

Appendix 9.1 Biodiversity Legislative Framework and Guidance

The Conservation of Habitats and Species Regulations 2017 (as amended)

The Conservation of Habitats and Species Regulations 2017 (as amended) consolidate all the various amendments made to the Conservation (Natural Habitats, &c.) Regulations 1994 in respect of England and Wales. The 1994 Regulations transposed Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (EC Habitats Directive) into national law.

The Regulations place duty upon the relevant authority of the UK government to identify sites which are of importance to the habitats and species listed in Annexes I and II of the Habitats Directive. Those sites which meet the criteria are, in conjunction with the European Commission, designated as Sites of Community Importance, which are subsequently identified as Special Areas of Conservation (SAC) by the European Union member states. The regulations also place a duty upon the UK government to maintain a register of European protected sites designated as a result of EC Directive 79/409/EEC on the Conservation of Wild Birds (The Birds Directive). These sites are termed Special Protection Areas (SPA) and, in conjunction with SACs, form a network of sites known as Natura 2000.

The Regulations make it an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade animals listed in Schedule 2, or pick, collect, cut, uproot, destroy, or trade 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 is satisfied that there are no satisfactory alternatives and that such actions will have no detrimental effect on wild populations of the species concerned.

Natural Environment and Rural Communities Act (NERC) 2006

The Natural Environment and Rural Communities (NERC) Act 2006 requires public bodies, including local authorities, 'to have regard to the conservation of biodiversity in England' when carrying out their normal functions. Section 41 of this Act lists of habitats and species of 'principal importance to biodiversity within England', also known as S41 habitats and species of 'principal importance to biodiversity'. The list acts as an aid to guide public bodies in implementing their duty. The enhancements recommended within the recommendations section of this report illustrate ways in which this Biodiversity Duty can be met.

The Countryside and Rights of Way (CROW) Act 2000

The CROW Act, introduced in England in 2000, amends and strengthens existing wildlife legislation detailed in the WCA. It places a duty on government departments to have regard for biodiversity and provides increased powers for the protection and maintenance of SSSIs. The Act also contains lists of habitats and species (Section 74) for which conservation measures should be promoted, in accordance with the recommendations of the Convention on Biological Diversity (Rio Earth Summit) 1992.

The Wildlife and Countryside Act (WCA) 1981 (as amended)

The WCA, as amended, consolidates and amends pre-existing national wildlife legislation to implement the Bern Convention and the Birds Directive. It complements the Conservation of Habitats and Species Regulations 2010 (as amended) offering protection to a wider range of species. The Act also provides for the designation and protection of national conservation sites of value for their floral, faunal or geological features, termed Sites of Special Scientific Interest (SSSIs). Schedules of the Act provide lists of protected flora and fauna species and detail the possible offences that apply to these species. All relevant species-specific legislation is detailed later in this Appendix.

Hedgerow Regulations 1997

The Hedgerow Regulations protects hedgerows in England and Wales through designation of 'important' hedgerows, stating prohibited and permitted work, what constitutes an offence and when a hedgerow must be replaced. The term hedgerow in these regulations excludes those within, or marking the boundary of, the curtilage of a dwelling-house.

Highways England (2019). Design Manual for Roads and Bridges (DMRB): LA 118 Biodiversity design. Volume 10: Section 4, Part 1.

This document provides principles for the biodiversity design and ecological survey for the construction, improvement and maintenance of motorways and all-purpose trunk roads. This document supersedes the following documents, which are withdrawn:

- 1) Volume 10, Section 3:
 - a) Part 1, HA 67/93 The Wildflower Handbook.
- 2) Volume 10, Section 4:
 - a) Part 1, HA 84/01 Nature Conservation and Biodiversity;
 - b) Part 2 HA 59/92 Mitigating Effects on Badgers;
 - c) Part 3 HA 80/99 Nature Conservation Advice in Relation to Bats;
 - d) Part 4 HA 81/99 Nature Conservation Advice in Relation to Otters;
 - e) Part 5 HA 97/01 Nature Conservation Advice in Relation to Dormice;
 - f) Part 6 HA 98/01 Nature Conservation Advice in Relation to Amphibians;
 - g) Part 7 HA 116/05 Part 4 Nature Conservation Advice in Relation to Reptiles and Roads;
- 3) IAN 116/08 Nature conservation advice in relation to bats;
- 4) IAN 116/08 (W) Nature Conservation Advice in relation to Bats

This full document has been re-written to make it compliant with the new Highways England drafting rules.

Highways England (2019). Design Manual for Roads and Bridges (DMRB): LA 104 Environmental assessment and monitoring. Volume 11, Section 2, Part 4.

