

LEGISLATION AND GOVERNMENT POLICY RELEVANT TO ASHDOWN FOREST

Last revised November 2019

BACKGROUND TO THE DOCUMENT

Ashdown Forest has a long, complicated history of land ownership, usage and relevant legislation. This document lists and summarises the major historical and modern legal instruments that protect or regulate land managed by the Conservators and those who use it. It is written by a non-lawyer to list sources of reference material for those who wish to discover more about the position in 2019. It is believed to be accurate and reasonably comprehensive but is confined to law or policy especially relevant to Ashdown Forest (e.g. it does not look at The Protection of Badgers Act 1992) and the author would welcome any information on errors or substantial omissions. Throughout the document, Ashdown Forest is referred to as 'the Forest' or 'AF'. Web sources were current at November 2019 and are underlined in blue - [like this](#). Pressing <ctrl> (Command ⌘ on Mac) and clicking on them should open the web link. Many of the legal instruments are now obsolete but are included for historical accuracy. Some policy matters are aspirational.

Relevant legislation falls into two categories, British law and EU law:

The former category consists of Acts of Parliament (for example, The Commons Act 2006) and relevant Schedules and also Regulations (for example the Conservation (Natural Habitats, & c.) Regulations 1994).

The latter comprises Directives originating from the Council of the European Union (not to be confused with the European Council or the Council of Europe) consisting of Articles and Annexes (for example, Council Directive 79/409/EEC). EU Directives were incorporated ('transposed') into UK law by means of Statutory Instruments (Regulations).

Both categories cover matters ranging from public access and governance to protection of endangered wildlife; UK law listed here deals with governance matters as well as the implementation of European Council Directives. Policy documents on UK wildlife matters are provided by Statutory Bodies, e.g. DEFRA.

Matters of potential conflict between different pieces of legislation or contentious interpretation need professional legal scrutiny for clarification and are outside the scope of this document. Sources are quoted as published documents or Web links. UK Public Acts from 1988 and Local Acts from 1991 are available at: <http://www.nationalarchives.gov.uk/records/looking-for-subject/parliament.htm> with some older PDF scanned material; also <https://www.legislation.gov.uk/> covers UK Acts and Statutory Instruments from 1267 to the present and Treaties, Directives Regulations and decisions originating from the EU from 1953 to present.

Historical background of Ashdown Forest

The following briefly summarises almost four hundred years of changes to the status and ownership of the Forest. More detail is at: <http://www.ashdownforest.org/enjoy/history.php>

1689 - The Duchy Decree: a major landowner and 'Master of the Forest', Charles Sackville, 6th Earl of Dorset, brought a legal suit against 133 commoners in the court of the Duchy of Lancaster, which appointed commissioners to divide up the current 5,662 ha (14,000 acres); their award in 1693 set aside 2,600 ha (6,425 acres) as common land, where the commoners were granted sole right of pasturage and the right to cut birch, alder and willow but were excluded forever from the remaining 55 per cent of its area.

1830 - Formation of a committee of four Commoners, a nominee of the Lord of the Manor and four employed Lookers to enforce regulation.

1875 - Lord De La Warr and his steward challenged the principle that the Commoners had rights other than estovers and "herbage by bite of mouth".

1878 - Action brought by the Earl against Commoner Bernard Hale, Deputy Lieutenant of Sussex and East Grinstead Magistrate. The Earl won. William Augustus Raper, a Hastings solicitor, was responsible for accumulating much of the evidence on behalf of the Commoners.

1881 - An appeal failed to establish a right of common for Hale, but did allow that he had a Right by Usage (i.e. a

Prescriptive Right). In an attempt to protect the rights of all the Commoners, a committee prepared a case against the Earl. He capitulated and under the Common Lands Regulation (Ashdown Forest) Provisional Order Confirmation Act of 1885, a Board of Conservators was appointed with powers to regulate the common land usage.

1937 - The Ashdown Forest Act strengthened the powers of the Conservators to enforce the new byelaws drawn up in 1935, especially in respect of digging up plants and litter cutting. It arranged for grants from local authorities in exchange for representation on the Board.

1949 - A further Ashdown Forest Act formalised and regulated the use of the Forest for army training.

1961 - Formation of the Society of Friends of Ashdown Forest.

1974 - Most recent Ashdown Forest Act.

