



# Natural Environment and Rural Communities Act 2006

## 2006 CHAPTER 16

### PART 3

#### WILDLIFE ETC.

##### *Biodiversity*

#### **40 Duty to conserve biodiversity**

- (1) 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.
- (2) In complying with subsection (1), a Minister of the Crown, government department or the National Assembly for Wales must in particular have regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992.
- (3) Conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat.
- (4) “Public authority” means any of the following—
  - (a) a Minister of the Crown;
  - (b) the National Assembly for Wales;
  - (c) a public body (including a government department, a local authority 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—

“local authority” means—

- (a) in relation to England, a county council, 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) in relation to Wales, a county council, a county borough council or a community council;

“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.

#### **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 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) and (2), the Secretary of State must—
  - (a) 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
  - (b) promote the taking by others of such steps.
- (4) The Secretary of State must, in consultation with Natural England—
  - (a) keep under review any list published under this section,
  - (b) make such revisions of any such list as appear to the Secretary of State appropriate, and
  - (c) publish any list so revised as soon as is reasonably practicable after revising it.

#### **42 Biodiversity lists and action (Wales)**

- (1) The National Assembly for Wales must, as respects Wales, publish a list of the living organisms and types of habitat which in the Assembly’s opinion are of principal importance for the purpose of conserving biodiversity.
- (2) Before publishing any list the Assembly must consult the Countryside Council for Wales as to the living organisms or types of habitat to be included in the list.
- (3) Without prejudice to section 40(1) and (2), the Assembly must—
  - (a) take such steps as appear to the Assembly 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
  - (b) promote the taking by others of such steps.
- (4) The Assembly must, in consultation with the Countryside Council for Wales—

- (a) keep under review any list published under this section,
- (b) make such revisions of any such list as appear to the Assembly appropriate, and
- (c) publish any list so revised as soon as is reasonably practicable after revising it.

*Pesticides harmful to wildlife*

**43 Possession of pesticides harmful to wildlife**

- (1) A person is guilty of an offence if he has in his possession a pesticide containing an ingredient that is prescribed for the purposes of this section by an order made by the Secretary of State.
- (2) The Secretary of State may not make an order under subsection (1) unless he is satisfied that it is necessary or expedient to do so in the interests of protecting wild birds or wild animals from harm.
- (3) It is a defence for a person charged with an offence under this section to prove that his possession of the pesticide was for the purposes of doing anything in accordance with—
  - (a) provision made by or under the Poisons Act 1972 (c. 66);
  - (b) regulations made under section 16(2) of the Food and Environment Protection Act 1985 (c. 48);
  - (c) the Biocidal Products Regulations 2001 (S.I. 2001/880) or any regulations replacing those regulations;
  - (d) the Plant Protection Products Regulations 2005 (S.I. 2005/1435) or any regulations replacing those regulations.
- (4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale (or both).
- (5) The court by which a person is convicted of an offence under this section may order the forfeiture of the pesticide in respect of which the offence was committed.
- (6) The power to make an order under subsection (1) is exercisable by statutory instrument.
- (7) A statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) The Secretary of State must take such steps as are reasonably practicable to bring information about the effect of an order under subsection (1) to the attention of persons likely to be affected by the order.
- (9) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44), the reference in subsection (4) to 51 weeks is to be read as a reference to 6 months.

**44 Enforcement powers in connection with pesticides**

- (1) An inspector may—

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*Status: This is the original version (as it was originally enacted).*