Environmental assessment is the process by which information about environmental effects is collected, assessed and used to inform decision-making. This includes Environmental Impact Assessment (EIA) and non-statutory environmental assessment. The assessment of environmental effects, reporting of assessments and monitoring of significant adverse environmental effects, aligns with the requirements of the Directive 2011/92/EU as amended by 2014/52/EU [Ref 4.N] (hereafter referred to as the EIA Directive).

This document sets out the requirements for environmental assessment of projects, including reporting and monitoring of significant adverse environmental effects.

This document updates previous environmental assessment advice contained in Volume 11 Section 2 (HA 205/08 and HD 48/08) of the DMRB, consolidates information contained in IAN 125/15 and IAN 133/10 and makes provision for requirements outlined under EU Directive 2011/92/EU as amended by 2014/52/EU [Ref 4.N].

Chartered Institute of Ecology and Environmental Management (CIEEM) (2018). Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine version 1.1. Chartered Institute of Ecology and Environmental Management, Winchester.

The *Guidelines for Ecological Impact Assessment in the UK and Ireland* (2018) combines the *Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater and Coastal*, 2nd edition (2016) and the *Guidelines for Ecological Impact Assessment in Britain and Ireland: Marine and Coastal* (2010).

The aim of the Guidelines is to:

- promote good practice;
- promote a scientifically rigorous and transparent approach to Ecological Impact Assessment (EcIA);
- provide a common framework to EcIA in order to promote better communication and closer cooperation between ecologists involved in EcIA; and
- provide decision-makers with relevant information about the likely ecological effects of a project.

Biodiversity: Code of practice for planning and development published by the British Standards Institute (BS 42020:2013) cites the CIEEM EcIA Guidelines as the acknowledged reference on ecological impact assessment. The Guidelines are consistent with the British Standard on Biodiversity, which provides recommendations on topics such as professional practice, proportionality, pre-application discussions, ecological surveys, adequacy of ecological information, reporting and monitoring.

The following organisations have been the main contributors to these Guidelines: Department of Agriculture, Environment and Rural Affairs, Scottish Natural Heritage, Natural Resources Wales, Chartered Institution of Water and Environmental Management (CIWEM), Institute of Environmental Management and Assessment (IEMA), Scottish Environment Protection Agency (SEPA), The Environment Agency, Natural England, The Marine Management Organisation (MMO), Marine Scotland Science, The Wildlife Trust, RSPB, ALGE.

Collins, J. (ed.) (2016). Bat Surveys for Professional Ecologists: Good Practice Guidelines (3rd edn). The Bat Conservation Trust, London.

This publication aims to provide good practice guidelines in relation to designing and undertaking bat surveys; analysing the data collected during those surveys; and writing survey reports. The guidelines relate to professional bat surveys carried out to assess how proposed activities may impact bats. The guidelines aim to raise standards and increase the consistency of this type of work and ultimately lead to a greater understanding of bats and improvements in their protection and conservation.

The guidelines should be interpreted and adapted on a case-by-case basis according to site-specific factors and the professional judgement of an experienced ecologist. Where examples are used in the guidelines, they are descriptive rather than prescriptive.

The guidelines do not aim to either override or replace knowledge and experience. It is accepted that departures from the guidelines are often appropriate. However, an ecologist should provide documentary evidence of a) their expertise in making this judgement and b) the ecological rationale behind the judgement.

UK Post-2010 Biodiversity Framework (2012)

The UK Post-2010 Biodiversity Framework covers the period 2011 to 2020 and replaces the UK Biodiversity Action Plan (UKBAP) 1994 – 2010. Its aim is to address the underlying causes of biodiversity loss and improve and enhance biodiversity and ecosystem services. The UKBAP contains a list of Priority Habitats and Species of conservation concern in the UK, and outlines biodiversity initiatives designed to enhance their conservation status. The UKBAP Priority Habitats and Species background information is still widely used at country level, as a material consideration in the planning process and is used to help draw up statutory lists of habitats and species of 'principal importance to biodiversity within England', as required under Section 41 of the NERC Act 2006. Local BAPs (LBAPs) are also still widely used which complement the UKBAP targeted towards species of conservation concern characteristic of each county.

Environment Bill (2019)

During 2019 the Government produced the Environment Bill Policy Statement which, when the legislation comes into effect, will legally require developers to ensure habitats for wildlife are enhanced, with a 10% increase in habitat for wildlife compared with the pre-development baseline. This means the Councils across England will have a duty to ensure that any plans or projects provide biodiversity net gains, as opposed to 'no net loss'. Although the legislation is not currently in place, it is expected to become a legal requirement imminently and clients are advised to plan accordingly.