

ENVIRONMENT ACT: 2021

89 Water quality: powers of Secretary of State

- (1) The Secretary of State may by regulations amend or modify any legislation to which this section applies for the purpose of—
- (a) making provision about the substances to be taken into account in assessing the chemical status of surface water or groundwater;
 - (b) specifying standards in relation to those substances or in relation to the chemical status of surface water or groundwater.
- (2) This section applies to —
- (a) the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 ([S.I. 2017/407](#));
 - (b) the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003 ([S.I. 2003/3245](#));
 - (c) the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004 ([S.I. 2004/99](#));
 - (d) the Groundwater Regulations (Northern Ireland) 2009 ([S.R. \(N.I.\) 2009 No. 254](#));
 - (e) the Water Framework Directive (Classification, Priority Substances and Shellfish Waters) Regulations (Northern Ireland) 2015 ([S.R. \(N.I.\) 2015 No. 351](#));
 - (f) the Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2017 ([S.R. \(N.I.\) 2017 No. 81](#));
 - (g) any regulations modifying that legislation made under or by virtue of the European Union (Withdrawal) Act 2018.
- (3) Regulations under subsection (1) may also, in connection with provision made under subsection (1)(a) or (b), amend or modify legislation to which this section applies so as to make provision—
- (a) setting objectives in relation to the substances about which the provision is made, or in relation to the chemical status of surface water or groundwater (including objectives to maintain specified standards or to achieve specified standards by specified dates);
 - (b) about how objectives set by the regulations are to be met, including provision requiring, or otherwise relating to, measures to be taken to achieve those objectives;
 - (c) requiring, or otherwise relating to, the monitoring or assessment of any matter relating to the chemical status of surface water or the chemical status of groundwater;
 - (d) about the classification of bodies of water according to their chemical status or any matter relating to their chemical status.
- (4) Regulations under this section may not contain provision that could be contained in—
- (a) regulations made by the Welsh Ministers under section 90, or
 - (b) regulations made by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland under section 91,
- unless those Ministers or that Department consents.
- (5) Regulations under this section may not contain provision applying to that part of a Scottish cross-border river basin district which is in Scotland, unless the Scottish Ministers consent.
- (6) Before making regulations under this section the Secretary of State must consult—
- (a) if the regulations apply to England (or part of England), the Environment Agency;
 - (b) if the regulations do not require the consent of the Welsh Ministers but apply to any part of a Welsh cross-border river basin district, the Welsh Ministers;

(c) if the regulations do not require the consent of the Scottish Ministers but apply to any part of a Scottish cross-border river basin district, the Scottish Ministers;

(d) any persons or bodies appearing to the Secretary of State to represent the interests of those likely to be affected by the regulations.

(7) A “Scottish cross-border river basin district” is a river basin district which is partly in England and partly in Scotland.

(8) A “Welsh cross-border river basin district” is a river basin district which is partly in England and partly in Wales.

(9) Regulations under this section are subject to the negative procedure.

93 Water quality: interpretation

In sections 89 to 92—

- “groundwater” has the same meaning as in the Water Framework Directive;
- “river basin district” means an area identified as such by or under any legislation to which the section in question applies;
- “surface water” has the same meaning as in the Water Framework Directive;
- “Water Framework Directive” means [Directive 2000/60/EC](#) of the European Parliament and of the Council establishing a framework for Community action in the field of water policy.

98 Biodiversity gain as condition of planning permission

Schedule 14 makes provision for biodiversity gain to be a condition of planning permission in England

100 Biodiversity gain site register

(1) The Secretary of State may by regulations make provision for and in relation to a register of biodiversity gain sites (“the biodiversity gain site register”).

