



ASSOCIATION OF
Local Government Ecologists

The Biodiversity Duty

Mike Oxford

ALGE Project Officer

The Natural Environment and Rural Communities Act 2006

Section 40:

“Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity”

Section 41

List of habitats and species of principal importance for biodiversity

After 11 Years ... is it still being applied?

What say all of you?

Primary Legislation

National Parks and Access to the Countryside Act 1949

Forestry Act 1967

Countryside Act 1968

Forestry Act 1979

Norfolk and Suffolk Broads Act 1988

Town and Country Planning Act 1990

Natural Heritage (Scotland) Act 1991

Water Industry Act 1991

Land Drainage Act 1991 + 1995

Protection of Badgers Act 1992

Environment Act 1995

Countryside And Rights of Way Act 2000

Countryside (Scotland) Act 1967

Conservation of Seals Act 1970

Wildlife and Countryside Act 1981

Environmental Protection Act 1990

Planning & Compensation Act 1991

Deer Act 1991

Water Resources Act 1991

Sea Fisheries (Wildlife Cons) Act

Land Drainage Act 1994

Wild Mammals Protection Act 1996

Local Government Act 2000

Secondary Legislation

The Forestry (Felling of Trees) Regulations 1979, S.I. 1979 No.791

The Forestry (Exceptions from Restrictions of Felling) Regulations 1979, S.I. No. 792

Wildlife and Countryside (Registration to Sell etc. Certain Dead Wild Birds) Regulations 1982; S.I. 1982 No 1219

Wildlife and Countryside (Ringing of Certain Birds) Regulations 1982, S.I. 1982 No 1220

Wildlife and Countryside (Registration and Ringing of Certain Captive Birds) Regulations 1982, S.I. 1982

Wildlife and Countryside (Claims for Compensation under section 30) Regulations 1982, S.I. 1982 No 1346

The Deer (Close Seasons) (Scotland) Order 1984, S.I. 1984 No 76

The Deer (Firearms) (Scotland) Order 1985, S.I. 1985 No 1168

The Environmental Assessment (Afforestation) Regulations 1988, S.I. 1988 No 1207

The Conservation of Seals (Common Seals) (Shetland Islands Area) Order 1991, S.I. 1991 No 2638

The Conservation of Seals (England) Order 1993, S.I. 1993 No 2876

The Conservation (Natural Habitats &c.) Regulations 1994, S.I. 1994 No 2716

List of Wild Birds (Sundays) Orders

List of Orders establishing Areas of Special Protection for Birds

List of Orders designating Environmentally Sensitive Areas.

The Hedgerow Regulations 1997, S.I. 1997 No 1160

The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999,

Legislation we probably use

- National Parks & Countryside Act 1949
- Wildlife and Countryside Act 1981 (WCA)
- The Protection of Badgers Act 1992
- Conservation (Natural Habitats) Regulations 1994
- Hedgerow Regulations 1997
- Impact Assessment Regulations 1999
- Countryside and Rights of Way Act 2000 (CRoW)
- Natural Environment and Rural Communities Act (2006)

The Law Commission's review of Wildlife Law

Nicholas Paines QC Law Commissioner

To review the law on the management and welfare of wildlife in England and Wales and to make recommendations for its simplification and modernisation.

Concentrated on species not habitats

Main Recommendations

- A single statute containing all the legislation on protection of species
- A single licensing regime operated by the Secretary of State and Welsh Ministers
- No substantive change to levels of protection of species unless required by EU/international law
- Preserving existing regulatory structures where possible

Also

- Higher maximum sentences for serious cases of wildlife crime
- Civil sanctions available in addition (for less serious cases)
- New offence of knowingly causing/ permitting a person to commit a wildlife crime

So far So Good

Then

23rd June

Brexit !

FREETHS



BREXIT AND NATURAL ENVIRONMENT LAW

Penny Simpson
Partner
Planning & Environment
Freeths LLP
8 November 2016

Answers not options...

