



# Environment Act 2021

## 2021 CHAPTER 30

### PART 6

#### NATURE AND BIODIVERSITY

##### *Biodiversity gain in planning*

#### **98 Biodiversity gain as condition of planning permission**

Schedule 14 makes provision for biodiversity gain to be a condition of planning permission in England.

#### **99 Biodiversity gain in nationally significant infrastructure projects**

Schedule 15 makes provision about biodiversity gain in relation to development consent for nationally significant infrastructure projects.

#### **100 Biodiversity gain site register**

- (1) The Secretary of State may by regulations make provision for and in relation to a register of biodiversity gain sites (“the biodiversity gain site register”).
- (2) A biodiversity gain site is land where—
  - (a) a person is required under a conservation covenant or planning obligation to carry out works for the purpose of habitat enhancement,
  - (b) that or another person is required to maintain the enhancement for at least 30 years after the completion of those works, and
  - (c) for the purposes of Schedule 7A to the Town and Country Planning Act 1990 the enhancement is made available to be allocated (conditionally or unconditionally, and whether for consideration or otherwise) in accordance with the terms of the covenant or obligation to one or more developments for which planning permission is granted.

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- (3) Regulations under this section must provide for the information in the register to be accessible to members of the public.
- (4) Regulations under this section may in particular make provision about—
  - (a) the person who is to establish and maintain the biodiversity gain site register (who may be the Secretary of State, Natural England or another person);
  - (b) circumstances in which land is or is not eligible to be registered;
  - (c) applications to register land in the register;
  - (d) the information to be recorded in relation to any land that is registered;
  - (e) amendments to the register;
  - (f) removal of land from the register;
  - (g) fees payable in respect of any application under the regulations.
- (5) Provision under subsection (4)(c) may in particular include provision about—
  - (a) who is entitled to apply to register land in the biodiversity gain site register;
  - (b) the procedure to be followed in making an application;
  - (c) the information to be provided in respect of an application;
  - (d) how an application is to be determined;
  - (e) appeals against the rejection of an application;
  - (f) financial penalties for the supply of false or misleading information in connection with an application.
- (6) Provision under subsection (4)(d) may in particular require the recording of the following in relation to any land registered in the biodiversity gain site register—
  - (a) the location and area of the land;
  - (b) the works to be carried out on the land and the habitat enhancement to be achieved by them;
  - (c) information about the habitat of the land before the commencement of those works;
  - (d) the person who applied to register the land and (if different) the person by whom the requirement to carry out the works or maintain the habitat enhancement is enforceable;
  - (e) any development to which any of the habitat enhancement has been allocated;
  - (f) the biodiversity value (for the purposes of Schedule 7A to the Town and Country Planning Act 1990 or Schedule 2A to the Planning Act 2008) of any such habitat enhancement in relation to any such development.
- (7) Regulations under this section may amend subsection (2)(b) so as to substitute for the period for the time being specified there a different period of at least 30 years.
- (8) Regulations under this section making provision under subsection (4)(g) or (5)(f) are subject to the affirmative procedure.
- (9) Other regulations under this section are subject to the negative procedure.
- (10) The Secretary of State must keep under review—
  - (a) the supply of land for registration in the biodiversity gain site register;
  - (b) whether the period specified in subsection (2)(b) or in paragraph 9(3) of Schedule 7A to the Town and Country Planning Act 1990 can be increased under subsection (7) or paragraph 9(4) of that Schedule without adversely affecting that supply.

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- (11) In this section “development”, “habitat enhancement”, “planning obligation” and “planning permission” have the same meanings as in Schedule 7A to the Town and Country Planning Act 1990.