1988 - Purchase of the Forest from Earl De La Warr by East Sussex County Council after a public appeal.

1994 - Purchase of sixty-nine acres of woodland at Chelwood Vachery.

1996 - The Forest designated a Special Protection Area SPA, further conserving the bird life.

1996-1998 - Phased fencing and re-introduction of grazing to 1,300 acres on the south and west chases.

2001 - Forest designated a Special Area of Conservation SAC to help conserve vulnerable plant habitats.

2001 - Forest entirely closed for six weeks due to Foot and Mouth Disease precautions.

2006 - August: Higher Level Stewardship agreement signed, terminated in 2015 to permit:

2016 - Signing of Higher Tier Countryside Stewardship agreement, to run to 2020

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The following paragraphs provide a chronological list and notes on Acts of Parliament, EU directives, Statutory Instruments (Regulations) and government policy that had or have a bearing on Ashdown Forest and its management:

Commons Act 1876

This set out the provision for inclosure (sic) under the Inclosure Acts 1845 to 1868, whereby the Inclosure Commissioners may, by provisional order, authorise the inclosure of a common, provided they were satisfied that, among other things, the public interest was protected, and provided they had regard to 'the benefit of the neighbourhood'.

36 commons in England and Wales are or were regulated under the Commons Act 1876. The Act enabled commons to be regulated or 'inclosed' by means of an Order that generally provided for management to be assigned to a Board of Conservators. Twenty or more such Boards remain today.

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Ashdown Forest Act 1885 - the full title is the 'Common Lands Regulation (Ashdown Forest) Provisional Order Confirmation Act of 1885'.

This Act established a Board of Conservators, defined as 12 elected Commoners plus a representative of the Lord of the Manor (Earl De La Warr). It provided the power to make and oversee Forest bye-laws, protect the rights of and regulate the numbers and activities of Commoners and preserve the Forest in its natural state. Many small, previously illegal, enclosures were recognized.

The three subsequent Ashdown Forest Acts of 1937, 1949 and 1974 further strengthened the powers of the Conservators to enforce new bye-laws. They also formalised and regulated the use of the Forest for army training and arranged for grants from local authorities in exchange for representation on the Board.

In 1893 the **Law of Commons Amendment Act** was passed. This was designed to prevent owners of common land circumventing the 1876 act by reliance on the Statute of Merton (the Commons Act 1236) which allowed them to enclose the common provided that they left a sufficiency for the freehold tenants.

http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1893/cukpga_18930057_en_1

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Commons Act 1899

This enabled District Councils to manage commons where their use for exercise and recreation was the prime consideration and where the owner and commoners did not require a direct voice in the management, or where the owner could not be found.

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National Parks and Access to the Countryside Act 1949

This Act gave powers to Natural England (then called the Nature Conservancy) to designate Sites of Special Scientific Interest (SSSIs) and National Nature Reserves (NNRs), and to local authorities to designate Local Nature Reserves (LNRs).
<https://www.legislation.gov.uk/ukpga/Geo6/12-13-14/97/contents>

Ashdown Forest was first notified as an SSSI under the 1949 Act in 1953 and subsequently in 1986 under the Wildlife and Countryside Act 1981. The reasons for notification can be found at:

<https://designatedsites.naturalengland.org.uk/PDFsForWeb/Citation/1001983.pdf>

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The Commons Registration Act 1965

The registration authorities' duties and responsibilities were set out in the 1965 Act, and in regulations made under the Act. These responsibilities were replaced by those set out in Part I of the Commons Act 2006.

http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1965/cukpga_19650064_en_1

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Countryside Act 1968

The 1968 Act empowered the Secretary of State to make grants to local authorities for Country Parks and amended the 1949 Act to allow grants payable under that Act to be dealt with in the same way as grants made under the 1968 Act. The memorandum set out the terms and conditions for payments under the two Acts in respect of expenditure on the following: National Parks land and areas of outstanding natural beauty; the establishment of country parks and facilities therein; the countryside generally (including the above) and long-distance routes. It also provided for bicycles to use public bridleways (s. 30(1)) subject to any byelaws (s. 30(2)).

http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1968/cukpga_19680041_en_1

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Animals Act 1971

If an animal injures someone or causes damage to property, the owner of the animal may be liable under this Act.