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- (a) enter any premises if he has reasonable grounds to suspect that he may find there evidence that an offence is being committed under section 43,
  - (b) require any person whom he reasonably believes has information about the formulation, effects or use of any substance found on the premises to give him that information, and
  - (c) seize any substance found on the premises, if he has reasonable grounds for believing that it is evidence of an offence under section 43.
- (2) “Inspector” means—
- (a) a person authorised in writing by the Secretary of State to exercise the powers under this section in relation to England;
  - (b) a person authorised in writing by the National Assembly for Wales to exercise the powers under this section in relation to Wales.
- (3) An authorisation under subsection (2) is subject to any conditions or limitations specified in it.
- (4) Schedule 2 to the Food and Environment Protection Act 1985 (officers and their powers), other than paragraph 2A(1)(b) of that Schedule, has effect with respect to inspectors as it has effect with respect to persons authorised to enforce Part 3 of that Act.
- (5) Subsections (6) and (7) apply where an inspector seizes a substance under subsection (1)(c).
- (6) The inspector must give to a person on the premises, or affix conspicuously to some object on the premises, a notice stating—
- (a) what he has seized and the ground for seizing it, and
  - (b) the address for service for any claim for the return of the substance.
- (7) The inspector—
- (a) may retain the substance for so long as is reasonably necessary for the purposes of any investigation or proceedings in respect of an offence under section 43;
  - (b) subject to any order for forfeiture under section 43(5) or any claim made within the relevant period by a person entitled to the return of the substance, may retain the substance or, after the relevant period, destroy or otherwise dispose of it.
- (8) “The relevant period” means the period ending 28 days after—
- (a) any proceedings in respect of an offence under section 43 are finally determined, or
  - (b) if no such proceedings are brought, the time for bringing such proceedings expires.

## **45 Codes of practice**

- (1) The Secretary of State may—
- (a) issue a code of practice in connection with any of the provisions of section 44 or Schedule 2 to the Food and Environment Protection Act 1985 (c. 48) as applied by section 44(4), and
  - (b) revise or replace such a code.

- (2) An inspector must have regard to any relevant provision of a code when discharging any function under any provision mentioned in subsection (1)(a).
- (3) But an inspector's failure to have regard to any provision of a code does not make him liable to criminal or civil proceedings.
- (4) A code—
  - (a) is admissible in evidence in any proceedings, and
  - (b) must be taken into account by a court in any case in which it appears to the court to be relevant.

#### **46 Interpretation**

- (1) This section has effect for the interpretation of sections 43 and 44.
- (2) "Pesticide" means—
  - (a) a pesticide as defined by section 16(15) of the Food and Environment Protection Act 1985;
  - (b) anything to which Part 3 of the 1985 Act applies (by virtue of section 16(16) of the Act) as if it were a pesticide.
- (3) "Wild bird" and "wild animal" have the same meaning as in Part 1 of the Wildlife and Countryside Act 1981 (c. 69).
- (4) "Premises" includes land (including buildings), movable structures, vehicles, vessels, aircraft and other means of transport.

#### *Protection of birds*

#### **47 Protection for nests of certain birds which re-use their nests**

- (1) Amend the Wildlife and Countryside Act 1981 (c. 69) as follows.
- (2) In section 1 (protection of wild birds, their nests and eggs), in subsection (1), after paragraph (a) insert—
  - "(aa) takes, damages or destroys the nest of a wild bird included in Schedule ZA1;"
- (3) At the beginning of the Schedules insert—

#### **"SCHEDULE ZA1**

#### **BIRDS WHICH RE-USE THEIR NESTS**

<i>Common name</i>	<i>Scientific name</i>
Eagle, Golden	<i>Aquila chrysaetos</i>
Eagle, White-tailed	<i>Haliaeetus albicilla</i>

NOTE: The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names shall not be taken into account.

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<i>Common name</i>	<i>Scientific name</i>
Osprey	Pandion haliaetus

NOTE: The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names shall not be taken into account.

- (4) In—
- (a) section 4 (exceptions to sections 1 and 3), in subsection (1)(c), and
  - (b) section 7 (registration etc. of certain captive birds), in subsection (3A)(a)(i) and (c)(i),
- after “Schedule” insert “ZA1 or”.
- (5) In section 22 (power to vary Schedules), in subsection (1), for “Schedules 1 to 4” substitute “Schedules ZA1 to 4”.

#### **48 Birds released into the wild as part of re-population programme**

- (1) In section 1 of the 1981 Act (protection of wild birds, their nests and eggs), for subsection (6) substitute—
- “(6) For the purposes of this section the definition of “wild bird” in section 27(1) is to be read as not including any bird which is shown to have been bred in captivity unless it has been lawfully released into the wild as part of a re-population or re-introduction programme.
- (6A) “Re-population” and “re-introduction” have the same meaning as in the Directive of the Council of the European Communities dated 2nd April 1979 (No [1979/409/EEC](#)) on the conservation of wild birds.”
- (2) In section 6 of the 1981 Act (sale etc. of live or dead wild birds, eggs etc.), for subsection (5) substitute—
- “(5) Any reference in this section to any bird included in Part 1 of Schedule 3 is a reference to any bird included in that Part which—
- (a) was bred in captivity,
  - (b) has been ringed or marked in accordance with regulations made by the Secretary of State, and
  - (c) has not been lawfully released into the wild as part of a re-population or re-introduction programme.
- (5A) “Re-population” and “re-introduction” have the same meaning as in the Directive of the Council of the European Communities dated 2nd April 1979 (No [1979/409/EEC](#)) on the conservation of wild birds.
- (5B) Regulations made for the purposes of subsection (5)(b) may make different provision for different birds or different provisions of this section.”