## **101 Biodiversity credits**

- (1) The Secretary of State may make arrangements under which a person who is entitled to carry out the development of any land may purchase a credit from the Secretary of State for the purpose of meeting the biodiversity gain objective referred to in Schedule 7A to the Town and Country Planning Act 1990 or Schedule 2A to the Planning Act 2008.
- (2) A credit is to be regarded for the purposes of that Schedule as having such biodiversity value as is determined under the arrangements.
- (3) The arrangements may in particular include arrangements relating to—
- (a) applications to purchase credits;
  - (b) the amount payable in respect of a credit of a given value;
  - (c) proof of purchase;
  - (d) reimbursement for credits purchased for development which is not carried out.
- (4) In determining the amount payable under the arrangements for a credit of a given value the Secretary of State must have regard to the need to determine an amount which does not discourage the registration of land in the biodiversity gain sites register.
- (5) The Secretary of State must publish information about the arrangements, including in particular the amount payable for credits.
- (6) The Secretary of State may use payments received under arrangements under this section for the following purposes (only)—
- (a) carrying out works, or securing the carrying out of works, for the purpose of habitat enhancement (within the meaning of Part 7A of the Town and Country Planning Act 1990) on land in England;
  - (b) purchasing interests in land in England with a view to carrying out works, or securing the carrying out of works, for that purpose;
  - (c) operating or administering the arrangements.
- (7) The references to works in subsection (6) do not include works which the Secretary of State is required to carry out apart from this section by virtue of any enactment.
- (8) The Secretary of State must publish reports relating to the discharge of the Secretary of State’s functions under subsections (1) and (6).
- (9) A report must relate to a period not exceeding a year which—
- (a) in the case of the first report, begins on the date on which Schedule 7A to the Town and Country Planning Act 1990 comes into force in relation to any development (within the meaning of Part 3 of that Act), and
  - (b) in the case of any subsequent report, begins on the day after the last day of the period to which the previous report related.
- (10) A report must set out—
- (a) the total payments received under arrangements under this section in the period to which the report relates,

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- (b) how those payments have been used, and
- (c) where those payments have been used for the purpose of carrying out or securing the carrying out of works for the purpose of habitat enhancement, the projected biodiversity value of the habitat enhancement at such time or times after completion of the works as the Secretary of State considers it appropriate to specify.

*Biodiversity objective and reporting*

**102 General duty to conserve and enhance biodiversity**

- (1) Section 40 of the Natural Environment and Rural Communities Act 2006 (duty to conserve biodiversity) is amended in accordance with subsections (2) to (7).
- (2) In the heading, after “conserve” insert “and enhance”.
- (3) For subsections (A1) and (1) substitute—
  - “(A1) For the purposes of this section “the general biodiversity objective” is the conservation and enhancement of biodiversity in England through the exercise of functions in relation to England.
  - (1) A public authority which has any functions exercisable in relation to England must from time to time consider what action the authority can properly take, consistently with the proper exercise of its functions, to further the general biodiversity objective.
  - (1A) After that consideration the authority must (unless it concludes there is no new action it can properly take)—
    - (a) determine such policies and specific objectives as it considers appropriate for taking action to further the general biodiversity objective, and
    - (b) take such action as it considers appropriate, in the light of those policies and objectives, to further that objective.
  - (1B) The requirements of subsection (1A)(a) may be satisfied (to any extent) by revising any existing policies and specific objectives for taking action to further the general biodiversity objective.
  - (1C) The first consideration required by subsection (1) must be completed by the authority within the period of one year beginning with the day on which section 102 of the Environment Act 2021 comes into force.
  - (1D) Any subsequent consideration required by subsection (1) must be completed no more than five years after the completion of the authority’s previous consideration.
  - (1E) A determination required by subsection (1A)(a) must be made as soon as practicable after the completion of the consideration to which it relates.
  - (1F) Nothing in this section prevents the authority from—
    - (a) determining or revising policies and specific objectives at any time, or
    - (b) taking action to further the general biodiversity objective at any time.”
- (4) In subsection (2) for “subsection (1)” substitute “subsections (1) and (1A)”.

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(5) After subsection (2) insert—

“(2A) In complying with subsections (1) and (1A) the authority must in particular have regard to—

- (a) any relevant local nature recovery strategy, and
- (b) any relevant species conservation strategy or protected site strategy prepared by Natural England.

(2B) The Secretary of State must issue guidance to local planning authorities as to how they are to comply with their duty under subsection (2A)(a) when complying with subsections (1) and (1A) in their capacity as such authorities.

