
Relevant Legislation and Planning Policy

Legislation

A summary of legislation relevant to (onshore) biodiversity in England and Wales is provided below. Note that the summary provided here is intended for general guidance only and the original legislation should be consulted for definitive information.

Conservation of Habitats and Species Regulations 2017

The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) consolidate the Conservation of Habitats and Species Regulations 2010 with subsequent amendments. The Regulations transpose Council Directive 92/43/EEC, on the conservation of natural habitats and of wild fauna and flora (EC Habitats Directive), into national law. Under the Habitats Regulations it is an offence to deliberately capture, kill or disturb¹ wild animals listed under Schedule 2 of the Regulations. It is also an offence to damage or destroy a breeding site or resting place of such an animal (even if the animal is not present at the time).

Wildlife & Countryside Act 1981

The Wildlife and Countryside Act 1981, as amended by the Countryside and Rights of Way (CROW) Act 2000 and the Natural Environment and Rural Communities (NERC) Act 2006, consolidates and amends existing national legislation to implement the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) and Council Directive 79/409/EEC on the Conservation of Wild Birds (Birds Directive), making it an offence to:

- Intentionally kill, injure or take any wild bird or their eggs or nests (with certain exceptions) and disturb any bird species listed under Schedule 1 to the Act, or its dependent young while it is nesting;
- Intentionally kill, injure or take any wild animal listed under Schedule 5 to the Act;
- Intentionally or recklessly damage, destroy or obstruct any place used for shelter or protection by any wild animal listed under Schedule 5 to the Act;
- Intentionally or recklessly disturb certain Schedule 5 animal species while they occupy a place used for shelter or protection;
- Pick or uproot any wild plant listed under Schedule 8 of the Act; or
- Plant or cause to grow in the wild any plant species listed under Schedule 9 of the Act.

Protection of Badgers Act 1992

The Protection of Badgers Act 1992 makes it illegal to kill, injure or take a badger or to intentionally or recklessly interfere with a badger sett. Sett interference includes disturbing badgers whilst they are occupying a sett or obstructing access to it.

¹ Disturbance, as defined by the Conservation of Habitats and Species Regulations 2010, includes in particular any action which impairs the ability of animals to survive, breed, rear their young, hibernate or migrate (where relevant); or which affects significantly the local distribution or abundance of the species.

Natural Environment & Rural Communities (NERC) Act 2006

Section 40 of the NERC Act 2006 places a duty on public authorities to have regard to the purpose of conserving biodiversity to have due regard for biodiversity and nature conservation during the course of their operations. Public authorities include government departments, local authorities and statutory undertakers.

Section 41 of the Act (Section 42 in Wales) requires the publication of a list of habitats and species publish which are of principal importance for the purpose of conserving biodiversity. The Section 41 list is used to guide authorities in implementing their duty to have regard to the conservation of biodiversity.

Note that Sections 40 and 42 were superseded in Wales by the Environment (Wales) Act 2016 (see below).

Environment (Wales) Act 2016

The Environment (Wales) Act puts in place the legislation needed to plan and manage Wales' natural resources in a more proactive, sustainable and joined-up way. Part 1 Section 6 of the Act introduces a new biodiversity duty, which replaces and enhances the biodiversity duties set out in the NERC Act 2006 and requires public authorities to seek to maintain and enhance biodiversity in the exercise of their functions and in so doing promote the resilience of ecosystems.

Section 7 of the Act lists living organisms and types of habitat in Wales, considered to be of key significance to sustain and improve biodiversity in relation to Wales.

Planning Policy

A summary of national planning policy relevant to (onshore) biodiversity in England and Wales is provided below. Note that the summary provided here is intended for general guidance only and the original policy documents should be consulted for definitive information. For local planning policy relevant to biodiversity the relevant local plans should be consulted.

National Planning Policy (England)

The National Planning Policy Framework (NPPF)² sets out guidance for local planning authorities and decision-makers in how to apply planning policies when drawing up plans and making decisions about planning applications. Along with Government Circular 06/05³, the broad policy objectives in relation to the protection of biodiversity and geological conservation in England through the planning system are set out. Specific policies relating to habitats and biodiversity are set out in paragraphs 131, 174 and 179-182 of the NPPF.

Paragraph 131 states that:

“Trees make an important contribution to the character and quality of urban environments and can also help mitigate and adapt to climate change. Planning policies and decisions should ensure that new streets are tree-lined, that opportunities are taken to incorporate trees elsewhere in developments (such as parks and community orchards), that appropriate measures are in place to secure the long-term maintenance of newly planted trees, and that existing trees are retained wherever possible. Applicants and local planning authorities should work with highways officers and tree officers to ensure that the right trees are planted in the right places, and solutions are found that are compatible with highways standards and the needs of different users”

² Ministry of Housing, Communities and Local Government. 2021. National Planning Policy Framework. July 2021.

