

# Guidance on Regulation 9 of the Conservation of Habitats and Species Regulations 2017

Currently Regulation 9 of the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') sets out duties for relevant public authorities to exercise their nature conservation functions in compliance with, or with regard to, the requirements of the Habitats Directive and the Wild Birds Directives ('the Directives').

This document sets out these requirements as they are not explicitly set out anywhere. It provides a broad summary of the key obligations under the European Union (EU) Nature Directives: EU Wild Birds Directive 2009/147/EC and the EU Habitats Directive 92/43/EEC.

**To maintain or restore, at a favourable conservation status, natural habitats and species of wild fauna and flora, within the national territory taking account of economic, social, and cultural requirements and regional or local characteristics**

For habitats and species of pan-European importance (as listed in annex I and II of the Habitats Directive respectively), to contribute to biodiversity by maintaining or restoring those features to a favourable conservation status, taking account of economic, social and cultural requirements and regional and local characteristics.

For wild birds, taking measures to maintain the population of the species referred to in Article 1 of the Wild Birds Directive (naturally occurring wild birds) at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level.

**The designation, protection, and management of a coherent protected sites network including preventing their deterioration, avoiding disturbance of the species for which the sites have been designated in so far as disturbance could be significant**

The creation of a national sites network within the UK territory (selection and designation of Special Areas of Conservation - SACs).

To classify the most suitable areas in number and size as special protection areas (Special Protection Areas - SPAs) for the conservation of species listed in annex I of the Wild Birds Directive in their area of distribution within the UK territory.

Taking similar measures for regularly occurring migratory bird species not listed in Annex I, bearing in mind their need for protection in their area of distribution within the UK territory, as regards their breeding, moulting and wintering areas and staging posts along their

migration routes. To this end, paying particular attention to the protection of wetlands and particularly to wetlands of international importance.

Establish the necessary conservation measures for SACs, and taking a similar approach for the management of SPAs, including appropriate:

- management plans specifically designed for the sites or integrated into other development plans
- statutory, administrative or contractual measures which correspond to the ecological requirements of the habitats and/or species of pan-European importance present on the sites

Within SACs and SPAs, taking appropriate steps to avoid:

- the deterioration of natural habitats and the habitats of species
- disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to achieving favourable conservation status

The assessment of 'plans and projects' by the competent authority (for example, for housing development a local planning authority) likely to have a significant effect on a SAC or SPA and not directly connected with or necessary to the management of the site. This comprises a number of sequential tests, which are broadly:

- screening for 'likely significant effects', alone and in-combination with other plans and projects
- following a conclusion of a significant effect, an appropriate assessment of the proposal on the conservation objectives of the site - the competent authority may only approve the proposal after having concluded that it will not adversely affect the integrity of the site (with or without mitigation as appropriate)
- the competent authority may nevertheless approve a plan or project notwithstanding an adverse effect on the integrity of a SAC or SPA, subject to 3 tests: no feasible alternatives, imperative reasons of overriding public interest and that compensatory measures are secured
- where the site concerned hosts a 'priority' habitat or species of pan-European importance (only applicable to SACs - habitats in danger of disappearance and endangered species, identified in annex I and II of the Habitats Directive), the competent authority can only consider reasons of public health and safety or primary environmental benefits, or other reasons after having regard to the opinion of the appropriate authority (in England, the Secretary of State)

In exceptional circumstances, the appropriate authority can seek to de-designate all or part of a SAC or SPA in response to natural developments.

## **The preservation, maintenance, or re-establishment of habitats for wild birds outside protected sites and to avoid pollution or deterioration of those habitats**

Taking appropriate steps to preserve, maintain and re-establish habitat that is large and varied enough for wild birds to support their population in the long term and avoid the pollution and deterioration of those areas.

## **Improving the ecological coherence of the national sites network (including through land use planning)**

Where considered necessary, in land-use planning and development policies, improve the coherence of the network by maintaining and where appropriate developing, features of the landscape (such as, rivers with their banks or the traditional system for marking field boundaries) or their function as stepping-stones (such as, ponds or small woods) that are important for the wild fauna and flora.