(2C) Guidance under subsection (2B) must be—

- (a) published by the Secretary of State in such manner as the Secretary of State thinks fit,
- (b) kept under review, and
- (c) revised where the Secretary of State considers it appropriate.

(2D) The first guidance under subsection (2B) must be published by the Secretary of State within the period of two years beginning with the day on which section 102 of the Environment Act 2021 comes into force.”

(6) For subsection (3) substitute—

“(3) The action which may be taken by the authority to further the general biodiversity objective includes, in particular, action taken for the purpose of—

- (a) conserving, restoring or otherwise enhancing a population of a particular species, and
- (b) conserving, restoring or otherwise enhancing a particular type of habitat.”

(7) After subsection (5) insert—

“(6) This section has effect in relation to Her Majesty’s Revenue and Customs with the following modifications—

- (a) the omission from subsection (A1) of the words “in England” and “in relation to England”;
- (b) the omission from subsection (1) of the words from “which” to “England”.

(7) In this section references to England include the territorial sea adjacent to England.”

(8) In section 41 of that Act (biodiversity lists and action (England))—

- (a) in subsection (1), after “conserving” insert “or enhancing”;
- (b) in subsection (3) for “and (2)” substitute “and (1A)”.

## **103 Biodiversity reports**

(1) After section 40 of the Natural Environment and Rural Communities Act 2006 insert—

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#### **“40A Biodiversity reports**

- (1) This section applies to—
  - (a) a local authority in England other than a parish council,
  - (b) a local planning authority in England, and
  - (c) a designated authority (see subsection (8)(a)).
- (2) A public authority to which this section applies (“the authority”) must publish biodiversity reports in accordance with this section.
- (3) A biodiversity report so published must contain—
  - (a) a summary of the action which the authority has taken over the period covered by the report for the purpose of complying with its duties under section 40(1) and (1A),
  - (b) a summary of the authority’s plans for complying with those duties over the period of five years following the period covered by the report,
  - (c) any quantitative data required to be included in the report by regulations under subsection (8)(b), and
  - (d) any other information that the authority considers it appropriate to include in the report.
- (4) If the authority is a local planning authority, its biodiversity report must also contain—
  - (a) a summary of the action taken by the authority in carrying out its functions under Schedule 7A to the Town and Country Planning Act 1990 (biodiversity gain as condition of planning permission) over the period covered by the report,
  - (b) information about any biodiversity gains resulting or expected to result from biodiversity gain plans approved by the authority during that period, and
  - (c) a summary of the authority’s plans for carrying out those functions over the five year period following the period covered by the report.
- (5) A biodiversity report—
  - (a) must specify the period covered by the report, and
  - (b) must be published within the period of 12 weeks following the last day of that period.
- (6) The authority’s first biodiversity report must cover a period chosen by the authority which—
  - (a) is no longer than three years, and
  - (b) begins with the day on which the authority first becomes subject to the duty under subsection (2).
- (7) A subsequent biodiversity report made by the authority must cover a period chosen by the authority which—
  - (a) is no longer than five years, and
  - (b) begins with the day after the last day of the period covered by its most recent biodiversity report.

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- (8) The Secretary of State may by regulations—
- (a) provide for specified public authorities, or public authorities of a specified description, to be designated authorities for the purposes of this section;
  - (b) require biodiversity reports to include specified quantitative data relating to biodiversity in any area of land in England in relation to which the authority exercises any functions.

In this subsection “specified” means specified in the regulations.

- (9) Public authorities with no functions exercisable in relation to England may not be designated under subsection (8)(a).
- (10) The power to make regulations under subsection (8) is exercisable by statutory instrument.
- (11) A statutory instrument containing regulations under subsection (8) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) Terms used in this section and section 40 have the same meaning as in that section.”