(2) A biodiversity gain site is land where—

(a) a person is required under a conservation covenant or planning obligation to carry out works for the purpose of habitat enhancement,

(b) that or another person is required to maintain the enhancement for at least 30 years after the completion of those works, and

(c) for the purposes of Schedule 7A to the Town and Country Planning Act 1990 the enhancement is made available to be allocated (conditionally or unconditionally, and whether for consideration or otherwise) in accordance with the terms of the covenant or obligation to one or more developments for which planning permission is granted.

(3) Regulations under this section must provide for the information in the register to be accessible to members of the public.

(4) Regulations under this section may in particular make provision about—

(a) the person who is to establish and maintain the biodiversity gain site register (who may be the Secretary of State, Natural England or another person);

(b) circumstances in which land is or is not eligible to be registered;

(c) applications to register land in the register;

(d) the information to be recorded in relation to any land that is registered;

(e) amendments to the register;

- (f) removal of land from the register;
 - (g) fees payable in respect of any application under the regulations.
- (5) Provision under subsection (4)(c) may in particular include provision about—
- (a) who is entitled to apply to register land in the biodiversity gain site register;
 - (b) the procedure to be followed in making an application;
 - (c) the information to be provided in respect of an application;
 - (d) how an application is to be determined;
 - (e) appeals against the rejection of an application;
 - (f) financial penalties for the supply of false or misleading information in connection with an application.
- (6) Provision under subsection (4)(d) may in particular require the recording of the following in relation to any land registered in the biodiversity gain site register—
- (a) the location and area of the land;
 - (b) the works to be carried out on the land and the habitat enhancement to be achieved by them;
 - (c) information about the habitat of the land before the commencement of those works;
 - (d) the person who applied to register the land and (if different) the person by whom the requirement to carry out the works or maintain the habitat enhancement is enforceable;
 - (e) any development to which any of the habitat enhancement has been allocated;
 - (f) the biodiversity value (for the purposes of Schedule 7A to the Town and Country Planning Act 1990 or Schedule 2A to the Planning Act 2008) of any such habitat enhancement in relation to any such development.
- (7) Regulations under this section may amend subsection (2)(b) so as to substitute for the period for the time being specified there a different period of at least 30 years.
- (8) Regulations under this section making provision under subsection (4)(g) or (5)(f) are subject to the affirmative procedure.
- (9) Other regulations under this section are subject to the negative procedure.
- (10) The Secretary of State must keep under review—
- (a) the supply of land for registration in the biodiversity gain site register;
 - (b) whether the period specified in subsection (2)(b) or in paragraph 9(3) of Schedule 7A to the Town and Country Planning Act 1990 can be increased under subsection (7) or paragraph 9(4) of that Schedule without adversely affecting that supply.
- (11) In this section “development”, “habitat enhancement”, “planning obligation” and “planning permission” have the same meanings as in Schedule 7A to the Town and Country Planning Act 1990

102 General duty to conserve and enhance biodiversity

- (1) Section 40 of the Natural Environment and Rural Communities Act 2006 (duty to conserve biodiversity) is amended in accordance with subsections (2) to (7).
- (2) In the heading, after “conserve” insert “and enhance”.
- (3) For subsections (A1) and (1) substitute—
- “(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.

(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.”

(4) In subsection (2) for “subsection (1)” substitute “subsections (1) and (1A)”.

(5) After subsection (2) insert—

“(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.”

(6) For subsection (3) substitute—

“(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.”

(7) After subsection (5) insert—

“(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.”

(8) In section 41 of that Act (biodiversity lists and action (England))—

(a) in subsection (1), after “conserving” insert “or enhancing”;

(b) in subsection (3) for “and (2)” substitute “and (1A)

103 Biodiversity reports

(1) After section 40 of the Natural Environment and Rural Communities Act 2006 insert—

“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;

(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.”

104 Local nature recovery strategies for England

(1) There are to be local nature recovery strategies for areas in England.

(2) Together the local nature recovery strategies are to cover the whole of England.

(3) The Secretary of State is to determine the areas within England to which individual local nature recovery strategies are to relate.