## **Surveillance and research of the conservation status of certain habitats and species**

Undertaking an assessment of conservation status for habitats and species of pan-European importance with particular regard to those of 'priority' status.

For wild birds, to encourage research and any work required as a basis for the protection, management and use of the population of all species of bird referred to in Article 1 (Wild Birds Directive).

Paying particular attention to research and work on the following subjects:

- species in danger of extinction
- areas particularly important to migratory species on their migratory routes and as wintering and nesting grounds
- listing of data on the population levels of migratory species as shown by ringing
- assessing the influence of methods of taking wild birds on population levels
- developing or refining ecological methods for preventing the type of damage caused by birds
- determining the role of certain species as indicators of pollution
- studying the adverse effect of chemical pollution on population levels of bird species

Undertaking the necessary scientific work to support implementation of the national sites network and improving its coherence.

## **The strict protection for certain species (flora and fauna) including wild birds, their eggs, nests, and habitats**

Animal species listed under Annex IV (a) of the Habitats Directive require a system of strict protection which prohibits:

- all forms of deliberate capture or killing of specimens of species from the wild
- deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration
- deliberate destruction or taking of eggs from the wild
- deterioration or destruction of breeding sites or resting places

Likewise, for plant species listed under Annex IV (b), a system that prohibits:

- the deliberate picking, collecting, cutting, uprooting or destruction of such plants in their natural range in the wild
- the keeping, transport and sale or exchange and offering for sale or exchange of specimens of such species taken in the wild, except for those taken legally before the Habitats Directive was implemented

If deemed necessary, measures should be taken to ensure the taking of animal and plant species of pan-European importance whose taking in the wild and exploitation may be subject to management measures, is compatible with maintaining favourable conservation status. Such measures include:

- regulations regarding access to certain property
- temporary or local prohibition of the taking of specimens in the wild and exploitation of certain populations
- regulation of the periods and methods of taking specimens
- application, when specimens are taken, of hunting and fishing rules which take account of the conservation of such populations
- establishment of a system of licences for taking specimens or of quotas
- regulation of the purchase, sale, offering for sale, keeping for sale or transport for sale of specimens
- breeding in captivity of animal species as well as artificial propagation of plant species, under strictly controlled conditions, with a view to reducing the taking of specimens of the wild
- assessment of the effect of the measures adopted

Prohibition of the use of indiscriminate means and methods used to capture or kill species listed in Annex V (a) and IV (a) (Habitats Directive). Such means are listed in Annex VI (a) and modes of transport are listed in Annex VI (b).

With regard to wild birds, under the Wild Birds Directive, without prejudice to Articles 7 (hunting) and 9 (derogations), for wild birds (referred to in Article 1) a general system of protection prohibits:

- deliberate killing or capture
- deliberate destruction of or damage to their nests and eggs or removal of their nests
- taking their eggs in the wild and keeping these eggs (even if empty)
- deliberate disturbance particularly during the period of breeding and rearing

- keeping certain species of birds of which hunting, and capture is prohibited

Without prejudice to article 6(2) and (3) (Wild Birds Directive), which provides exceptions for certain species (listed in Annex III) provided they are legally killed or taken, prohibiting:

- the sale
- transport for sale
- keeping for sale
- offering for sale of live or dead wild birds in Article 1
- sale of any readily recognisable parts or derivatives of such birds (Not prohibited in respect of species referred to in Annex III, Part A – provided birds have been legally killed, captured or acquired.)

**Huntable species: species listed in Annex II (Wild Birds Directive) may, due to their population level, distribution and reproductive rate, be hunted under national legislation, subject to the following provisions**

Ensure that the hunting of these species does not jeopardise conservation efforts in their distribution area.

Species listed in Annex II Part A may be hunted in the geographical sea and land where the Directive applies. Species listed in Annex II Part B may be hunted only in the EU Member State in respect of which they are indicated.

