



Natural Environment and Rural Communities Act 2006

2006 CHAPTER 16

PART 3

WILDLIFE ETC.

Biodiversity

40 Duty to conserve [^{F1}and enhance] biodiversity

[^{F2}(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.

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- (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.]
- (2) In complying with [^{F3}subsections (1) and (1A)], a Minister of the Crown [^{F4}or government department] must in particular have regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992.
- [^{F5}(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.]
- [^{F6}(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.]
- (4) “Public authority” means any of the following—
- (a) a Minister of the Crown;
 - ^{F7}(b)
 - (c) a public body (including a government department, a local authority [^{F8} and a local planning authority]);
 - (d) a person holding an office—
 - (i) under the Crown,
 - (ii) created or continued in existence by a public general Act, or
 - (iii) the remuneration in respect of which is paid out of money provided by Parliament;
 - (e) a statutory undertaker.
- (5) In this section—

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“local authority” means—

(a) [^{F9}a county council in England], a district council, a parish council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;

(b) ^{F10} ...

"local planning authority" has the same meaning as in the Town and Country Planning Act 1990 (c. 8);

"Minister of the Crown" has the same meaning as in the Ministers of the Crown Act 1975 (c. 26);

"statutory undertaker" means a person who is or is deemed to be a statutory undertaker for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990.

^{F11} ...

[^{F12}(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.]

Textual Amendments

- F1** Words in s. 40 heading inserted (1.1.2023) by Environment Act 2021 (c. 30), **ss. 102(2)**, 147(3) (with s. 144); S.I. 2022/1266, reg. 2(a)
- F2** S. 40(A1)-(1F) substituted for s. 40(A1)(1) (1.1.2023) by Environment Act 2021 (c. 30), **ss. 102(3)**, 147(3) (with s. 144); S.I. 2022/1266, **reg. 2(a)**
- F3** Words in s. 40(2) substituted (1.1.2023) by Environment Act 2021 (c. 30), **ss. 102(4)**, 147(3) (with s. 144); S.I. 2022/1266, reg. 2(a)
- F4** Words in s. 40(2) substituted (21.5.2016) by Environment (Wales) Act 2016 (anaw 3), s. 88(2)(a), **Sch. 2 para. 9(2)(c)**
- F5** S. 40(2A)-(2D) inserted (1.1.2023) by Environment Act 2021 (c. 30), **ss. 102(5)**, 147(3) (with s. 144); S.I. 2022/1266, reg. 2(a)
- F6** S. 40(3) substituted (1.1.2023) by Environment Act 2021 (c. 30), **ss. 102(6)**, 147(3) (with s. 144); S.I. 2022/1266, reg. 2(a)
- F7** S. 40(4)(b) omitted (21.5.2016) by virtue of Environment (Wales) Act 2016 (anaw 3), s. 88(2)(a), **Sch. 2 para. 9(2)(d)(i)**
- F8** Words in s. 40(4)(c) substituted (21.5.2016) by Environment (Wales) Act 2016 (anaw 3), s. 88(2)(a), **Sch. 2 para. 9(2)(d)(ii)**
- F9** Words in s. 40(5)(a) substituted (21.5.2016) by Environment (Wales) Act 2016 (anaw 3), s. 88(2)(a), **Sch. 2 para. 9(2)(e)(i)**
- F10** Words in s. 40(5) omitted (21.5.2016) by virtue of Environment (Wales) Act 2016 (anaw 3), s. 88(2)(a), **Sch. 2 para. 9(2)(e)(ii)**
- F11** Words in s. 40(5) omitted (21.5.2016) by virtue of Environment (Wales) Act 2016 (anaw 3), s. 88(2)(a), **Sch. 2 para. 9(2)(f)**
- F12** S. 40(6)(7) inserted (1.1.2023) by Environment Act 2021 (c. 30), **ss. 102(7)**, 147(3) (with s. 144); S.I. 2022/1266, reg. 2(a)

Commencement Information

- I1** S. 40 in force at 1.10.2006 by S.I. 2006/2541, **art. 2** (with Sch.)

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[^{F13}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.
- (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;

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- (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.]

Textual Amendments

F13 S. 40A inserted (1.1.2023) by [Environment Act 2021 \(c. 30\)](#), **ss. 103(1)**, 147(3) (with s. 144); S.I. 2022/1266, reg. 2(b)

41 Biodiversity lists and action (England)

- (1) The Secretary of State must, as respects England, publish a list of the living organisms and types of habitat which in the Secretary of State's opinion are of principal importance for the purpose of conserving [^{F14}or enhancing] biodiversity.
- (2) Before publishing any list the Secretary of State must consult Natural England as to the living organisms or types of habitat to be included in the list.
- (3) Without prejudice to section 40(1) [^{F15}and (1A)], the Secretary of State must—
- take such steps as appear to the Secretary of State to be reasonably practicable to further the conservation of the living organisms and types of habitat included in any list published under this section, or
 - promote the taking by others of such steps.
- (4) The Secretary of State must, in consultation with Natural England—
- keep under review any list published under this section,
 - make such revisions of any such list as appear to the Secretary of State appropriate, and
 - publish any list so revised as soon as is reasonably practicable after revising it.

Textual Amendments

F14 Words in s. 41(1) inserted (1.1.2023) by [Environment Act 2021 \(c. 30\)](#), **ss. 102(8)(a)**, 147(3) (with s. 144); S.I. 2022/1266, reg. 2(a)

F15 Words in s. 41(3) substituted (1.1.2023) by [Environment Act 2021 \(c. 30\)](#), **ss. 102(8)(b)**, 147(3) (with s. 144); S.I. 2022/1266, reg. 2(a)

Commencement Information

I2 S. 41 in force at 1.10.2006 by S.I. 2006/2541, **art. 2** (with Sch.)

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F16 42 Biodiversity lists and action (Wales)

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Textual Amendments

F16 S. 42 omitted (21.5.2016) by virtue of Environment (Wales) Act 2016 (anaw 3), s. 88(2)(a), **Sch. 2 para. 9(3)**

Changes to legislation:

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