<https://www.legislation.gov.uk/ukpga/1971/22>

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Local Government Act 1972

This Act reformed the organisation of local government, including ESCC. It laid down standing orders for regulating Council procedures.

http://opsi.gov.uk/RevisedStatutes/Acts/ukpga/1972/cukpga_19720070_en_1

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Ashdown Forest Act 1974

This is the most recent legislation specifically about Ashdown Forest that covers its finance and the duties of its Board of Conservators. The lines below highlight major points. Section references are in brackets.

http://www.ashdownforest.org/governance/protection/docs/Act_1974.pdf

(15) The Clerk ... shall prepare and keep a register of the commoners ...

(16) It shall be the duty of the Conservators at all times as far as possible to regulate and manage the Forest as an amenity and place of resort subject to the existing rights of common and to protect such rights of common, to protect the Forest from encroachments and to conserve it as a quiet and natural area of outstanding beauty.

(17) ... the Conservators have the power in and in relation to the forest from time to time:

subject to the consent of the lord of the manor ... engage in all manner of tree conservation, including planting, felling cutting and lopping of trees and shrubs ...
protect any part of the forest and ... erect fences therefor subject to a limit of 100 acres being enclosed at any one time;
conserve the fauna and flora and ... improve grazing;
conserve those parts of the forest which are of historical, archaeological and physiographical interest;
provide and maintain vehicles, plant ... and buildings ...;
provide and maintain recreational facilities which ... do not involve the erection of new buildings ... of any kind ... ;
make, provide, maintain and extend car parking places for vehicles ... ;
appoint officers and staff for the purpose of more efficiently and properly carrying out the duties of the Conservators... ;

(18) Additional powers of the conservators:

Includes: '(e) ... power to make reasonable charges for the parking of vehicles in the Forest ...' (subject to a schedule of charges being approved by East Sussex County Council)

(20) The Conservators may acquire by agreement ... purchase, exchange, lease, gift or otherwise any land within or outside the Forest, and hold such land as part of the Forest ...
... sell ... let or mortgage any land held by them.

(21) ... the public shall have access on foot to the Forest for quiet recreation and enjoyment.

(24) The County Council shall pay to the Conservators any amount by which in any year the expenditure ... exceeds the income ... in that year.

(25) The Conservators shall prepare ... estimates of the expenditure and income ... and the County Council shall inform the Conservators of ... (their) ... approval or disapproval ... of such estimates ...

Section 19 of the Act allows the Conservators to 'make, alter or repeal byelaws for the regulation and better administration of the Forest'

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East Sussex Act 1981

Section 89 of this lengthy Act, covering many procedural matters in the County's administration, replaces the option of proxy votes for election of AF conservators with postal votes.

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The Wildlife and Countryside Act 1981

This is still the major legal instrument for wildlife protection in Britain, although other significant Acts have been passed since. It has numerous parts and supplementary lists and schedules many of which have been amended since publication; it was amended in 1985 and 1991 and schedules amended 1988, 1991, 1992 and 1998. The CROW Act 2000 and NERC Act 2006 further contained important amendments of the 1981 Act. It is therefore often referred to as 'The Wildlife and Countryside Act 1981 (as amended)'

This legislation is the means by which the Convention on the Conservation of European Wildlife and Natural Habitats (the 'Bern Convention') and the European Union Directives on the Conservation of Wild Birds (79/409/EEC) and Natural Habitats and Wild Fauna and Flora (92/43/FFC) (see below) are implemented in Great Britain see **Statutory Instrument 1994 No. 2716** below.

- * Part I is concerned with the protection of wild plants and animals
- * Part II relates to the countryside and national parks (and the designation of protected areas),
- * Part III covers public rights of way,
- * Part IV deals with miscellaneous provisions of the Act ie prevention of release of non-native plants or animals

Section 28G of the Wildlife and Countryside Act (as amended by the Countryside and Rights of Way Act 2000) requires a local authority (a '**section 28G authority**') to "take reasonable steps, consistent with the proper exercise of the authority's functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest". And "The Secretary of State expects that all public bodies will take full account of their responsibilities under this duty whenever their actions may affect SSSIs".

<http://www.jncc.gov.uk/page-1377>

<http://www.legislation.gov.uk/ukpga/1981/69>

<http://www.naturenet.net/law/wcagen.html#other>

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Road Traffic Act 1988

Section 34 prohibits driving off road vehicles without lawful authority on land not forming part of a road. It also prohibits driving without lawful authority onto or upon any common land, moorland or land of any other description not being part of a road.