³ Office of the Deputy Prime Minister. 2005. Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System. ODPM Circular 06/2005.

Paragraph 174 states that:

“Planning policies and decisions should contribute to and enhance the natural and local environment by:

- a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);*
- b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;*
- c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate;*
- d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;*
- e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development f) should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and*
- f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate”.*

Paragraph 179 states that:

“To protect and enhance biodiversity and geodiversity, plans should:

- a) Identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation; and*
- b) promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.”*

Paragraph 180 of the NPPF states that:

“When determining planning applications, local planning authorities should apply the following principles:

- a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;*
- b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;*
- c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists; and*
- d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.”*

Paragraphs 181-182 relate to European sites (referred to as habitats sites) and state:

“The following should be given the same protection as habitats sites:

a) potential Special Protection Areas and possible Special Areas of Conservation;

b) listed or proposed Ramsar sites; and

c) sites identified, or required, as compensatory measures for adverse effects on habitats sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.

The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.”

National Planning Policy (Wales)

Planning Policy Wales (PPW)⁴ sets out the land use planning policies of the Welsh Government. The primary objective of PPW is to ensure that the planning system contributes towards the delivery of sustainable development and improves the social, economic, environmental and cultural well-being of Wales. Section 6.4 of PPW relates to biodiversity and ecological networks.

Paragraph 6.4.3 of PPW states that:

“The planning system has a key role to play in helping to reverse the decline in biodiversity and increasing the resilience of ecosystems, at various scales, by ensuring appropriate mechanisms are in place to both protect against loss and to secure enhancement.”

It goes on to state that:

“Development plan strategies, policies and development proposals must consider the need to:

- support the conservation of biodiversity, in particular the conservation of wildlife and habitats;*
- ensure action in Wales contributes to meeting international responsibilities and obligations for biodiversity and habitats;*
- ensure statutorily and non-statutorily designated sites are properly protected and managed;*
- safeguard protected and priority species and existing biodiversity assets from impacts which directly affect their nature conservation interests and compromise the resilience of ecological networks and the components which underpin them, such as water and soil, including peat; and*
- secure enhancement of and improvements to ecosystem resilience by improving diversity, condition, extent and connectivity of ecological networks.”*

Section 6.4 goes on to set out policy in respect of:

- The Biodiversity and Resilience of Ecosystems Duty, as set out in Section 6 of the Environment (Wales) Act 2016;*
- Designated Sites, including:*
 - Sites of Special Scientific Interest;*
 - Special Protection Areas, Special Areas of Conservation and Ramsar Sites;*
 - Proposed Special Areas of Conservation, Special Protection Areas and Ramsar sites; and*

⁴ Welsh Government. 2018. Planning Policy Wales. Edition 10, December 2018.

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- Non-statutory Designations.
 - Protected Species; and
 - Trees, Woodlands and Hedgerows.

PPW is supplemented by a series of Technical Advice Notes (TANs), Welsh Government Circulars, and policy clarification letters, which together with PPW provide the national planning policy framework for Wales. TAN 5⁵ deals with Nature Conservation and Planning and states in paragraph 2.4:

“When considering policies and proposals in local development plans and when deciding planning applications that may affect nature conservation, local planning authorities should:

- *Pay particular attention to the principles of sustainable development, including respect for environmental limits, applying the precautionary principle, using scientific knowledge to aid decision making and taking account of the full range of costs and benefits in a long term perspective;*
- *Contribute to the protection and improvement of the environment, so as to improve the quality of life and protect local and global ecosystems, seeking to avoid irreversible harmful effects on the natural environment;*
- *Promote the conservation and enhancement of statutorily designated areas and undeveloped coast;*
- *Ensure that appropriate weight is attached to designated sites of international, national and local importance;*
- *Protect wildlife and natural features in the wider environment, with appropriate weight attached to priority habitats and species in Biodiversity Action Plans;*
- *Ensure that all material considerations are taken into account and decisions are informed by adequate information about the potential effects of development on nature conservation;*
- *Ensure that the range and population of protected species is sustained;*
- *Adopt a step-wise approach to avoid harm to nature conservation, minimise unavoidable harm by mitigation measures, offset residual harm by compensation measures and look for new opportunities to enhance nature conservation; where there may be significant harmful effects local planning authorities will need to be satisfied that any reasonable alternative sites that would result in less or no harm have been fully considered.”*

⁵ Welsh Assembly Government. 2009. Planning Policy Wales Technical Advice Note 5: Nature Conservation and Planning. September 2009.