#### *Local nature recovery strategies*

### **104 Local nature recovery strategies for England**

- (1) There are to be local nature recovery strategies for areas in England.
- (2) Together the local nature recovery strategies are to cover the whole of England.
- (3) The Secretary of State is to determine the areas within England to which individual local nature recovery strategies are to relate.
- (4) The area of a local authority, other than a county council, may not be split between local nature recovery strategies.
- (5) Section 40(2A) of the Natural Environment and Rural Communities Act 2006 (duty to conserve biodiversity) makes provision about the duties of public authorities in relation to local nature recovery strategies.

### **105 Preparation of local nature recovery strategies**

- (1) A local nature recovery strategy for an area (“the strategy area”) is to be prepared and published by the responsible authority.
- (2) The responsible authority for a local nature recovery strategy is such one of the following authorities as is appointed by the Secretary of State—
  - (a) a local authority whose area is, or is within, the strategy area;
  - (b) the Mayor of London;
  - (c) the mayor for the area of a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009;
  - (d) a National Park authority in England;
  - (e) the Broads Authority;

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- (f) Natural England.
- (3) A local nature recovery strategy is to be reviewed and republished from time to time by the responsible authority.
- (4) The Secretary of State may by regulations make provision about the procedure to be followed in the preparation and publication, and review and republication, of local nature recovery strategies.
- (5) Regulations under this section may, for example, include provision—
  - (a) requiring the provision of information by a local authority whose area is, or is within, the strategy area but which is not the responsible authority;
  - (b) for a local nature recovery strategy to be agreed by all of the local authorities whose areas are within the strategy area;
  - (c) for the procedure for reaching such agreement and for the resolution of disagreements (including resolution by the Secretary of State or by a public inquiry);
  - (d) for consultation, including consultation of members of the public;
  - (e) for the times at or after which a local nature recovery strategy is to be reviewed and republished.
- (6) Regulations under this section are subject to the negative procedure.

## **106 Content of local nature recovery strategies**

- (1) A local nature recovery strategy relating to an area (“the strategy area”) is to include—
  - (a) a statement of biodiversity priorities for the strategy area, and
  - (b) a local habitat map for the whole strategy area or two or more local habitat maps which together cover the whole strategy area.
- (2) The statement of biodiversity priorities referred to in subsection (1)(a) is to include—
  - (a) a description of the strategy area and its biodiversity,
  - (b) a description of the opportunities for recovering or enhancing biodiversity, in terms of habitats and species, in the strategy area,
  - (c) the priorities, in terms of habitats and species, for recovering or enhancing biodiversity (taking into account the contribution that recovering or enhancing biodiversity can also make to other environmental benefits), and
  - (d) proposals as to potential measures relating to those priorities.
- (3) A local habitat map referred to in subsection (1)(b) is a map identifying—
  - (a) national conservation sites in the strategy area,
  - (b) any nature reserves in the strategy area provided under section 21 of the National Parks and Access to the Countryside Act 1949, and
  - (c) other areas in the strategy area which in the opinion of the responsible authority—
    - (i) are, or could become, of particular importance for biodiversity, or
    - (ii) are areas where the recovery or enhancement of biodiversity could make a particular contribution to other environmental benefits.
- (4) A local habitat map which does not relate to the whole of the strategy area must relate to the area of one or more local authorities within the strategy area.



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- (5) The Secretary of State may issue guidance as to—
  - (a) information to be included in a local nature recovery strategy pursuant to the requirements in subsections (1) to (3), and
  - (b) any other matters to be included in a local nature recovery strategy.
- (6) A responsible authority must have regard to the guidance when preparing a local nature recovery strategy.
- (7) The Secretary of State must lay before Parliament, and publish, the guidance.

#### **107 Information to be provided by the Secretary of State**

- (1) For the purpose of assisting responsible authorities in their preparation of local nature recovery strategies, the Secretary of State must prepare and publish a national habitat map for England.
- (2) The national habitat map must in particular identify—
  - (a) national conservation sites, and
  - (b) other areas that in the opinion of the Secretary of State are of particular importance for biodiversity.
- (3) The Secretary of State may from time to time review and republish the national habitat map.
- (4) The Secretary of State must inform a responsible authority of any area in the authority's strategy area which falls within subsection (5).
- (5) An area falls within this subsection if in the Secretary of State's opinion—
  - (a) the area could be of greater importance for biodiversity, or is an area where the recovery or enhancement of biodiversity could make a contribution to other environmental benefits, and
  - (b) the area could contribute to the establishment of a network of areas across England for the recovery and enhancement of biodiversity in England as a whole.
- (6) The Secretary of State must provide a responsible authority with any other information—
  - (a) that is held by the Secretary of State, and
  - (b) that the Secretary of State considers might assist the authority in preparing a local nature recovery strategy.