<https://www.legislation.gov.uk/ukpga/1988/52/contents>

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STRATEGIC PLAN FOR THE CONVENTION ON BIOLOGICAL DIVERSITY

At the 1992 Earth Summit in Rio de Janeiro, world leaders agreed on a comprehensive strategy for "sustainable development". One of the key agreements was the **Convention on Biological Diversity**. The Convention established three main goals:

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

In 2002, 10 years after the Convention on Biological Diversity was opened for signature, the Parties developed a Strategic Plan to guide its further implementation at the national, regional and global levels.

The purpose was: 'to halt effectively the loss of biodiversity so as to secure the continuity of its beneficial uses through the conservation and sustainable use of its components and the fair and equitable sharing of benefits arising from the use of genetic resources.'

In decision VI/26 The Conference of the Parties took note of the conclusions of the Seychelles Workshop on the Strategic Plan and the report of the Open-ended Inter-Sessional Meeting on the Strategic Plan, National Reports and Implementation of the Convention on Biological Diversity (19 - 21 November 2001, Montreal, Canada) and adopted a Strategic Plan for the Convention on Biological Diversity.

2010 Biodiversity Target

In April 2002, the Parties to the Convention committed themselves to achieve by 2010 a significant reduction of the current rate of biodiversity loss at the global, regional and national level as a contribution to poverty alleviation and to the benefit of all life on Earth.

This target was subsequently endorsed by the World Summit on Sustainable Development and the United Nations General Assembly and was incorporated as a target under the Millennium Development Goals.

<http://www.cbd.int/sp/default.shtml>

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UK Public Service Agreement Targets on SSSIs

There are 4,111 Sites of Special Scientific Interest (SSSIs) in England covering 1,076,704 ha. In 2004 Defra had a Public Service Agreement (PSA) target to have at least 95% of the SSSI area in recovering or favourable condition (FC) by 2010. The Departmental Report stated that 67.4% of SSSIs were in target condition in March 2005, an increase of 4.5% from March 2004. At the end of 2010 over 95% by area of English SSSIs were stated to be in favourable or recovering condition.

<http://www.publications.parliament.uk/pa/cm200506/cmselect/cmenvfru/693/69308.htm>

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1979 Birds Directive

Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds - 19 Articles.

The Declaration of 22 November 1973 on the Programme of Action of the European Communities on the Environment called for specific action to protect birds, supplemented by a resolution on 17 May 1977 on the continuation and implementation of European community policy and its action programme on the environment.

http://ec.europa.eu/environment/nature/legislation/birdsdirective/index_en.htm

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The Environmental Protection Act 1990

Although primarily for the control of pollution, this Act is quoted by JNCC as defining ‘...one of JNCC's special functions to establish common standards throughout Great Britain for the monitoring of nature conservation.’ **Common Standards Monitoring** introduced the term **Favourable Condition** and variations based on trends in recovery or deterioration and involved the setting of **Conservation Objectives** now termed **Favourable Condition Tables FCTs**.

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1992 EC Habitats Directive

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1992L0043:20070101:EN:PDF>

In 1992 the European Community adopted **Council Directive 92/43/EEC** on the Conservation of natural habitats and of wild fauna and flora (EC Habitats Directive). The Directive contains 24 Articles and is the means by which the Community meets its obligations as a signatory of the Convention on the **Conservation of European Wildlife and Natural Habitats (Bern Convention)**. Member States are required to protect species listed in Annexes, monitor habitats and species and report every six years on implementation.

The 189 habitats listed in Annex I and the 788 species in Annex II are protected by means of a network of sites, each State proposing sites for evaluation to form a European network of **Sites of Community Importance (SCIs)**, designated as **Special Areas of Conservation (SACs)**.

The site list for the Atlantic Biogeographical Region (which includes the UK) was formally adopted by the Commission in December 2004. The UK's first SACs were subsequently designated in Wales in December 2004, in Scotland in March 2005, and in England in April 2005.

These, with **Special Protection Areas (SPAs)** designated under the 1979 EC Birds Directive, form a network of protected areas known as **Natura 2000** as required by Article 3.

