PROTECTED AREAS

CORE TOPICS:
- Key designated areas for the protection of nature and limitations on managing these areas.
- Proposed legislative reform to designated areas of protection.

KEY TAKEAWAYS:
- Rewilding in a protected area may be restricted by the area’s designated aims of protecting specific species and habitats.
- The SSSI regime limits activities within SSSI sites only and consent / permission must be granted for any activities falling within the site-specific list of “operations requiring consent”.
- It is an offence for anyone to intentionally or recklessly damage the protected natural features of any SSSI.
- Any activities which are likely to have a significant negative effect on the protected features of Special Areas of Conservation (SAC) and Special Protection Areas (SPA) will be restricted and may require a Habitats Regulation Assessment.
- It is an offence to intentionally or recklessly damage the natural feature by reason of which the land has been designated as a European site.
- Rewilding within a National Park or Areas of Outstanding Natural Beauty may be subject to stricter planning and development controls.

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1. AREAS PROTECTED FOR NATURE – KEY DESIGNATIONS

In England and Wales, certain areas of land that have particular importance for nature (e.g., because they are home to rare plant species or they are home to breeding sites for threatened animal species) are protected by laws which often restrict the management of that land and may limit the activities which can be pursued on that land by landholders.

The most common designations in England and Wales are Sites of Special Scientific Interest ("SSSI"), Special Areas of Conservation ("SACs"), Special Protection Areas ("SPAs") and Ramsar Sites.

The designated sites system\(^1\) can be used to identify these protected sites in England, and the Magic Map\(^2\) can be used to identify these protected sites in Wales.

Each of these designations and their potential impact on rewilding activities are described below.

1.1 Site of Special Scientific Interest (SSSI)

A SSSI is a site notified (designated) as being of special interest due to the flora or fauna present or the geological make-up or physiography of the area under the Wildlife and Countryside Act 1981 (the "WCA"). Sections 28 to 33 of the WCA set out the SSSI regime, which is a domestic designation that applies in Great Britain.

Natural England ("NE") and Natural Resources Wales ("NRW") may designate particular sites as being of special scientific interest when it believes the land’s wildlife, geology or landform is of special interest. Their objective is for all SSSIs to reach ‘favourable condition’.

SSSIs exist on "land", which may include estuarial waters, land lying above mean low water mark, and further adjacent waters in certain circumstances (section 28(1A)-(1B) of the WCA), meaning that although SSSIs are principally a terrestrial designation, the sites can extend into marine areas.

It is important for rewilders to be aware that NE and NRW have the power to prosecute anyone who intentionally or recklessly damages a SSSI, destroys any of the designated features or disturbs wildlife for which a site was notified. Designation as a SSSI may therefore limit the rewilding activities that can be carried out on site and any change in land management is likely to require the consent of NE or NRW. Therefore, if rewilding land is a SSSI, this designation is likely to limit the freedom that you have in relation to your rewilding project and constraints may have been imposed on how the land can be managed and developed.

The designated sites system\(^3\) and the protected areas search\(^4\) can be used to search for a SSSI to get a list of the operations requiring NE’s and NRW's consent, respectively.

1.2 What restrictions are placed on the management of SSSIs?

SSSIs must be managed effectively and appropriately to conserve the special features of the site. The sites are assessed and categorised as being in favourable, unfavourable (with specifications on whether the area is recovering, declining or has no change available from NE only) or destroyed/part destroyed condition. In order to assess the condition of the site, NE / NRW will visit your SSSI at least every six years. This may be more or less regular depending on the site in question. They will notify in advance, but do have a power of entry if they believe a site is being damaged.

Each SSSI has a specific list of activities (usually extensive), known as ‘operations’ for which consent from NE / NRW will be required. The list of operations will be specific to each site and could include, for example:

(a) grazing and changes in the grazing regime (including type of stock or intensity or seasonal pattern of grazing and cessation of grazing);

(b) stock feeding and changes in stock feeding practice, including changes in the number of animals stocked;

(c) the release into the site of any wild, feral, captive bred or domestic animal, plant or seed;

(d) the destruction, displacement, removal or cutting of any plant or plant remains, including tree, shrub, herb, hedge, dead or decaying wood or turf;

(e) the introduction of, or changes to tree or woodland management; and

(f) modification of the structure of watercourses.