#### **108 Interpretation**

- (1) This section has effect for the purposes of sections 104 to 107.
- (2) "Local authority" means—
  - (a) a county or district council in England;
  - (b) a London borough council;
  - (c) the Common Council of the City of London;
  - (d) the Council of the Isles of Scilly.
- (3) "National conservation site" means—

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- (a) a site of special scientific interest, within the meaning of Part 2 of the Wildlife and Countryside Act 1981;
- (b) a national nature reserve declared in accordance with section 35 of that Act;
- (c) a Ramsar site, within the meaning of section 37A of that Act;
- (d) a marine conservation zone designated under section 116 of the Marine and Coastal Access Act 2009;
- (e) a European site, within the meaning of regulation 8 of the Conservation of Habitats and Species Regulations 2017 ([S.I. 2017/1012](#)).

### *Conservation*

#### **109 Species conservation strategies**

- (1) Natural England may prepare and publish a strategy for improving the conservation status of any species of fauna or flora.
- (2) A strategy under subsection (1) is called a “species conservation strategy”.
- (3) A species conservation strategy must relate to an area (the “strategy area”) consisting of—
  - (a) England, or
  - (b) any part of England.
- (4) A species conservation strategy for a species may in particular—
  - (a) identify areas or features in the strategy area which are of importance to the conservation of the species,
  - (b) identify priorities in relation to the creation or enhancement of habitat for the purpose of improving the conservation status of the species in the strategy area,
  - (c) set out how Natural England proposes to exercise its functions in relation to the species across the whole of the strategy area or in any part of it for the purpose of improving the conservation status of the species in the strategy area,
  - (d) include Natural England’s opinion on the giving by any other public authority of consents or approvals which might affect the conservation status of the species in the strategy area, and
  - (e) include Natural England’s opinion on measures that it would be appropriate to take to avoid, mitigate or compensate for any adverse impact on the conservation status of the species in the strategy area that may arise from a plan, project or other activity.
- (5) Natural England may, from time to time, amend a species conservation strategy.
- (6) A local planning authority in England and any prescribed authority must co-operate with Natural England in the preparation and implementation of a species conservation strategy so far as relevant to the authority’s functions.
- (7) The Secretary of State may give guidance to local planning authorities in England and to prescribed authorities as to how to discharge the duty in subsection (6).
- (8) The Secretary of State must lay before Parliament, and publish, the guidance.

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- (9) A local planning authority in England and any prescribed authority must in the exercise of its functions have regard to a species conservation strategy so far as relevant to its functions.
- (10) In this section—
- “England” includes the territorial sea adjacent to England, which for this purpose does not include—
- (a) any part of the territorial sea adjacent to Wales for the general or residual purposes of the Government of Wales Act 2006 (see section 158 of that Act), or
  - (b) any part of the territorial sea adjacent to Scotland for the general or residual purposes of the Scotland Act 1998 (see section 126 of that Act);
- “local planning authority” means a person who is a local planning authority for the purposes of any provision of Part 3 of the Town and Country Planning Act 1990;
- “prescribed authority” means an authority exercising functions of a public nature in England which is specified for the purposes of this section by regulations made by the Secretary of State.
- (11) Regulations under subsection (10) are subject to the negative procedure.

