

Appendix 7.1 Nature Conservation Legislation

Contents

International Conventions and Directives	1
National Legislation	2
References	4

This page is intentionally blank.

Appendix 7.1 Nature Conservation Legislation

International Conventions and Directives

Ramsar Convention

The Convention on Wetlands of International Importance was adopted in Iran in February 1971 and came in to force in December 1975. The Convention considers the subject area of wetland conservation and comprises three elements of activity:

- the designation of wetlands of international importance as Ramsar sites;
- the promotion of the sustainable use of all wetlands in the territory of each country; and
- international co-operation with other countries to further the sustainable use of wetlands and their resource.

The Convention on Biological Diversity

The Convention on Biological Diversity was adopted at the Earth Summit in Rio de Janeiro, Brazil in June 1992, and came into force in December 1993. It was the first global treaty to provide a legal framework for biodiversity conservation. The treaty has three primary goals:

- the conservation of biological diversity;
- the sustainable use of its components; and
- the fair and equitable sharing of the benefits arising from the use of genetic resources.

Signatories are required to create and enforce national strategies and action plans to conserve, protect and enhance biological diversity. The UK Government ratified the Convention and published the UK Biodiversity Action Plan (UKBAP) in 1994, and to compliment the UKBAP, separate biodiversity strategies for each of the devolved governments have been subsequently developed including the Scottish Biodiversity Strategy, launched in 2004.

The Bern Convention

The requirements of the Convention on the Conservation of European Wildlife and Natural Habitats (the Bern Convention) came into force in 1982. The Convention requires Member States to ensure the conservation and protection of wild plant and animal species that are listed within the Convention which number over 500 wild plant species and more than 1000 wild animal species. These requirements are implemented in UK law through the Wildlife and Countryside Act 1981 (as amended).

The Bonn Convention on Conservation of Migratory Species of Wild Animals

The aim of the convention in respect to migratory species is to achieve their effective management across national or jurisdictional boundaries. Within the UK, the convention is enacted by the Environmental Protection Act 1990.

The Habitats Directive (92/43/EEC)

The EU Directive (92/43/EEC) on the Conservation of Natural Habitats and of Wild Fauna and Flora (the Habitats Directive, 1992) is the mechanism by which the requirements of the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) are met. The Directive requires Member States to implement a range of measures for the protection and monitoring of habitats and species. The focus of the Directive is to promote the maintenance of biodiversity by requiring Member States to take measures to maintain or restore natural habitats and wild species at a favourable conservation status, introducing a requirement for robust protection of habitats and species of European importance. Annex I of the Directive lists

189 habitats; Annex II lists 788 species which together with habitats are afforded protection through a network of designated sites (Special Areas of Conservation (SAC)) which along with Special Protected Areas (SPAs) (designated under the Birds Directive – see below) form a network of protected areas known as Natura 2000.

The Birds Directive (79/409/EEC)

The European Union (EU) Directive on the Conservation of Wild Birds (79/409/EEC) was adopted in 1979 and is the primary mechanism for delivering the EU's obligations under the CBD, the Ramsar and Bonn Conventions. Collectively, the Birds and Habitats Directives require Member States to take action in order to protect all bird species and their habitats which includes the designation of Special Protection Areas (SPAs) in respect to species listed on Annex I of the Directive.

Water Framework Directive (WFD) (2000/60/EC)

The WFD came into force in December 2000 and requires that all inland and coastal watercourses in Europe do not deteriorate from their current condition and reach at least 'good' ecological status by 2015 with the exception of heavily modified or artificial waterways which must reach 'good' ecological potential.

EC Freshwater Fish Directive (2006/44/EC)

The aim of the Freshwater Fish Directive is to protect freshwater bodies identified by Member States as waters suitable for sustaining fish populations. Member States are required to classify waters as cyprinid or salmonid and set physical and chemical water quality objectives. It should be noted that this Directive will be repealed in 2013 by the EC Water Framework Directive when waters currently designated under the Freshwater Fish Directive will become protected areas under the Water Framework Directive.

The Agreement on the Conservation of Populations of European Bats (Eurobats)

The agreement on the conservation of populations of European bats was concluded in 1991 and came into force in 1994 through the Convention on Migratory Species of Wild Animals. The agreement aims to protect all 45 species of bats identified in Europe through legislation, education, conservation measures and international co-operation as it is acknowledged that endangered migratory-species can only be adequately protected only if measures are carried out over the entire range of the species.

National Legislation

The Wildlife and Countryside Act

The Wildlife and Countryside Act 1981 (as amended) is the principle mechanism for wildlife protection in the UK. Schedule 1 of the Act lists bird species that are afforded special protection while Schedules 4-6 afford protection to various wild animal species from injury, killing or disturbance. Schedule 8 of the Act confers protection to certain plant species and legalised the spread of non-native invasive plant species. The principal designation established under the Act is the citation of Sites of Special Scientific Interest (SSSI).

The Wildlife and Natural Environment (Scotland) Act (WANE)

The WANE Act was passed by the Scottish Parliament in March 2011 and gained Royal Assent in April 2011. The principal mechanism of the Act was to modernise legislation with regards to wildlife and the natural environment and make it more efficient, effective and proportionate. The key areas of change relevant to nature conservation are:

- to ensure badger licensing legislation is consistent with that for other protected mammal species;
- control, contain and eradicate invasive non-native flora and fauna;
- improve the administration of species licensing with powers to issue licences being transferred to Scottish Natural Heritage (SNH) from the Scottish Government;
- to abolish the Areas of Special Protection designation; and

- to improve Sites of SSSI legislation.