 Undertaking any “operation” identified for the relevant SSSI will require consent from NE or NRW and rewilders should therefore engage with NE / NRW at an early stage when they are considering changes to the management of their land. Failure to obtain such consent may constitute an offence.

In order to understand whether a site is a SSSI and any restricted activities applicable to that site, visit the Natural England site or the Natural Resources Wales site, as applicable.

Note that NE / NRW must be notified within 28 days of changes to the ownership and occupation of SSSI land, including notification of sales, leases or easements.

EXAMPLE: IMPACT OF SSSI DESIGNATION ON REWILDING LAND

Landowner A is rewilding a 50 hectares site, part of which is covered by a SSSI designation because it is a good example of dwarf-shrub heath plant communities.

Landowner A notices that, by natural succession and regeneration, native, pioneer tree species such as birch, rowan and willow are colonising the upland heath area of her land and she would like to support this process and allow it to continue.

She would also like to introduce cattle and horses to graze the land and encourage the creation of a mosaic of habitats.
1.3 How are SSSIs identified and selected for protection?

If NE / NRW believe that an area of land should be protected as a SSSI, they will send a letter of notification to the landowner. This letter will set out the reasons for designation, their views on management, a map of the SSSI, a list of operations that will require their consent, legal obligations to support these processes within the SSSI designated land, and how to give your opinions or object to the designation.

NE / NRW must also notify the Local Planning Authority (the “LPA”), the Secretary of State for Environment, Food and Rural Affairs (the “SoS for Environment”) as well as other relevant public bodies. Following these notifications, there will be a consultation period of not less than three months during which any comments or objections to the designation can be submitted.

All SSSIs are registered on the Land Charges register. If you are buying land or to find out if your land is within a SSSI, a conveyancing search should be carried out to see if the land is notified as a SSSI.

1.4 Special Area of Conservation (SAC) and Special Protection Areas (SPA)

SACs and SPAs are a network of areas designated under the EU’s Birds Directive (2009/147/EC) (“Birds Directive”) to protect:

(a) vulnerable wild bird species listed in Annex 1 to the Birds Directive which naturally occur in the UK; and

(b) regularly occurring migratory species of birds not listed in Annex 1 which naturally occur in the UK.

SACs and SPAs are designated and protected in England and Wales and adjacent territorial waters (up to 12 nautical miles offshore), under the Conservation of Habitats and Species Regulations 2017 (SI 2017/1012) (“ Habitats Regulations”) and can be identified by viewing an online map called the Magic Map that allows someone to view all the SAC and SPA designated sites across the EU. It also provides information on the reasoning behind a particular site gaining its status. Alternatively, just the UK sites can be viewed here (for SACs) or here for SPAs.

The appropriate nature conservation body can make management agreements in relation to an SPA or SAC with the landowner. Alternatively, the appropriate authority can make a special nature conservation order (“SNCO”) specifying operations (on or off the SPA or SAC) likely to destroy or damage protected features. For example, an SNCO specifies operations that appear likely to destroy or damage the flora, fauna, or geological or physiographical features by reason of which the land is a European site.

The SNCO is a local land charge which means it will be recorded in a register of local land charges by the relevant authority and the register will be open to public inspection. The authority can then serve a stop notice (although compensation may be payable) and make a restoration order in relation to any activities which breach the SNCO. In addition, the appropriate nature conservation body can make byelaws to protect the site.

More generally, there are significant restrictions on development affecting an SAC or SPA and these may impact rewilders looking to develop land to facilitate ecotourism and public engagement facilities. The appropriate authority is required to undertake an appropriate assessment of any plan or project that is likely (either alone or in combination with other plans or projects) to have a significant effect on an SAC or SPA and which is not directly connected with or necessary to the management of that site. This means that even if rewilded land is not itself an SAC or an SPA, a plan or project may still be subject to assessments if it is likely to have a significant effect on a nearby SAC or SPA.

A “plan or project” has a broad meaning and will effectively include any activity which could impact the conservation objectives of the protected site. This could include e.g., erecting any buildings, felling trees or causing changes to relevant habitats including by introducing new species of animals or plants.

The appropriate assessment is known as a Habitats Regulation Assessment (“HRA”) in England and Wales, which is to assess:

(a) if the proposed plan or project will have a negative effect on the site’s conservation objectives; and

(b) whether there is an alternative solution.

The general rule is that consent for the plan or project will only be given if the assessment determines that it will not adversely affect the integrity of the protected site.