(4) The area of a local authority, other than a county council, may not be split between local nature recovery strategies.

(5) Section 40(2A) of the Natural Environment and Rural Communities Act 2006 (duty to conserve biodiversity) makes provision about the duties of public authorities in relation to local nature recovery strategies.

109 Species conservation strategies

(1) Natural England may prepare and publish a strategy for improving the conservation status of any species of fauna or flora.

(2) A strategy under subsection (1) is called a “species conservation strategy”.

(3) A species conservation strategy must relate to an area (the “strategy area”) consisting of—

(a) England, or

(b) any part of England.

(4) A species conservation strategy for a species may in particular—

(a) identify areas or features in the strategy area which are of importance to the conservation of the species,

(b) identify priorities in relation to the creation or enhancement of habitat for the purpose of improving the conservation status of the species in the strategy area,

(c) set out how Natural England proposes to exercise its functions in relation to the species across the whole of the strategy area or in any part of it for the purpose of improving the conservation status of the species in the strategy area,

(d) include Natural England’s opinion on the giving by any other public authority of consents or approvals which might affect the conservation status of the species in the strategy area, and

(e) include Natural England's opinion on measures that it would be appropriate to take to avoid, mitigate or compensate for any adverse impact on the conservation status of the species in the strategy area that may arise from a plan, project or other activity.

(5) Natural England may, from time to time, amend a species conservation strategy.

(6) A local planning authority in England and any prescribed authority must co-operate with Natural England in the preparation and implementation of a species conservation strategy so far as relevant to the authority's functions.

(7) The Secretary of State may give guidance to local planning authorities in England and to prescribed authorities as to how to discharge the duty in subsection (6).

(8) The Secretary of State must lay before Parliament, and publish, the guidance.

(9) A local planning authority in England and any prescribed authority must in the exercise of its functions have regard to a species conservation strategy so far as relevant to its functions.

(10) In this section—

- “England” includes the territorial sea adjacent to England, which for this purpose does not include—
 - (a) any part of the territorial sea adjacent to Wales for the general or residual purposes of the Government of Wales Act 2006 (see section 158 of that Act), or
 - (b) any part of the territorial sea adjacent to Scotland for the general or residual purposes of the Scotland Act 1998 (see section 126 of that Act);
- “local planning authority” means a person who is a local planning authority for the purposes of any provision of Part 3 of the Town and Country Planning Act 1990;
- “prescribed authority” means an authority exercising functions of a public nature in England which is specified for the purposes of this section by regulations made by the Secretary of State.

(11) Regulations under subsection (10) are subject to the negative procedure

- “England” has the meaning given in section 109;
- “European site” has the meaning given in regulation 8 of the Conservation of Habitats and Species Regulations 2017;
- “local planning authority” has the meaning given in section 109;
- “public authority” has the meaning given in section 40(4) of the Natural Environment and Rural Communities Act 2006

Conservation

109 Species conservation strategies

(1) Natural England may prepare and publish a strategy for improving the conservation status of any species of fauna or flora.

(2) A strategy under subsection (1) is called a “species conservation strategy”.

(3) A species conservation strategy must relate to an area (the “strategy area”) consisting of—

- (a) England, or
- (b) any part of England.

(4) A species conservation strategy for a species may in particular—

- (a) identify areas or features in the strategy area which are of importance to the conservation of the species,
- (b) identify priorities in relation to the creation or enhancement of habitat for the purpose of improving the conservation status of the species in the strategy area,
- (c) set out how Natural England proposes to exercise its functions in relation to the species across the whole of the strategy area or in any part of it for the purpose of improving the conservation status of the species in the strategy area,

(d) include Natural England's opinion on the giving by any other public authority of consents or approvals which might affect the conservation status of the species in the strategy area, and

(e) include Natural England's opinion on measures that it would be appropriate to take to avoid, mitigate or compensate for any adverse impact on the conservation status of the species in the strategy area that may arise from a plan, project or other activity.