## **110 Protected site strategies**

- (1) Natural England may prepare and publish a strategy for—
- (a) improving the conservation and management of a protected site, and
  - (b) managing the impact of plans, projects or other activities (wherever undertaken) on the conservation and management of the protected site.
- (2) A strategy under subsection (1) is called a “protected site strategy”.
- (3) A “protected site” means—
- (a) a European site,
  - (b) a site of special scientific interest, or
  - (c) a marine conservation zone,
- to the extent the site or zone is within England.
- (4) A protected site strategy for a protected site may in particular—
- (a) include an assessment of the impact that any plan, project or other activity may have on the conservation or management of the protected site (whether assessed individually or cumulatively with other activities),
  - (b) include Natural England’s opinion on measures that it would be appropriate to take to avoid, mitigate or compensate for any adverse impact on the conservation or management of the protected site that may arise from a plan, project or other activity,
  - (c) identify any plan, project or other activity that Natural England considers is necessary for the purposes of the conservation or management of the protected site, and
  - (d) cover any other matter which Natural England considers is relevant to the conservation or management of the protected site.

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- (5) In preparing a protected site strategy for a protected site, Natural England must consult—
- (a) any local planning authority in England which exercises functions in respect of an area—
    - (i) within which any part of the protected site is located, or
    - (ii) within which a plan, project or other activity that Natural England considers may have an adverse impact on the conservation or management of the protected site is being, or is proposed to be, undertaken,
  - (b) any public authority in England—
    - (i) that is undertaking, or proposing to undertake, a plan, project or other activity that Natural England considers may have an adverse impact on the conservation or management of the protected site,
    - (ii) the consent or approval of which is required in respect of a plan, project or other activity that Natural England considers may have an adverse impact on the conservation or management of the protected site, or
    - (iii) that Natural England considers may otherwise be affected by the strategy,
  - (c) any IFC authority in England which exercises functions in respect of an area—
    - (i) the conservation or management of which Natural England considers may be affected by the strategy, or
    - (ii) the sea fisheries resources of which Natural England considers may be affected by the strategy,
  - (d) the Marine Management Organisation, where—
    - (i) any part of the protected site is within the MMO's area, or
    - (ii) Natural England considers any part of the MMO's area may otherwise be affected by the strategy,
  - (e) the Environment Agency,
  - (f) the Secretary of State, and
  - (g) any other person that Natural England considers should be consulted in respect of the strategy, including the general public or any section of it.
- (6) In subsections (4) and (5), a reference to an adverse impact on the conservation or management of a protected site includes—
- (a) in relation to a European site, anything which adversely affects the integrity of the site,
  - (b) in relation to a site of special scientific interest, anything which is likely to adversely affect the flora, fauna or geological or physiographical features by reason of which the site is of special interest,
  - (c) in relation to a marine conservation zone, anything which hinders the conservation objectives stated for the zone pursuant to section 117(2) of the Marine and Coastal Access Act 2009, and
  - (d) any other thing which causes deterioration of natural habitats and the habitats of species as well as disturbance of the species in the protected site, in so far as such disturbance could be significant in relation to the conservation or management of the protected site.

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- (7) A person whom Natural England consults under subsection (5)(a) to (e) must cooperate with Natural England in the preparation of a protected site strategy so far as relevant to the person’s functions.
- (8) The Secretary of State may give guidance as to how to discharge the duty in subsection (7).
- (9) The Secretary of State must lay before Parliament, and publish, the guidance.
- (10) A person must have regard to a protected site strategy so far as relevant to any duty which the person has under—
  - (a) the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012),
  - (b) sections 28G to 28I of the Wildlife and Countryside Act 1981, or
  - (c) sections 125 to 128 of the Marine and Coastal Access Act 2009.
- (11) Natural England may, from time to time, amend a protected site strategy.
- (12) The duty to consult a person under subsection (5) also applies when Natural England amends a protected site strategy under subsection (11) so far as the amendment is relevant to the person’s functions.
- (13) In this section—
  - “England” has the meaning given in section 109;
  - “European site” has the meaning given in regulation 8 of the Conservation of Habitats and Species Regulations 2017;
  - “IFC authority” means an inshore fisheries and conservation authority created under section 150 of the Marine and Coastal Access Act 2009;
  - “local planning authority” has the meaning given in section 109;
  - “marine conservation zone” means an area designated as a marine conservation zone under section 116(1) of the Marine and Coastal Access Act 2009;
  - “MMO’s area” has the meaning given in section 2(12) of the Marine and Coastal Access Act 2009;
  - “public authority” has the meaning given in section 40(4) of the Natural Environment and Rural Communities Act 2006;
  - “sea fisheries resources” has the meaning given in section 153(10) of the Marine and Coastal Access Act 2009;
  - “site of special scientific interest” means an area notified under section 28(1) of the Wildlife and Countryside Act 1981.