The Directive was amended in 1997 by a technical adaptation Directive. The annexes were further amended by the Environment Chapter of the Treaty of Accession 2003.

The **Habitats Directive** introduces the precautionary principle that projects can only be allowed after judging that there are no adverse effects on the integrity of the site.

Projects may still be permitted if there are no alternatives and there are imperative reasons of overriding public interest (See **IROPIs** below). In such cases compensation measures will be necessary to ensure the overall integrity of network of sites. These measures also apply to SPAs.

The Directive also requires Member States to encourage the management of features of the landscape to support the **Natura 2000 network**.

Article 6 is one of the most important articles in the Habitats Directive as it defines how Natura 2000 sites are managed and protected. **Paragraphs 6(1) and 6(2)** require that, within Natura 2000, Member States:

- Take appropriate conservation measures to maintain and restore the habitats and species for which the site has been designated to a favourable conservation status;
- Avoid damaging activities that could significantly disturb these species or deteriorate the habitats of the protected species or habitat types.

Paragraphs 6(3) and 6(4) lay down the procedure to be followed when planning new developments that might affect a Natura 2000 site. Thus:

- Any plan or project likely to have a significant effect on a Natura 2000 site, either individually or in combination with other plans or projects, shall undergo an **Appropriate Assessment** to determine its implications for the site. The competent authorities can only agree to the plan or project after having ascertained that it will not adversely affect the integrity of the site concerned (Article 6.3)
- In exceptional circumstances, a plan or project may still be allowed to go ahead, in spite of a negative assessment, provided there are no alternative solutions and the plan or project is considered to have imperative reasons of overriding public interest (**IROPI**). In such cases the Member State must take appropriate compensatory measures to ensure that the overall coherence of the N2000 Network is protected. (Article 6.4). (See 'Protection of NATURA 2000 sites' below)

In the UK the Directive has been transposed into national laws by means of the **Conservation (Natural Habitats, & c.) Regulations 1994 (as amended)**, known as '**The Habitats Regulations**'.

The 1992 Habitats Directive continues to underpin legislation in England that protects threatened habitats and species.

Most SACs and SPAs on land or in freshwater areas are already notified as Sites of Special Scientific Interest (SSSIs).

The **Joint Nature Conservation Committee (JNCC)** advises government on the application and interpretation of the Habitats Directive, including the sites that meet the criteria for consideration as SCIs.

<http://www.jncc.gov.uk/>

Ashdown Forest SPA : <http://www.jncc.gov.uk/default.aspx?page=2052>

Ashdown Forest SAC : <http://jncc.defra.gov.uk/protectedsites/sacselection/sac.asp?EUCode=UK0030080>

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Statutory Instrument 1994 No. 2716

The Conservation (Natural Habitats, &c.) Regulations 1994 'The 1994 Habitats Regulations'

These Regulations make provision for the purpose of implementing, for Great Britain, **Council Directive 92/43/EEC**

It describes the protocol for selection of sites and the designation of Special Areas of Conservation (**SAC**) and establishes priorities for the designation of sites.

http://www.opsi.gov.uk/SI/si1994/Uksi_19942716_en_1.htm

See below: this Statutory Instrument has been consolidated by the **Conservation of Habitats and Species Regulations 2010** amended by **The Conservation of Habitats and Species (Amendment) Regulations 2012**.

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The Environment Act 1995

This transferred all regulatory and pollution control functions (apart from those of local authorities) into one central body, The Environment Agency, EA. It places a duty on local authorities to assess the quality of air in their area – this includes nitrogen compounds from vehicle exhausts whose deposition on Ashdown Forest heathland can lead to a harmful increase in soil nutrients.

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Protection of NATURA 2000 sites

The text of Article 6.4 of the Habitats Directive 92/43/EEC

"If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted. Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest (**IROPI**)".

This provides for exceptional circumstances but emphasises the international importance given to **NATURA 2000** sites

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992L0043:EN:HTML>

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Local Government Act 2000

Part I: introduced a new power for local authorities to promote the economic, social or environmental well-being of an area.

Part II: required that all local authorities move away from the traditional committee style of decision-making, where all members had a formal decision making role, to one of four executive models ie, leader or cabinet, mayor or cabinet, mayor or council manager, or alternative arrangements.