The Act also empowers SNH to issue restoration notices requiring action to be undertaken by the responsible party to restore damage to a SSSI.

The Conservation (Natural Habitats &c.) Regulations

The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) transpose the Habitats Directive into UK domestic law. The Regulations came into force in October 1994 and have been subsequently amended since this date (most notably in 1997). The Regulations allow for the designation and protection of 'European sites and species whilst making it an offence (subject to certain exceptions) to deliberately capture, kill, disturb, or trade in the animals listed in Schedule 2 of the Regulations, or pick, collect, cut, uproot, destroy, or trade in the plants listed in Schedule 4. However, the above actions can be legalised through the application and award of licences administered by SNH under the WANE Act subject to the satisfaction of three licencing tests.

Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act

This Act came into force in 2003 and affords protection to salmon and freshwater fisheries by requiring planning authorities to adhere to a number of orders as part of their statutory role. Under the Act, any person shall be guilty of an offence who knowingly takes, injures or destroys; places any device or engine for the purpose of obstructing the passage of, any smolt, parr, salmon fry or alevin; knowingly injures or disturbs any salmon spawn; or disturbs any spawning bed or any bank or shallow in which the spawn of salmon may be.

Nature Conservation (Scotland) Act

The Nature Conservation (Scotland) Act 2004 came into force in November 2004. The Act contains five parts and seven schedules and places duties on public bodies in relation to biodiversity conservation, increasing protection for Sites of Special Scientific Interest (SSSI), makes amendments to the legislation on Nature Conservation Orders; provides for Land Management Orders for SSSIs and associated land; strengthens wildlife enforcement legislation; and requires the preparation of a Scottish Fossil Code.

Protection of Badgers Act

Under the Protection of Badgers Act, badgers are legally protected from intentional cruelty and from the results of lawful human activities such as development. The Protection of Badgers Act consolidates all previous legislation including the Badgers Act 1973 (as amended) and the Badgers (Further Protection) Act 1991. Badgers are also given protection from killing or taking by certain means under Schedule 6 of the WCA 1981 (as amended). Under the legislation, badgers are afforded protection from wilful or attempted killing, injuring and interference with the badgers' sett. The Act defines a badger sett as 'any structure or place which displays signs indicating current use by a badger'.

References

Secretariat of the Agreement on the Conservation of Populations of European Bats. (1994). Agreement on the Conservation of Populations of European Bats (EUROBATS). [online]. Available at: <http://www.eurobats.org/>. Accessed January 2012.

The Council of Europe. (1979). The Convention on the Conservation of European Wildlife & Natural Habitats (the Bern Convention). [online]. Available at: http://www.coe.int/t/dg4/cultureheritage/nature/Bern/default_en.asp. Accessed July 2012.

The European Commission. (1979). Council Directive (79/409/EEC): The Conservation of Wild Birds. [online]. Available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1979:103:0001:005:EN:HTML>. Accessed July 2012.

The European Commission. (1992). Council Directive (92/43/EEC): The Conservation of Natural Habitats and Wild Flora and Fauna. [online]. Available at: <http://www.eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992L0043:EN:HTML>. Accessed January 2012.

The European Commission. (2000). Council Directive (200/60/EC): The Water Framework Directive. [online]. Available at: http://ec.europa.eu/environment/water/water-framework/index_en.html. Accessed July 2012.

The European Commission. (2006). Council Directive (2006/44/EU): The Quality of Fresh Waters Needing Protection or Improvement in Order to Support Fish Life (The Freshwater Fish directive). [online]. Available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:264:0020:0031:EN:pdf>. Accessed July 2012.

The International Community. (1979). The Ramsar Convention. [online]. Available at: <http://www.ramsar.org/>. Accessed January 2012.

The International Community. (1992). The Convention on Biological Diversity. [online]. Available at: <http://www.cbd.int/convention>. Accessed January 2012.

The Scottish Government. (2004). Nature Conservation (Scotland) Act. [online]. Available at: <http://www.legislation.gov.uk/asp/2004/6/contents>. Accessed July 2012.

The Scottish Government. (2011). The Wildlife and Natural Environment (Scotland) Act. [online]. Available at: <http://www.legislation.gov.uk/asp/2011/6/contents/enacted>. Accessed July 2012.

The Secretariat of the Convention on Migratory Species. (1979). The Conservation of Migratory Species of Wild Animals (the Bonn Convention). [online]. Available at: <http://www.cms.int>. Accessed July 2012.

The UK Government. (1881). The Wildlife and Countryside Act. [online]. Available at: <http://www.legislation.gov.uk/ukpga/1981/69>. Accessed July 2012.

The UK Government. (1992). The Protection of Badgers Act. [online]. Available at: <http://www.legislation.gov.uk/ukpga/1992/51/contents>. Accessed July 2012.

The UK Government. (1994). The Conservation (Natural Habitats, & c.) Regulations. [online]. Available at: <http://www.legislation.gov.uk/uksi/1994/2716/contents/made>. Accessed July 2012.

The UK Government. (2003). The Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act. [online]. Available at: <http://www.legislation.gov.uk/asp/2003/15/contents>. Accessed July 2012.