Natural Environment legislation: short term future

- In the short-term, no significant changes
- Brexit Day: European Communities Act 1972 repealed
- “Great Repeal Bill” needed to:
 - give continuing effect to existing EU-derived domestic legislation (eg Conservation of Habitats & Species Regulations 2010)
 - make necessary legislative changes to deal with references to EU law / EU institutions
 - give effect to European Regulations

Natural Environment legislation: long term future

- PM's statements indicate we will not remain subject to the Court of Justice / EU law
- Wild Birds / Habitats Directive in weaker position than other EU environmental law:
 - no trade incentive for compliance
 - compliance not a requirement of the “Norway model”
- Conclusion: no likely ongoing legal requirement to comply with the nature Directives

International Law

- Approx 40 environmental conventions ratified
- International law requires compliance
- But far less effective enforcement than for EU law
- No automatic direct effect in our national courts
- But pressure on Govt not to breach international law

Caselaw influence

- European Court caselaw - huge influence
 - eg “Likely significant effect”
 - eg “mitigation” vs “compensation”
- The key “unknown”
- From Brexit Day = highly unlikely to be bound by Court of Justice
- Post B-Day CJEU decisions? No likely influence
- Pre B-Day CJEU decisions? No longer binding, but persuasive?
- Pre B-Day domestic decisions based on CJEU decisions: binding...?



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ALGE Annual Conference 8th November

***BREXIT
RISKS?
OPPORTUNITIES?
ACTION?***

David Tyldesley FRTPI FCIEEM FRSA

Lot of uncertainty but

We expect all EU environmental legislation to still be in place on day 1 post Brexit

It will then be scrutinised for repeal / revocation or amendment as necessary

So we should prepare for the process of examination – now.

SCENARIOS

Focus on the Habitats and Species Regulations which implement the Nature (Birds and Habitats) Directives

But also think about EIA and possibly SEA Regulations because assessments often overlap

SCENARIO 1

No change at all

Is this likely to be feasible?

Can we argue such a case?

What are the pitfalls?

What would be the influence of CJEU?

Do we simply ignore references to EC / EU for example in designation processes?

SCENARIO 2

Retain but improve where change would be better

What improvement opportunities would we want to concentrate on?

What are the pitfalls?

How can ALGE influence change?

SCENARIO 3

Repeal all EU nature legislation – rely on international obligations

What would be the advantages?

What are the pitfalls?

What would we put in place and how?

Scope and adequacy of ‘domestic’ nature conservation legislation and policy.



A Bill for Nature's Recovery?

Stephen Trotter CEnv MCIEEM

Director, The Wildlife Trusts England



Protecting **Wildlife** for the Future

A legal driver for nature's *recovery*?



A NATURE AND WELLBEING ACT

A GREEN PAPER FROM THE WILDLIFE TRUSTS AND THE RSPB



A Nature and Wellbeing Act for

WILDLIFE IN...



NEIGHBOURHOODS

map, protect and create areas for nature (roads, parks, streets etc) via the planning system to local ecological networks



WALKING DISTANCE

call for everyone to live no more than 15 minute walk from a natural space



SCHOOLS

a proposed amendment to Section 76 of the Education Act to make caring for nature a key purpose of schooling



HEALTHCARE

help make access to nature and wild places part of preventative and treatment-based healthcare



RECOVERY

set new targets for increased wildlife and raise the nature baseline. For example a 10% increase in the species watchlist indicator



PERPETUITY

secure our existing wildlife provision, laws remain strong and continue to defend threatened species and habitats from harm



A NEW ENVIRONMENTAL WATCHDOG

create an Office of Environmental Responsibility in government to ensure that targets for recovery are met



What do we really really want?

Legislation that covers:

- Net gain for biodiversity
- The Lawton principles
- Natural capital
- Ecosystem Services
- The Defra 25 year natural environment plan
- Human well being

Expert
ecological
consultancy
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services

Protecting Wild Animals, Plants & their Habitats

The ecological consultant's perspective

by

Dr Tim Hounsome CEcol MCIEEM




biocensus

Summary

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- The reform of the current legislation is welcome and overdue
- New legislation needs to recognise developers and a major group that would have to deal with it
- It would be good to make it easier to bring successful prosecutions
- Dynamic Schedules would be welcomed
- Recognition of the difference between individual protection and population protection is needed

