

APPENDIX 2

RELEVANT LEGISLATION AND POLICY

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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 (Amendment) (EU Exit) Regulations 2019

The Habitats Directive (Council Directive 92/43/EEC)⁶⁵ 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)⁶⁶. 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 2017⁶⁷ (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 2018⁶⁸ 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 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).

Following the UK's exit from the EU, EU environmental law continues to operate in the UK. References to EU legislation will be removed from UK legislation from 1 January 2021, and international targets and agreements will be enshrined in UK legislation through the proposed Environment Bill. There will be a new statutory body - The Office for Environmental Protection (OEP)⁶⁹.

In 2019, amendments were made to the regulations following the UK referendum to leave the European Union. These changes, labelled the Conservation of Habitats and Species (Amendment)(EU Exit) Regulations 2019, incorporated the EU Natura 2000 network of sites into UK law through the creation of a 'National Site Network', comprised of all Special Areas of Conservation and Special Protected Areas in the UK. Other changes included the creation of management objectives for each National Site Network

site, an amended SAC designation process and arrangements to replace the function of the European Commission where projects affecting SACs and SPAs involve imperative reasons of overriding public interest (IROPI).

The Countryside and Rights of Way Act 2000

The Countryside and Rights of Way Act 2000⁷⁰ 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 Wetlands⁷¹.

The Wildlife and Countryside Act 1981 (As Amended)

The Wildlife and Countryside Act 1981 (as amended)⁷² 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.

Environment (Wales) Act 2016

The Environment (Wales) Act 2016⁷³ replaces the duty in Section 42 of the Natural Environment and Rural Communities Act (NERC) Act 2006. The 2016 Environment (Wales) Act requires Welsh Ministers to publish, review and revise lists of living organisms and types of habitat in Wales, which they consider are of key significance to sustain and improve biodiversity in relation to Wales. The Welsh Ministers must also take all reasonable steps to maintain and enhance the living organisms and types of habitat cited under the Act, and encourage others to take such steps. Part 1 of the Act, including Sections 6 and 7, came into force on May 21, 2016. The priority habitats and species list under Section 7 remains unchanged from Section 42, as based on UK BAP priorities.

Protection of Badgers Act 1992

The Protection of Badgers Act 1992⁷⁴ 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).

Well-being of Future Generations (Wales) Act 2015

The Well-being of Future Generations (Wales) Act 2015⁷⁵ requires public bodies to take into account the impact decisions could have on the social, environmental, economic and cultural well-being of people in Wales in the future.

Policy

Planning Policy Wales, Edition 12 (2024)

The Planning Policy Wales Edition 12⁷⁶ (PPW) was updated in 2024 setting out the Welsh Government's planning policies for Wales and how these are expected to be applied. 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, as required by the Planning (Wales) Act 2015, the Well-being of Future Generations (Wales) Act 2015 and other key legislation and resultant duties such as the Biodiversity and Resilience of Ecosystems Duty (Section 6 Duty) introduced to the Environment (Wales) Act 2016.

In fulfilling the Section 6 Duty, planning authorities must also have regard to:

- the list of habitats and species of principal importance for Wales, published under Section 7 of the Environment (Wales) Act 2016;
- the SoNaRR, published by NRW;
- any Area Statement, published by NRW, that covers all or part of the area in which the authority exercises its functions and NRW's Nature Network Maps¹²⁶; and
- guidance given to public authorities by Welsh Ministers under Section 6 of the Environment (Wales) Act.

The PPW recognises that the planning system has a key role to play in helping to reverse the decline in biodiversity and increase the resilience of ecosystems, at various scales, by ensuring appropriate mechanisms are in place to both protect against loss and to secure enhancement. It recognises that some biodiversity may be impacted by necessary development, but states that the planning system should ensure that overall there is a net benefit for biodiversity and ecosystem resilience.