(5) Natural England may, from time to time, amend a species conservation strategy.

(6) A local planning authority in England and any prescribed authority must co-operate with Natural England in the preparation and implementation of a species conservation strategy so far as relevant to the authority's functions.

(7) The Secretary of State may give guidance to local planning authorities in England and to prescribed authorities as to how to discharge the duty in subsection (6).

(8) The Secretary of State must lay before Parliament, and publish, the guidance.

(9) A local planning authority in England and any prescribed authority must in the exercise of its functions have regard to a species conservation strategy so far as relevant to its functions.

(10) In this section—

- “England” includes the territorial sea adjacent to England, which for this purpose does not include—
 - (a) any part of the territorial sea adjacent to Wales for the general or residual purposes of the Government of Wales Act 2006 (see section 158 of that Act), or
 - (b) any part of the territorial sea adjacent to Scotland for the general or residual purposes of the Scotland Act 1998 (see section 126 of that Act);
- “local planning authority” means a person who is a local planning authority for the purposes of any provision of Part 3 of the Town and Country Planning Act 1990;
- “prescribed authority” means an authority exercising functions of a public nature in England which is specified for the purposes of this section by regulations made by the Secretary of State.

(11) Regulations under subsection (10) are subject to the negative procedure.

Habitats Regulations

112 Habitats Regulations: power to amend general duties

(1) The Secretary of State may by regulations amend the Conservation of Habitats and Species Regulations 2017 ([S.I. 2017/1012](#)) (the “Habitats Regulations”), as they apply in relation to England, for the purposes in subsection (2).

(2) The purposes are—

(a) to require persons within regulation 9(1) of the Habitats Regulations to exercise functions to which that regulation applies—

- (i) to comply with requirements imposed by regulations under this section, or
- (ii) to further objectives specified in regulations under this section,

Instead of exercising them to secure compliance with the requirements of the Directives;

(b) to require persons within regulation 9(3) of the Habitats Regulations, when exercising functions to which that regulation applies, to have regard to matters specified by regulations under this section instead of the requirements of the Directives.

(3) The regulations may impose requirements, or specify objectives or matters, relating to—

- (a) targets in respect of biodiversity set by regulations under section 1 or 3;

(b) improvements to the natural environment which relate to biodiversity and are set out in an environmental improvement plan.

(4) The regulations may impose any other requirements, or specify any other objectives or matters, relating to the conservation or enhancement of biodiversity that the Secretary of State considers appropriate.

(5) Regulations under this section may also, in connection with provision made for the purposes in subsection (2), amend other provisions of the Habitats Regulations, as they apply in relation to England, which refer to requirements, objectives or provisions of the Directives.

(6) In making regulations under this section the Secretary of State must have regard to the particular importance of furthering the conservation and enhancement of biodiversity.

(7) The Secretary of State may make regulations under this section only if satisfied that the regulations do not reduce the level of environmental protection provided by the Habitats Regulations.

(8) Before making regulations under this section the Secretary of State must lay before Parliament, and publish, a statement explaining why the Secretary of State is satisfied as mentioned in subsection (7).

(9) Before making regulations under this section the Secretary of State must consult such persons as the Secretary of State considers appropriate.

(10) Regulations under this section may not come into force before 1 February 2023.

(11) In this section—

- “the Directives” has the same meaning as in the Habitats Regulations (see regulation 3(1));
- “England” includes the territorial sea adjacent to England, which for this purpose does not include—

(a)

any part of the territorial sea adjacent to Wales for the general or residual purposes of the Government of Wales Act 2006 (see section 158 of that Act), or

(b)

any part of the territorial sea adjacent to Scotland for the general or residual purposes of the Scotland Act 1998 (see section 126 of that Act);

- “environmental improvement plan” has the same meaning as in Part 1.

(12) Regulations under this section are subject to the affirmative procedure.