Hunting (including falconry) shall be carried out in accordance with national measures in force, complying with the principles of wise use and ecological control of the species of birds concerned, and that the practise is compatible as regards the population of these species, in particular migratory species, with the measures resulting from Article 2.

Species which hunting laws apply, shall not be hunted during the rearing season or various stages of reproduction.

In the case of migratory species, the species to which hunting regulations apply are not hunted during their period of reproduction or during their return to their rearing grounds.

In respect of the hunting, capture or killing of birds under the Directive, to prohibit the use of all means, arrangements or methods used for the large-scale or non-selective capture or killing of birds or capable of causing the local disappearance of a species, in particular the use of those listed in Annex IV, point (a).

Prohibit any hunting from the modes of transport and under the conditions mentioned in Annex IV, point (b).

**In the context of allowing an exception from the strict protection of species for specified reasons, for example, in the interest of public health and safety, to ensure that such actions do not impact on the favourable conservation status of the species**

For wild animals and plants there is scope to derogate from the provisions set out, provided that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range, for the following reasons:

- in the interest of protecting wild fauna and flora and conserving natural habitats
- to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property
- in the interests of public health and public safety, or for other imperative reasons of overriding public interest
- for the purpose of research and education, of repopulating and re-introducing these species and for the breeding operations necessary for these purposes, including the artificial propagation of plants
- to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species listed in Annex IV (Habitats Directive) in limited numbers

For wild birds there is scope to derogate from the provisions of Articles 5 to 8 (Wild Birds Directive - species protection), where there is no other satisfactory solution, for the following reasons:

- in the interests of public health and safety, in the interests of air safety, to prevent serious damage to crops, livestock, forests, fisheries and water, for the protection of flora and fauna
- or the purposes of research and teaching, of re-population, of re-introduction and for the breeding necessary for these purposes
- to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers

Derogations must specify:

- the species which are subject to the derogations
- the means, arrangements or methods authorised for capture or killing
- the conditions of risk and the circumstances of time and place under which such derogations may be granted
- the authority empowered to declare that the required conditions obtain and to decide what means, arrangements or methods may be used, within what limits and by whom
- the controls which will be carried out

**To ensure that any introduction of wild species (flora, fauna, or bird) which do not occur naturally in the wild state in the UK territory does not prejudice the local flora and fauna**

Study the desirability of re-introducing species listed in Annex IV of the Habitats Directive where this might contribute to their conservation. This is provided that such re-introduction contributes effectively to re-establishing these species at a favourable conservation status and takes place only after proper consultation of the public concerned.

Ensure that the deliberate introduction into the wild of any species which is not native to their territory is regulated so as not to prejudice natural habitats within their natural range or the wild native fauna and flora and, if they consider it necessary, prohibit such introduction.

**Six-yearly reporting on the measures taken under the above provisions, including the conservation status of habitats and species of pan-European importance**

The UK government must publish:

- a report every 6 years on implementation
- biennial derogation reports on the licensed activities that are exceptions to the legislation

**Amending annexes**

Habitats Directive - as necessary in response to any technical and scientific progress amend, Annex:

- I habitats of pan-European importance
- II animals and plants of pan-European importance
- III criteria for the selection of SACs
- V animal and plant species of pan-European importance whose taking in the wild and exploitation may be subject to management measures
- VI prohibited methods and means of capture and killing and modes of transport

Wild Birds Directive - as necessary in response to any technical and scientific progress amend, Annex:

- I list of naturally occurring wild birds subject to special conservation measures concerning their habitats
- II list of wild birds that may be hunted
- III list of wild birds that may be offered for sale
- IV list of prohibited means of which certain species of wild birds may be hunted
- V list of subjects for the ongoing research (species in danger of extinction, areas particularly important to migratory species on their migratory routes and as wintering and nesting grounds, listing of data on the population levels of migratory species as shown by ringing, assessing the influence of methods of taking wild

birds on population levels, developing or refining ecological methods for preventing the type of damage caused by birds, determining the role of certain species as indicators of pollution and studying the adverse effect of chemical pollution on population levels of bird species)