## **111 Wildlife conservation: licences**

- (1) In section 10 of the Wildlife and Countryside Act 1981 (exceptions to section 9 of that Act), in subsection (1)—
  - (a) in paragraph (a), omit the final “or”;
  - (b) at the end insert “or
  - (c) anything done in relation to an animal of any species pursuant to a licence granted by Natural England under regulation 55 of the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012) in respect of an animal or animals of that species”.

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- (2) In section 16 of that Act (power to grant licences), in subsection (3)—
  - (a) in paragraph (h), omit the final “or”;
  - (b) at the end insert “or
    - (j) in England, for reasons of overriding public interest”.
- (3) In that section, after subsection (3A) insert—
 

“(3B) In England, the appropriate authority shall not grant a licence under subsection (3) unless it is satisfied—

  - (a) that there is no other satisfactory solution, and
  - (b) that the grant of the licence is not detrimental to the survival of any population of the species of animal or plant to which the licence relates.”
- (4) In that section, in subsections (5A)(c) and (6)(b), after “two years,” insert “or in the case of a licence granted by Natural England five years,”.
- (5) In that section, in subsection (9)(c), after “to (e)” insert “or (j)”.
- (6) In the Conservation of Habitats and Species Regulations 2017 ([S.I. 2017/1012](#)), in regulation 55(10), for “two years” substitute—
  - “(a) five years, in the case of a licence granted by Natural England, or
  - (b) two years, in any other case.”

### *Habitats Regulations*

#### **112 Habitats Regulations: power to amend general duties**

- (1) The Secretary of State may by regulations amend the Conservation of Habitats and Species Regulations 2017 ([S.I. 2017/1012](#)) (the “Habitats Regulations”), as they apply in relation to England, for the purposes in subsection (2).
- (2) The purposes are—
  - (a) to require persons within regulation 9(1) of the Habitats Regulations to exercise functions to which that regulation applies—
    - (i) to comply with requirements imposed by regulations under this section, or
    - (ii) to further objectives specified in regulations under this section, instead of exercising them to secure compliance with the requirements of the Directives;
  - (b) to require persons within regulation 9(3) of the Habitats Regulations, when exercising functions to which that regulation applies, to have regard to matters specified by regulations under this section instead of the requirements of the Directives.
- (3) The regulations may impose requirements, or specify objectives or matters, relating to—
  - (a) targets in respect of biodiversity set by regulations under section 1 or 3;
  - (b) improvements to the natural environment which relate to biodiversity and are set out in an environmental improvement plan.

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- (4) The regulations may impose any other requirements, or specify any other objectives or matters, relating to the conservation or enhancement of biodiversity that the Secretary of State considers appropriate.
- (5) Regulations under this section may also, in connection with provision made for the purposes in subsection (2), amend other provisions of the Habitats Regulations, as they apply in relation to England, which refer to requirements, objectives or provisions of the Directives.
- (6) In making regulations under this section the Secretary of State must have regard to the particular importance of furthering the conservation and enhancement of biodiversity.
- (7) The Secretary of State may make regulations under this section only if satisfied that the regulations do not reduce the level of environmental protection provided by the Habitats Regulations.
- (8) Before making regulations under this section the Secretary of State must lay before Parliament, and publish, a statement explaining why the Secretary of State is satisfied as mentioned in subsection (7).
- (9) Before making regulations under this section the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (10) Regulations under this section may not come into force before 1 February 2023.
- (11) In this section—
  - “the Directives” has the same meaning as in the Habitats Regulations (see regulation 3(1));
  - “England” includes the territorial sea adjacent to England, which for this purpose does not include—
    - (a) any part of the territorial sea adjacent to Wales for the general or residual purposes of the Government of Wales Act 2006 (see section 158 of that Act), or
    - (b) any part of the territorial sea adjacent to Scotland for the general or residual purposes of the Scotland Act 1998 (see section 126 of that Act);
  - “environmental improvement plan” has the same meaning as in Part 1.
- (12) Regulations under this section are subject to the affirmative procedure.