Part III: introduced a new ethical framework for councils, including a requirement to adopt a code of conduct for members and implement a standards committee. The general functions of the standards committee are to promote and maintain high standards of conduct within the local authority and to assist members of the authority to observe the code of conduct.

<http://www.legislation.gov.uk/ukpga/2000/22/contents>

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Countryside and Rights of Way Act CROW 2000

This Act provided a new right of public access on foot to areas of open land, eg mountain, moor, heath, down and registered common land. Since the 1974 Ashdown Forest Act states ‘...the public shall have access on foot to the Forest for quiet recreation and enjoyment.’, this is not a new right for the Forest. The land of Ashdown Forest is therefore termed ‘s. 15 land’, which refers to section 15 of the CROW Act 2000 and is land that has a right of public access governed under another enactment.

Section 74 placed a duty on Government Departments to have regard for the conservation of biodiversity and maintain lists of species and habitats for which conservation steps should be taken or promoted, in accordance with the Convention on Biological Diversity.

<http://www.legislation.gov.uk/ukpga/2000/37/section/74>

It renamed the Nature Conservancy Council - English Nature (later renamed again ‘Natural England’)

It increased protection for Sites of Special Scientific Interest (SSSI) and strengthened wildlife enforcement legislation including legal enforcement. Currently if Natural England refuse to give consent to an operation that may damage the special features of a SSSI, that operation may not take place lawfully.

It required local authorities to produce management plans for each Area of Outstanding Natural Beauty (AONB).

It enabled the creation of Conservation Boards to assume responsibility for AONBs, particularly where the land designated crossed several local authority jurisdictions.

The Act also required any Minister of the Crown or Government department (in England) to have regard to the purpose of conserving and enhancing the natural beauty of AONBs when performing their functions.

<http://www.jncc.gov.uk/page-1378>

<https://www.gov.uk/guidance/protected-areas-sites-of-special-scientific-interest>

<https://designatedsites.naturalengland.org.uk/SiteList.aspx>

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Commons Act 2006

This Act covers Commons Councils to be set up with powers to regulate grazing and other agricultural activities. Defra was expecting to bring this part of the Act into force in late 2007.

The Act addresses registration of ‘missed’ commons and wrongly registered land through an overhaul of the registration system for common land (and town and village greens).

It sets out new criteria for the registration of town or village greens.

It covers the severance of common rights, preventing commoners from selling, leasing or letting their rights away from the property to which rights are attached. By means of SI 2006/2145 the severance of rights was prohibited with effect from 28 June 2005 apart from temporary severance by leasing or licensing.

Defra stated that it provided better protection for common land and greens by streamlining the consents system for works and fencing on commons and ensured that existing statutory protections were applied consistently. This included reinforcing existing protections against abuse, encroachment and unauthorised development. Lengthy consultation papers covering fundamental governance, public engagement and administrative points were provided to AF.

Many parts of this extensive Act have not yet been brought into force by Commencement Orders.

<http://www.legislation.gov.uk/ukpga/2006/26/contents>

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The Natural Environment and Rural Communities Act (NERC) 2006

In 2004 following the review of ‘rural delivery’ carried out by Lord Haskins, Defra published its Rural Strategy.

NERC 2006 established Natural England (NE), an independent statutory Non-Departmental Public Body (NDPB), formed by merging the Countryside Agency’s landscape, access and recreation functions with the activities of English Nature and the larger part of the Rural Development Service (RDS).

The Act also covers the illegal use of byways by motor vehicles by putting an end to claims for motor vehicle access on the basis of historical use by horse-drawn vehicles.

It provides powers for the Secretary of State to fund activities directly within Defra’s remit and to allow both the Secretary of State, and designated bodies, to delegate Environment, Food and Rural Affairs (EFRA) functions to one another (although regulatory and enforcement functions cannot be delegated to private bodies).

Of relevance to AF and the duty of the landowner, **Section 40** states “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.” Public authorities are defined in the Act as including County Councils.

