LEGISLATION AND GOVERNMENT POLICY RELEVANT TO ASHDOWN FOREST

Notes for the Board of Conservators of Ashdown Forest


BACKGROUND TO THE DOCUMENT

Ashdown Forest has a long and 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 provide sources of reference material for those who wish to discover more about the position in 2011. It is believed to be accurate and reasonably comprehensive but is confined to law or policy particularly relevant to AF issues (eg 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 July 2011 and are underlined in blue - like this. Clicking on them should open the web link.

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

The former category consists of Acts of Parliament (for example, The Commons Act 2000) 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 are encapsulated into GB 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, eg Natural England.

Matters of potential conflict between different pieces of legislation are likely to need detailed 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. Legislation made before 1988 is available in its original print format, see http://www.tso.co.uk/ or HMSO.

Historical background of Ashdown Forest

The following 1830-2006 extracts are taken from an earlier AF website summary of Ashdown Forest legislation and organisational history. More on the history is at http://www.ashdownforest.org/enjoy/history.php

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 whether or not the Commoners had any 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 - The 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, the 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 - 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 - Further Ashdown Forest Act formalised and regulated the use of the Forest for army training.
1974 - Most recent Ashdown Forest Act.

1988 - Purchase of the Forest from Earl De La Warr by East Sussex County Council.
1994 - Purchase of sixty-nine acres of woodland at Chelwood Vachery.
1996 - Forest designated a Special Protection Area SPA, further conserving the bird life.
1996-1998 - Phased fencing and re-introduction of grazing to 1300 acres on the south/west chases.
2001 - Forest designated a Special Area of Conservation SAC to help conserve vulnerable habitats.
2001 - Forest entirely closed for six weeks due to Foot and Mouth Disease precautions.
2006 – August;  HLS agreement signed

The following paragraphs attempt to provide a chronological list and provide notes on Acts of Parliament, EU directives, Statutory Instruments and government policy that are believed to have a bearing on Ashdown Forest:

**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 (sic) by means of an Order that generally provided for management to be assigned to a Board of Conservators, twenty or more Boards remain today.

**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 viz. 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, 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 inclose the common provided that they left a sufficiency for the freehold tenants.

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 do not require a direct voice in the management, or where the owner cannot be found.

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).

http://www.legislation.gov.uk/ukpga/Geo6/12-13-14/97

Ashdown Forest reasons for notification: http://www.sssi.naturalengland.org.uk/citation/citation_photo/1001983.pdf

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 are 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

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.

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

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

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. All Board members are provided with a printed copy of this but the lines below highlight major points. Section references are in brackets.


(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 to:

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;
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;...

(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 and 25) East Sussex County Council and Wealden District Council should meet the expenses of the Conservators in so far as such expenses are not defrayed by the proceeds of the rate levied on the Commoners and out of other income.

Section 19 of the Act allows the Conservators to ‘make, alter or repeal byelaws for the regulation and better administration of the forest’.

East Sussex Act 1981

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

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. 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) requires a local 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
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.

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.
UK Public Service Agreement Targets on SSSIs

There are 4,111 Sites of Special Scientific Interest (SSSIs) in England covering 1,076,704 ha. 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 deemed in favourable or recovering condition.

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

1979 Birds Directive


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.


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.

1992 EC Habitats Directive


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) under the 1979 EC Birds Directive, form a network of protected areas known as Natura 2000.

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. In such cases compensation measures will be necessary to ensure the overall integrity of network of sites. These measures also apply to SPAs.
It also requires Member States to encourage the management of features of the landscape to support the Natura 2000 network.

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' and more recently consolidated by the Conservation of Habitats and Species Regulations 2010.

Most SACs on land or freshwater areas are underpinned by notification as Sites of Special Scientific Interest (SSSIs). In the case of SACs that are not notified as SSSI, positive management is promoted by wider countryside measures, while protection relies on the provisions of the Habitats Regulations.

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


Statutory Instrument 1994 No. 2716

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


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".

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

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.


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.

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.


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

http://www.english-nature.org.uk/special/sssi/protection.cfm

**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.


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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.

The explanatory notes alone run to 42 pages.


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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.


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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

Conservation of Habitats and Species Regulations 2010

These replace the earlier Conservation (Natural Habitats, &c.) Regulations 1994, ‘the Habitats Regulations’ although they are still commonly referred to by that name. 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.


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.


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:


‘We achieve our outcomes through the deployment of advice, incentives, regulation and practical action. Our regulation work involves helping people comply with laws that protect wildlife and the natural environment and taking enforcement action when these laws are broken.’

Improvement Programme for England's Natura 2000 sites IPEN

“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....”


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’.


Biodiversity 2020 can be found at:


where it states: ‘Governments 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 reordered 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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