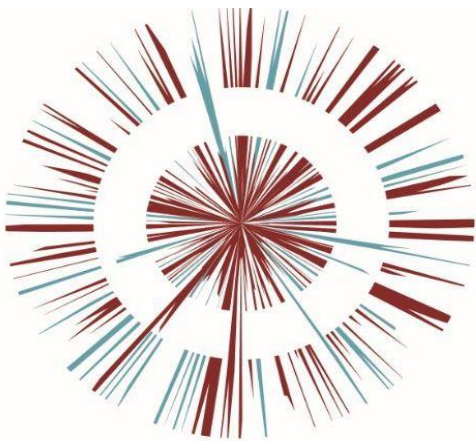




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APPENDIX 9.17: LEGISLATION

Wildlife and Countryside Act 1981

- 1.1.1. The principle statutory instrument that governs nature conservation in England is the Wildlife and Countryside Act 1981 as amended (WCA 1981).
- 1.1.2. The WCA 1981 consolidates and amends existing national legislation to implement the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) and the Birds Directive in Great Britain. It is complimented by the Wildlife and Countryside (Service of Notices) Act 1985, which relates to notices served under the 1981 Act, and the Conservation Regulations 1994 (as amended), which implement the Habitats Directive.
- 1.1.3. Containing four Parts and seventeen Schedules, the Act covers protection of wildlife (birds, and some animals and plants), the countryside, National Parks, and the designation of protected areas, and public rights of way.
- 1.1.4. Amendments to the Act have been made and there is a statutory quinquennial review of Schedules 5 and 8 (protected wild animals and plant respectively), undertaken by the country agencies and co-ordinated by the Joint Nature Conservation Committee. The 5th review was submitted in 2008, notably increasing water vole protection from partial to full.

Protection of Badgers Act 1992

- 1.1.5. There are very few Acts of Parliament that are dedicated to one species with conservation as part of the aim. This Act supplements the WCA 1981 by affording protection to badgers against disturbance and their setts against unlawful damage and destruction. It provides a licensing system to allow works to proceed in a sensitive manner.

Countryside and Rights of Way (CRoW) Act 2000

- 1.1.6. The CRoW Act 2000 places a duty on Government Departments and the National Assembly for Wales to have regard for the conservation of biodiversity and maintain lists of species and habitats for which conservation steps should be taken or promoted, in accordance with the 1992 Rio Convention on Biological Diversity. The Act makes various amendments to the WCA 1981 including increasing SSSI protection, management and policing.
- 1.1.7. DEFRA published the first 'list' in 2002 under Section 74 of the CRoW Act 2000, which was identical with the UK BAP list at the time, now superseded by the Natural Environment and Rural Communities Act 2006 Section 41 list (see below).

Natural Environment and Rural Communities (NERC) Act 2006

- 1.1.8. The NERC Act 2006 makes provision in respect of biodiversity, pesticides harmful to wildlife and the protection of birds, and in respect of invasive non-native species.
- 1.1.9. Section 40 of the Act lays a duty on authorities to have regard to the purpose of conserving biodiversity in compliance with the UN Biodiversity Convention in 1992. This is otherwise known as the 'Biodiversity Duty'. Guidance for local authorities on implementing the Biodiversity Duty is provided in DEFRA (2007)¹.

Section 41 List

- 1.1.10. For the purposes of conserving biodiversity, habitats and species of principle importance are listed through the provisions set out in Section 41 of this Act (replacing Section 74 of the CRoW Act 2000), referred to in this chapter as the Section 41 List. DEFRA 2007¹ references the UK and local Biodiversity Action Plans (BAPs) (see below) as the source of data for the Section 41 List. This chapter uses the List, as updated by the UK BAP, as a key guide for identification of ecological features to be affected by proposals, and to guide and weigh recommendations and mitigation.

¹ DEFRA 2007 Guidance for local authorities on implementing the Biodiversity Duty. PB12584

- 1.1.11. The Section 41 List has been further refined by DEFRA 2007, where seven sectors have been selected where public bodies and other stakeholders can make a significant contribution to biodiversity conservation, through their Biodiversity Duty. Habitats and species relevant to each sector have been identified to help non-conservation professionals consider where the List might apply to them.
- 1.1.12. Of these seven, two are relevant to this assessment i.e. Land Use Planning and Regional & Local Government. The List was last updated in 2010 and referenced here as Natural England 2010².

The Conservation of Habitats and Species Regulations 2010

- 1.1.13. These Regulations consolidate the Conservation (Natural Habitats, &c.) Regulations 1994, and together they transpose the European Habitats Directive³ into domestic law. The Regulations provide for the designation and protection of 'European sites' (referred to in this assessment as Natura 2000 sites), the protection of 'European protected species' (EPS), and the adaptation of planning and other controls for the protection of such.
- 1.1.14. Under the Regulations, UK competent authorities have a general duty to have regard to the EC Habitats and Birds⁴ Directives.