Section 41 of the Act requires the Secretary of State to publish a list of habitats and species which are of principal importance for the conservation of biodiversity in England – **priority habitats**. AF Lowland Heathland and Dry Acid Grassland are both **priority habitats**.

http://www.legislation.gov.uk/ukpga/2006/16/pdfs/ukpga_20060016_en.pdf

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Statutory Instrument 1159: The Local Authorities (Model Code of Conduct) Order 2007

This sets out standards of conduct for members of Local Authorities, eg ESCC Councillors appointed to the AF Board and is referred to in current AF Standing Orders and Commoner's Annual Meetings.

http://www.legislation.gov.uk/uksi/2007/1159/pdfs/uksi_20071159_en.pdf

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Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds ("the Wild Birds Directive")

This sets broad objectives for the European Union on a wide range of activities to meet its obligations for bird species under the [Bern Convention](#) and [Bonn Convention](#), although the precise legal mechanisms for their achievement are at the discretion of each Member State. In the UK delivery is via several different statutes including The Conservation of Habitats and species Regulations below.

<http://jncc.defra.gov.uk/page-1373>

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Conservation of Habitats and Species Regulations 2010

These replace the earlier Conservation (Natural Habitats, &c.) Regulations 1994, 'the Habitats Regulations' and are now commonly referred to as 'The Habitats Regulation 2010'. They consolidate the 30 sets of amendments made to the 1994 Regulations into a single set of regulations and make other improvements. They contain no substantive change to previous policies and procedures. They impose a duty on the Secretary of State and Welsh Ministers to make arrangements for the surveillance of the conservation status of natural habitats and species protected under the Habitats Directive. Regulation 102 requires **appropriate assessment** of the implications for any European designated site for any land use plan in view of that site's conservation objectives.

<http://www.legislation.gov.uk/uksi/2010/490/contents/made>

The Conservation of Habitats and Species (Amendment) Regulations 2012

These make amendments in response to correspondence received from the European Commission regarding gaps in the UK transposition of the Wild Birds Directive and also address various inconsistencies resulting from overlapping designations and legislation. They require five-yearly review by the Secretary of State of the operation and effect of the 2010 Regulations.

<http://www.legislation.gov.uk/uksi/2012/1927/contents/made>

The Conservation of Habitats and Species Regulations 2017

Consolidates all the various amendments made to the Habitats Regulations 2010. It notes: "The Habitats Regulations 2010, themselves a consolidation of the Conservation (Natural Habitats &c.) Regulations 1994, have now been amended ten times since enactment. They are likely to remain in place for some time after the UK exits the EU, and the power to consolidate them will no longer be available once we exit." And: "A further review of the Regulations would be a complex and time-consuming exercise which could only be undertaken when resources are available and would be best considered following our exit from the European Union." They provide five-yearly monitoring and review of the Regulations.

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Natural England's SSSI Enforcement Policy Statement

CRoW 2000 provides additional legal powers to NE to 'ensure better protection and management of SSSIs and safeguard their existence into the future'.

The following link sets out NE's position:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/389649/enforcement-guidance.pdf

stating: “Where offences are committed we aim to provide advice and best practice guidance to achieve future compliance. This may be written or verbal and may be the only action we take. However, where this voluntary cooperative approach fails or where the impact on the environment is of concern it may also be proportionate to serve a sanction.”

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Improvement Programme for England’s Natura 2000 sites IPENS

“While many sites are well on the path to recovery, a significant number are not yet in a healthy state. The IPENS programme will develop a strategic approach to achieving favourable condition on England’s Natura 2000 sites by reviewing, for each site:

- the risks and issues that are impacting on and/or threatening the condition of the site
- which mechanisms (i.e. actions and measures) could be used to address them
- how much it will cost and where the money could come from.

By June 2015 the programme will deliver ... an Improvement Plan for each Natura 2000 site ...”

<http://www.naturalengland.org.uk/ourwork/conservation/designations/sac/ipens2000.aspx>

The Forest’s Site Improvement Plan No 2014 can be viewed at:

<http://publications.naturalengland.org.uk/publication/5793096570765312?category=6149691318206464>

However, no implementation funds were forthcoming by the time the programme closed in June 2015.

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The UK Post-2010 Biodiversity Framework

This replaced the earlier UK Biodiversity Action Plan of priority species and habitats drawn up between 1995 and 1999. It is now specific to each UK country. In England the UK BAP has been superseded by:

Strategic Plan for Biodiversity 2011-2020, including Aichi Biodiversity Targets

The UN Biodiversity Summit in October 2010 was held in Nagoya, Aichi, Japan. 192 countries and the European Union agreed to an ambitious conservation plan to protect global biodiversity. The **Nagoya Protocol** advocates the fair sharing of genetic resources arising from biodiversity and the **Aichi Biodiversity Targets** list 20 targets under five headings.

