. It can be read in full at www.legislation.gov.uk/ukxi/2004/1633/contents/made

Countryside and Rights of Way (CRoW) Act 2000

Amends the Wildlife and Countryside Act 1981. It contains measures to improve public access to the open countryside and common land and amends law relating to Public Rights of Way and nature conservation. It strengthens the protection for Sites of Special

Scientific Interest (SSSIs), includes tougher penalties through the provision of extra powers for the prosecution of wildlife crime, provides a basis for the conservation of biodiversity, provides for better management of Areas of Outstanding Natural Beauty (AONBs) and places a duty on the Welsh Assembly Government and government departments to have regard for biodiversity. Section 74 contains a list of species and habitats which are of conservation importance but this has been superseded by the section 42 list contained in the NERC Act 2006. More information on the act can be found at: www.legislation.gov.uk/ukpga/2000/37/notes/division/1

The Local Government Act 2000

Required every local authority to prepare a community strategy for promoting and improving the economic, social and environmental well-being of their area and contributing to the achievement of sustainable development in the UK. The Welsh Assembly Government recommended that Local Biodiversity Action Plans (LBAPs) should underpin community strategies.

The Hedgerow Regulations 1997

Prevents the removal or damage of certain hedgerows without the prior permission of the relevant Local Planning Authority. Various criteria specified within the regulations are used to identify and protect important hedgerows for wildlife, landscape and / or historical reasons. The regulations can be read in full at:

www.legislation.gov.uk/uksi/1997/1160/contents/made

The Environment Act 1995

Established National Park Authorities, the Environment Agency and the Scottish Environment protection agency. The act also covers pollution control, natural resource conservation, provisions for contaminated land and abandoned mines and provides protection for important hedges. The act can be read in full at:

www.legislation.gov.uk/ukpga/1995/25/contents

The Protection of Badgers Act 1992

Consolidation of previous legislation (the Badgers Act 1973, the Badgers Act 1991 and the Badgers (Further Protection) Act 1991) providing protection for badgers and their setts.

The act can be read in full at: www.legislation.gov.uk/ukpga/1992/51/contents

The Planning and Compensation Act 1991

Improved local planning authorities' abilities to safeguard conservation and amenity areas by strengthening their planning enforcement and development control powers. It also required development plans to include policies in respect of the conservation of the natural beauty and amenity of land. It can be read in full at

www.legislation.gov.uk/ukpga/1991/34/contents

The Environmental Protection Act (EPA) 1990

Established English Nature (now Natural England), the Countryside Council for Wales (Now Natural Resources Wales) and the Joint Nature Conservation Committee (JNCC) and required them to manage nature reserves and provide nature conservation advice for

their regions. The act also contained provisions for waste and pollution control and amended various laws including those relating to clean air, litter and radioactive substances. The act can be read in full at: www.legislation.gov.uk/ukpga/1990/43/contents

The Wildlife and Countryside Act 1981

Consolidated all existing provisions for birds and animals and extended the protected list to include plants. The act prohibits certain methods of killing or taking wild animals, ensures the notification and management of SSSIs and prevents the introduction of Invasive Non-Native Species. It also introduced the category of UK Marine Protected Areas. This act has been amended by the CRoW Act 2000, see above. The act can be read in full at: www.legislation.gov.uk/ukpga/1981/69/contents

The Countryside Act 1968

Strengthened many of the powers given under the 1949 Act and imposed on Ministers, government departments and public bodies a duty to have regard to the desirability of conserving the natural beauty and amenity of the countryside in the exercise of their functions relating to land. It can be read in full at www.legislation.gov.uk/ukpga/1968/41

The National Parks and Access to the Countryside Act 1949

Introduced the concept of National Nature Reserves (NNRs) and Sites of Special Scientific Interest (SSSIs), important for their flora and fauna, geological or physiographical (landform) features and conferred powers on local authorities to create nature reserves. It can be read in full at www.legislation.gov.uk/ukpga/Geo6/12-13-14/97