Habitats (Habitats Regulations Assessment)

- 1.1.15. The Regulations require competent authorities to consider or review planning permission, applied for or granted, affecting a European site, and, subject to certain exceptions, restrict or revoke permission where the integrity of the site would be adversely affected. Under Regulation 61 of the Conservation of Habitats and Species Regulations 2010, where any proposed plan or project is likely to have an effect on a Natural 2000 site or qualifying feature for a site, then the competent authority

² <http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/protectandmanage/habsandspeciesimportance.aspx>

³ <http://jncc.defra.gov.uk/page-1374>

⁴ <http://jncc.defra.gov.uk/page-1373>

(normally the local planning authority) will carry out an appropriate assessment of those effects, referred to as a Habitat Regulations Assessment (HRA).

Species

- 1.1.16. The Regulations make it an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in the animals listed in Schedule 2, or pick, collect, cut, uproot, destroy, or trade in the plants listed in Schedule 4. However, these actions can be made lawful through the granting of licenses by the appropriate authorities. Licenses may be granted for a number of purposes (such as science and education, conservation, preserving public health and safety), but only after the appropriate authority, including the planning authority, is satisfied that there are no satisfactory alternatives and that such actions will have no detrimental effect on wild populations of the species concerned: these three elements form the basis of the three derogation 'tests' to be applied to satisfy European legislation, prior to providing planning permission and therefore normally requiring full survey data to be presented as part of an application that has an effect on an EPS.
- 1.1.17. DEFRA has recently relaxed these stringent EPS rules, and the possible alternatives can be found here⁵.

ODPM Circular 06/2005 Biodiversity and Geological conservation

- 1.1.18. This Circular provides administrative guidance on the application of the law relating to planning and nature conservation as it applies in England. With the onset of the National Planning Policy Framework in March 2012 (see below), this remains as the principal source of statutory interpretation of the legislation listed above.
- 1.1.19. The Circular is presented in four Parts, of which the first three are relevant here. The Circular requires updating since the publication of the National Planning Policy Framework in March 2012 replaced Planning Policy Statements (see below), but should be applied as follows:

Part I: Internationally Designated Sites

- a) This Part provides guidance on implementation of the Conservation of Species and Habitat Regulations 2010 (updating the Habitat Regulation 1994),

⁵ <https://www.gov.uk/government/consultations/wildlife-licensing-comment-on-new-policies-for-european-protected-species-licences>

in compliance with the Habitats Directive. The principal is maintenance of the Natura 2000 suite of sites. Helpful definition of derogation from the Habitats Directive and the 'three tests' is provided.

- b) The principal of compensation is included, although this will be subject to strict testing under the 'three tests' system and is unlikely to be effective at an international level.

Part II: Nationally Designated Sites

- c) This Part focusses on Sites of Special Scientific Interest (SSSI) and provides guidance on interpretation of the Wildlife and Countryside Act 1981 (as amended, inc. the CROW Act 2000).

Part III: Conservation of habitats and species outside designated areas

- d) Part III pulls together statutory instruments and the route through which their protection is linked to Biodiversity Action Plans in the UK, both nationally and locally.
- e) Section 84 of this Circular states that the habitats and species listed in the S41 List are capable of being a material consideration.
- f) Section 85 refers to the CROW 2000 Act, Section 74, which has been superseded by the S41 List and requires updating. The importance of the S41 List in principal is set out here.
- g) Section 95 identifies forthcoming DEFRA advice on Local Wildlife Sites. DEFRA 2006⁶ subsequently defines local wildlife sites and their management, linking local wildlife sites to the Conservation of Habitats and Species Regulations 2010 (Regulation 39[3]) where they are referred to as 'Stepping Stones'. This is a key link for local wildlife site protection via the Natural Environment White Paper⁷, and Lawton 2010⁸, and subsequently informing the England Biodiversity Strategy for 2020⁹, all of which provide policy guidelines for

⁶ **DEFRA 2006** Local Sites Guidance on their Identification, Selection and Management. PB11684

⁷ **DEFRA 2011(a)** The Natural Choice: securing the value of nature.

⁸ **Lawton 2010** Making Space for Nature: a review of England's wildlife sites and ecological network. Chaired by Professor Sir John Lawton. Submitted to DEFRA 16th September 2010.

⁹ **DEFRA 2011(b)** Biodiversity 2020: A strategy for England's wildlife and ecosystem services. PB13583

protection of stepping stones integral to ecological networks, the latter as referred to most recently in the National Planning Policy Framework 2012 (see earlier).