### **113 Habitats Regulations: power to amend Part 6**

- (1) The Secretary of State may by regulations amend Part 6 of the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012) (the “Habitats Regulations”) (assessment of plans and projects) as they apply in relation to England.
- (2) In making regulations under this section the Secretary of State must have regard to the particular importance of furthering the conservation and enhancement of biodiversity.
- (3) The Secretary of State may make regulations under this section only if satisfied that the regulations do not reduce the level of environmental protection provided by the Habitats Regulations.
- (4) Before making regulations under this section the Secretary of State must lay before Parliament, and publish, a statement explaining why the Secretary of State is satisfied as mentioned in subsection (3).

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- (5) Before making regulations under this section the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (6) In this section “England” has the same meaning as in section 112.
- (7) Regulations under this section are subject to the affirmative procedure.

### *Tree felling and planting*

#### **114 Controlling the felling of trees in England**

Schedule 16 makes amendments to Part 2 of the Forestry Act 1967 in relation to the enforcement of the power to control the felling of trees in England.

#### **115 Local highway authorities in England to consult before felling street trees**

After section 96 of the Highways Act 1980 insert—

##### **“96A Duty of local highway authorities in England to consult before felling street trees**

- (1) A local highway authority in England must consult members of the public before felling a tree on an urban road (a “street tree”).
- (2) A local highway authority must have regard to any guidance given by the Secretary of State to local highway authorities about how to discharge the duty under subsection (1).
- (3) The duty under subsection (1) does not apply in a case where—
  - (a) the street tree has a diameter not exceeding 8 centimetres (measured over the bark, at a point 1.3 metres above ground level),
  - (b) the authority considers that the street tree is dead,
  - (c) the authority considers that the street tree is required to be felled—
    - (i) by virtue of an order under the Plant Health Act 1967, or
    - (ii) under any enactment on the basis that the tree is dangerous,
  - (d) the authority considers that the street tree is required to be felled in order to comply with—
    - (i) a duty to make reasonable adjustments in the Equality Act 2010 because the tree is causing an obstruction (see section 20 of that Act), or
    - (ii) a duty in section 29 of that Act (prohibitions on discrimination etc in the provision of services) because the tree is causing an obstruction, or
  - (e) the felling of the street tree is required for the purpose of carrying out development authorised by—
    - (i) planning permission granted under section 70, 73, 76D, 77 or 79 of the Town and Country Planning Act 1990, or
    - (ii) outline planning permission granted under section 92 of that Act.



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- (4) In subsection (1) “urban road” means a highway, other than a trunk road or classified road, which—
- (a) is a restricted road for the purposes of section 81 of the Road Traffic Regulation Act 1984 (30 miles per hour speed limit),
  - (b) is subject to an order made by virtue of section 84(1)(a) of that Act imposing a speed limit not exceeding 40 miles per hour, or
  - (c) is otherwise a street in an urban area.”

*Use of forest risk commodities in commercial activity*

**116 Use of forest risk commodities in commercial activity**

- (1) In Schedule 17—
- (a) Part 1 makes provision about the use of forest risk commodities in commercial activity,
  - (b) Part 2 makes provision about enforcement, and
  - (c) Part 3 contains general provisions.
- (2) Regulations under the following provisions of Schedule 17 are subject to the affirmative procedure—
- (a) paragraph 1;
  - (b) paragraph 2(4)(c);
  - (c) paragraph 5 (except for paragraph 5(2)(b) and (5));
  - (d) paragraph 7;
  - (e) Part 2.
- (3) Regulations under the following provisions of Schedule 17 are subject to the negative procedure—
- (a) paragraph 3;
  - (b) paragraph 4;
  - (c) paragraph 5(2)(b) and (5).