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

- support the maintenance and enhancement of biodiversity and the resilience of ecosystems;
 - ensure action in Wales contributes to meeting international responsibilities and obligations for biodiversity and habitats, including the most recent targets set out in the 2022 UN Global Biodiversity Framework;
 - ensure statutorily and non-statutorily designated sites and habitats are properly protected and managed and their role at the heart of resilient ecological networks is safeguarded;
 - safeguard protected species and species of principal importance and existing biodiversity assets from direct, indirect or cumulative adverse impacts that affect their nature conservation interests and compromise the resilience of ecological networks and the components which underpin them, such as water, air and soil, including peat; and
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- secure the maintenance and enhancement of ecosystem resilience and resilient ecological networks by improving diversity, extent, condition, and connectivity.

To support the implementation of the Section 6 Duty, Natural Resources Wales (NRW) has developed the DECCA framework for evaluating ecosystem resilience based on five attributes and properties of ecosystem resilience; Diversity, Extent, Condition, Connectivity and Aspects. Any planning proposal must demonstrate that it has both maintained and enhanced biodiversity and built resilient ecological networks and delivered a Net Benefit for Biodiversity (NBB) (proportionate to the scale and nature of the development proposed). Even if the biodiversity value has been maintained, there must still be a pro-active process to look for and secure enhancement through the design and implementation of the development.

Planning authorities must follow a step-wise approach (which incorporates the DECCA Framework) to maintain and enhance biodiversity, build resilient ecological networks and deliver net benefits for biodiversity by ensuring that any adverse environmental effects are firstly avoided, then minimised, mitigated, and as a last resort compensated for. Enhancement must be secured by delivering a biodiversity benefit primarily on site or immediately adjacent to the site, over and above that required to mitigate or compensate for any negative impact.

Technical Advice Note (TAN) 5: Nature Conservation and Planning (2009)

This Technical Advice Note⁷⁷ provides advice about how the land use planning system should contribute to protecting and enhancing biodiversity and geological conservation. It outlines Key Principles of Positive Planning For Nature Conservation, and details local development plans and development control procedures, and how developments must account for affected protected and priority habitats and species.

Biodiversity Action Plans (BAP)

In 1994, the Government produced the UK Biodiversity Action Plan (BAP)⁷⁸, a national strategy for the conservation of biodiversity. This led to the creation of the UK Biodiversity Steering Group, which has listed 1150 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'⁷⁹ 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 2011-2020'⁸⁰ and its 20 'Aichi targets'⁸¹, 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 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.

Neath Port Talbot Local Development Plan (2011-2026)

Neath Port Talbot Local Development Plan⁸² guides the future development of the area, providing a clear vision for the County Borough setting out where, when and how much new development can take place. It details the Strategic Policy SP15 (Biodiversity and Geodiversity) and detailed policies EN6 (Important Biodiversity and Geodiversity Sites) and EN7 (Important Natural Features).

Supplementary Planning Guidance: Biodiversity and Geodiversity (May 2018)

Supplementary Planning Guidance: Biodiversity and Geodiversity⁸³ provides information and guidance setting out the expectations on all development proposals to protect, conserve, enhance and manage important habitats, species and sites of geological interest within Neath Port Talbot. It sets out the measures that will be taken through the planning system to meet the relevant objectives set out in the Local Development Plan.

Neath Port Talbot Biodiversity Duty Plan 2023-2026

The Neath Port Talbot Biodiversity Duty Plan⁸⁴ (the Plan) builds on the achievements of the previous Biodiversity Duty Plan (2020-2023), to safeguard and enhance the borough's unique and diverse habitats and species, foster a deeper connection between residents and their natural surroundings and contribute to the global commitment to biodiversity conservation and sustainability. The actions assigned to the Plan have been drawn up in line with the objectives of the Welsh Government's Nature Recovery Action Plan (NRAP) for Wales. The Plan includes six of the objectives set out in the NRAP needed in Wales to deliver its ambition to reverse the decline in biodiversity, as relevant to the borough. These include requirements such as embedding biodiversity into decision making at all levels, managing and enhancing habitats, improving understanding and monitoring of biodiversity, and putting in place a framework for delivery.