<http://www.cbd.int/sp/default.shtml>

In June 2011, EU Member States endorsed the European Commission’s EU Biodiversity Strategy which has a particular focus on EU-level action. This will be used as a framework by Member States, with the global Nagoya agreement, to inform their own national plans.

Biodiversity 2020: A strategy for England’s wildlife and ecosystem services

This Defra policy was launched in July 2011 and followed the first government White Paper on the Environment for 20 years: ‘The Natural Choice – Securing the value of Nature’.

<http://www.official-documents.gov.uk/document/cm80/8082/8082.pdf>

Biodiversity 2020 can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69446/pb13583-biodiversity-strategy-2020-111111.pdf

where it states: “Government will play a leading role in delivering the vision, mission and intended outcomes. We have developed four priority areas for action by Government, its agencies, the wider biodiversity partnership and others to

achieve our ambitions, including a more integrated large-scale approach to conservation on land and at sea, putting people at the heart of biodiversity, reducing environmental pressures and improving our knowledge.

These four priority areas are based on the five strategic goals of the Convention on Biological Diversity (CBD) Strategic Plan 2011-2020, but re-cast and re-ordered to better fit the priorities here in England. Our approach will be informed by the list of priority species and habitats in England.”

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Update to Habitats Directive regarding priority habitats (April 2013)

On 11 April 2013, the Court of Justice of the European Union (ECJ) gave a preliminary ruling relating to Article 6(3) of the Habitats Directive (Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora) on the approach that an authority should take when assessing whether it is likely that a plan or project will adversely affect the integrity of a Special Area of Conservation (SAC) or a Site of Community Interest (SCI). The case related to a road scheme that would permanently destroy 1.47 hectares of a 270 ha SCI in Ireland protected as a **priority** habitat for its limestone pavement under the Habitats Directive.

The ECJ decided that if a project will lead to the lasting and irreparable loss of the whole or part of a priority natural habitat type, the competent national authority must conclude that such a plan or project will adversely affect the integrity of that site. It must therefore prevent the development.

In practice, this could prevent many projects proceeding, unless imperative reasons of overriding public interest (**IROPI**) can be proven, and compensatory measures made, under the derogation in Article 6(4). (Ireland v An Bord Pleanala [2013] EUECJ C-258/11.)

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In May **2013**, the Commission adopted a ‘Communication on Green Infrastructure’ (GI) which addresses the spatial structure of natural and semi-natural areas. According to the Commission, the adoption of this Communication is a key step in implementing the EU 2020 Biodiversity Strategy, in particular Target 2, which requires that by 2020 ecosystems and their services are maintained and enhanced by establishing GI. A central part of the EU’s GI is the Natura 2000 network (see **Natura 2000** above) as it harbours many of Europe’s remaining healthy ecosystems and biodiversity. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0249:FIN:EN:PDF>

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2018 Defra 25-year Environment plan published

This wide-ranging plan is important for AF as it includes binding targets for reductions in reactive nitrogen pollution (which damage heathland biodiversity).

The Environment Bill has two parts: the first to fill the policy and national level compliance void necessitated by **Brexit**; the second a range of powers to introduce targets for the UK to fulfil its current EU environmental obligations.

The Environment Bill received a second reading on 28th October 2019, received cross party support and was sent to the committee stages in which there would have been detailed scrutiny. However, the dissolution of Parliament means it will now need to be reintroduced by the new Government.

The Bill proposes a new Office for Environmental Protection (OEP) to hold Government and public authorities to account, with the ability to demand answers if they appear to be in serious breach of their obligations in environmental law.

<https://www.gov.uk/government/publications/25-year-environment-plan>

The Agriculture Bill 2017-2019 sets out how farmers and land managers will in future receive “public money for public good”, such as better air and water quality, improved soil health, higher animal welfare standards, public access to the countryside and measures to reduce flooding. It has relevance as the proposed legislative basis for the new **Environmental Land Management Scheme** that will succeed Direct Payments and Countryside Stewardship as the vehicle for paying public money to farmers and land managers. The Bill completed its Committee Stage in the House of Commons on 20 November 2018 but failed to complete its passage through Parliament before the end of the session..

<https://www.gov.uk/government/news/landmark-agriculture-bill-to-deliver-a-green-brex>

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