

### Biodiversity Legislation

The Habitat Regulations 2017 are the principal means by which Council Directive 92/43/EEC on the conservation of natural habitats of wild fauna and flora (the “Habitats Directive”) is transposed in England and Wales and the adjacent territorial seas. They also transpose elements of the EU Wild Birds Directive in England and Wales.

There is an expectation, based on long standing Parliamentary convention, that the UK will consolidate legislation on the fourth substantive amendment. The Habitats Regulations 2017 themselves a consolidation of the Conservation (Natural Habitats &c.) Regulations 1994, have now been amended ten times since enactment. They are likely to remain in place for some time after the UK exits the EU, and the power to consolidate them will no longer be available once the UK exits the EU. In the light of this, the government have consolidated the Regulations, aiding usability and clarity.

A statutory instrument is also being made to consolidate the Offshore Marine (Conservation Natural Habitats &c.) Regulations 2007, which transpose the Wild Birds and Habitats Directives in the UK beyond 12 nautical miles. The 2007 Regulations have been amended twelve times since being introduced. A separate Explanatory Memorandum has been prepared for that instrument known as the Conservation of Offshore Marine Habitats and Species Regulations 2017.

The ‘UK’ Post-2010 Biodiversity Framework’ (JNCC & DEFRA, 2012), published in July 2012, also sets out a framework of priorities for UK-level work for the Convention on Biological Diversity, to which the UK is a signatory. Covering the period 2011-2020, this framework replaces the original UK Biodiversity Action Plan (UK BAP, 2004) system and now the work is focussed on the separate countries (England, Scotland, Northern Ireland and Wales). The overall aim remains to protect a number of rare species and habitats, and reverse the declines of more widespread but declining species and habitats, and so currently many of the species and habitats in the UK BAP still form the basis of the biodiversity work carried out in the separate countries as required under Section 42 of the Natural Environment and Rural Communities (NERC) Act 2006 (Wales).

Furthermore, Local Biodiversity Action Plans (LBAPs) are still in place under this framework to manage and conserve species and habitats of priority at a local level. Where necessary, further species specific surveys and mitigation measures are recommended so as to safeguard any significant existing ecological interest within the site and where appropriate, opportunities for ecological enhancements are proposed with reference to national and local Biodiversity Action Plans (BAPs).

Furthermore, recommendations are guided by the Planning Policy for Wales (PPW), Edition 10 produced in December 2018, where the policies in section 6, taken as a whole, detail the importance of the distinctive and natural places in Wales. The chapter states that:

“A prosperous Wales can be realised by valuing the quality of our landscapes and historic environment as important for tourism, business, local employment, locally sourced building products, in attracting inward investment and to be accessed used and enjoyed by local communities. By protecting and enhancing biodiversity and our natural environment more generally, it will be possible to future proof economic assets in response to the challenges presented by climate change, to promote low carbon and appropriate resource choices which address the causes of climate change and to provide cost effective ecosystem services such as clean air and water.”

Paragraph 6.4 of the PPW is of particular relevance and relates to biodiversity and ecological networks.

It states that The Environment (Wales) Act 2016 introduced an enhanced biodiversity and resilience of ecosystems duty. This duty applies to public authorities in the exercise of their functions in relation to Wales and will help maximise contributions to achieving the well-being goals. The Nature Recovery Action Plan supports this legislative requirement to reverse the decline in biodiversity, address the underlying causes of biodiversity loss by putting nature at the heart of decision-making and increasing the resilience of ecosystems by taking specific action focussed around the 6 objectives for habitats and species.

In Implementing the Section 6 Duty, PPW states that there are 5 key areas: diversity, extent, condition, connectivity and adaptability to change. These can be actioned as follows:

Diversity: to ensure mechanisms are in place to minimise further loss and where circumstances allow for species' populations to expand and recolonise their natural range (former range) or adapt to future change. More diverse ecosystems are more resilient to external influences (this includes biological, geological and physical diversity on a site). This means development should not cause any significant loss of habitats or populations of species, locally or nationally and must provide a net benefit for biodiversity;

Extent: to ensure mechanisms allow for the identification of potential habitats, the maintenance of existing assets and networks and promote the restoration of damaged, modified or potential habitats and the creation of new habitat. This means that planning decisions should incorporate measures which seek the creation, restoration and appropriate management of green networks

and linkages between habitats and maintaining and enhancing other green infrastructure features and networks;

Condition: Ecosystems need to be in a healthy condition to function effectively, to deliver a range of important ecosystem services. Planning decisions should not compromise the condition of ecosystems. By taking an integrated approach to development, for example, which considers both direct and wider impacts and benefits it should be possible to make a positive contribution. Planning for the long term management of retained habitats is key to maintaining condition through for example, the use of planning obligations;

Connectivity: to take opportunities to develop functional habitat and ecological networks within and between ecosystems and across landscapes, building on existing connectivity and quality and encouraging habitat creation, restoration and appropriate management. The opportunities could include enlarging habitat areas, developing buffers around designated sites or other biodiversity assets or corridors, including transport and river corridors, and the creation of 'stepping stones' which will strengthen the ability of habitats and ecological networks to adapt to change, including climate change; and

Adaptability to change: primarily in the form of climate change, for both species (diversity) and ecosystems requires action to protect the extent, condition and connectivity of habitats, features and ecological networks. Development plans, planning proposals and applications which build on protecting designated sites and securing and enhancing green infrastructure will be key ways of addressing the attributes of ecosystems resilience identified in the Environment Act as well as facilitating social and economic resilience aspirations of the Well-being of Future Generations Act.