#### **49 Registration etc. of certain captive birds**

In section 7 of the 1981 Act (registration etc. of certain captive birds), in subsection (3A), after paragraph (c) insert—

- “(ca) any offence under subsection (1);”.

*Invasive non-native species*

**50 Sale etc. of invasive non-native species**

After section 14 of the 1981 Act insert—

**“14ZA Sale etc. of invasive non-native species**

- (1) Subject to the provisions of this Part, a person is guilty of an offence if he sells, offers or exposes for sale, or has in his possession or transports for the purposes of sale—
  - (a) an animal or plant to which this section applies, or
  - (b) anything from which such an animal or plant can be reproduced or propagated.
- (2) Subject to the provisions of this Part, a person is guilty of an offence if he publishes or causes to be published any advertisement likely to be understood as conveying that he buys or sells, or intends to buy or sell—
  - (a) an animal or plant to which this section applies, or
  - (b) anything from which such an animal or plant can be reproduced or propagated.
- (3) This section applies to an animal or plant which—
  - (a) is within section 14(1) or (2) (animals and plants which must not be released etc. into the wild),
  - (b) is of a description prescribed for the purposes of this section by an order made by the Secretary of State, and
  - (c) is a live animal or live plant.
- (4) An order under subsection (3) may be made in relation to a particular area or a particular time of the year.
- (5) Subsections (3) and (4) of section 14 (defence of due diligence etc.) apply to an offence under this section as they apply to an offence under that section.”

**51 Codes of practice in connection with invasive non-native species**

After section 14ZA of the 1981 Act insert—

**“14ZB Codes of practice in connection with invasive non-native species**

- (1) The Secretary of State may issue or approve a code of practice relating to—
  - (a) animals which are not ordinarily resident in and are not regular visitors to Great Britain in a wild state,
  - (b) animals or plants included in Schedule 9, or
  - (c) any description of animals or plants mentioned in paragraph (a) or (b).
- (2) The Secretary of State may revise or replace a code or approve its revision or replacement.
- (3) The Secretary of State must ensure that a code is published in a way that is appropriate for bringing it to the attention of persons likely to be affected by it.

- (4) A person's failure to comply with a provision of a code does not make him liable to criminal or civil proceedings.
- (5) A code—
- (a) is admissible in evidence in any proceedings, and
  - (b) must be taken into account by a court in any case in which it appears to the court to be relevant.”

*Enforcement etc. of provisions relating to wildlife*

**52 Enforcement powers in connection with wildlife**

Schedule 5 contains amendments relating to enforcement powers in connection with wildlife.

**53 Wildlife offences: time limits for proceedings**

Schedule 6 contains provisions extending the time limit for summary proceedings for certain offences relating to wildlife.

**54 Application of Part 1 of 1981 Act to Crown**

- (1) In the 1981 Act, before section 67 insert—

**“66A Application of Part 1 to Crown**

- (1) Subject to subsections (2) to (5), Part 1 and regulations and orders made under it bind the Crown.
  - (2) No contravention by the Crown of any provision of Part 1 makes the Crown criminally liable; but the High Court may, on the application of any person appearing to the Court to have an interest, declare unlawful an act or omission of the Crown which constitutes such a contravention.
  - (3) Despite subsection (2), Part 1 applies to persons in the public service of the Crown as it applies to other persons.
  - (4) But the powers conferred by sections 18A to 19XA are not exercisable in relation to premises occupied by the Crown.
  - (5) Nothing in this Part affects Her Majesty in her private capacity.
  - (6) Subsection (5) is to be read as if section 38(3) of the Crown Proceedings Act 1947 (c. 44) (meaning of Her Majesty in her private capacity) were contained in this Act.”
- (2) For the heading to section 67, substitute “Application of Parts 2 and 3 to Crown land”.