There are some exceptions to this rule. In particular, if a plan or project has a negative assessment and there is no alternative solution, consent may be given for the plan or project to be undertaken if it is for “imperative reasons of
overriding public interest”, including those of a social or economic nature. In reality this is a very hard test to satisfy and will generally be reserved for public infrastructure projects rather than anything a private landowner may wish to do on their land. If consent is granted in such circumstances, compensatory measures must be made.

### EXAMPLE: IMPACT OF SPA DESIGNATION ON REWILDING ACTIVITIES

Landowner B is rewilding a 300-hectare area near the Seven Sisters Country Park which includes a SPA which is designated to protect a unique wetland habitat.

Although the proposed increased drainage by the neighbouring landowner is not taking place in the SPA itself, it is still caught by the protections offered by the Habitats Regulations and will need to be subject to a Habitats Regulation Assessment if it likely to have a significant effect on the integrity of an SPA.

This means that an appropriate assessment will need to be conducted to understand the likely impact of the increased drainage on the SPA. If a significant negative effect cannot be ruled out, NE will not grant consent if there is an alternative solution. If an alternative solution is not available, NE will only grant consent in the exceptional circumstance of there being an overriding and imperative public interest which is a very stringent test to satisfy.

### 1.5 Ramsar sites

A Ramsar site is a wetland of international importance designated for protection under the Convention on Wetlands of International Importance (Ramsar Convention) of which the UK is a signatory. While a Ramsar site is principally a terrestrial designation, it can extend into intertidal areas.

Specific legal protection for the Ramsar site habitat and species is provided by designation as SSSIs or SPAs.

### 2. DESIGNATIONS REFORM

In March 2022, the Department for Environment, Food and Rural Affairs (“Defra”) published a Nature Recovery Green Paper on protected sites and species in England for consultation. The Green Paper is intended to support the government’s target to restore nature and halt the decline in species abundance by 2030, as required by the Environment Act 2021 (the “Environment Act”). The Green Paper includes significant reform proposals, in particular for:

1. protected sites, by consolidating various designations (such as SSSIs, SACs and Marine Conservation Zones) into single terrestrial and marine designations, possibly with different categories of protection;
2. species protection legislation, by consolidation of protection, licensing and enforcement legislation into simpler and consistent legislation; and
3. HRAs potentially with a single reformed process to complement the proposals for simplified designations.

As at February 2023, the Retained EU Law (Revocation and Reform) Bill is currently passing through parliament and has the potential to bring significant change to all aspects of our laws that originate from the EU, including the Habitats Regulations which regulated SPAs and SACs.

### 3. NATIONAL AND LOCAL NATURE RESERVES

In addition to the protected area designations described above, areas of land which are publicly owned may also be identified as National Nature Reserves (“NNRs”) or Local Nature Reserves (“LNRs”).

#### 3.1 National Nature Reserve (NNR)

A NNR is a visitor-focused designation under section 19(1) of the National Parks and Access to the Countryside Act 1949 (the “NPACA”) and section 35(1) of the WCA. It protects species abundance by 2030, as required by the Environment Act 2021 (the “Environment Act”). The Green Paper includes significant reform proposals, in particular for:

1. protected sites, by consolidating various designations (such as SSSIs, SACs and Marine Conservation Zones) into single terrestrial and marine designations, possibly with different categories of protection;
2. species protection legislation, by consolidation of protection, licensing and enforcement legislation into simpler and consistent legislation; and
3. HRAs potentially with a single reformed process to complement the proposals for simplified designations.

As at February 2023, the Retained EU Law (Revocation and Reform) Bill is currently passing through parliament and has the potential to bring significant change to all aspects of our laws that originate from the EU, including the Habitats Regulations which regulated SPAs and SACs.

#### 3.2 Local Nature Reserve (LNR)

A LNR can be designated by a local authority under sections 19(1) and 21 of NPACA provided that the site is controlled by the local authority through ownership, lease or agreement with the owner. It will be locally important for wildlife, geology, education or enjoyment (without disturbing wildlife). Occasionally, a LNR may also be designated as a SSSI. Usually, the site will remain a protected LNR for a minimum of 21 years.
The LNR designation:

(a) gives limited protection from development by indicating its conservation value;

(b) encourages proper management of its conservation features; and

(c) enables bye-laws to be made to protect the site.

The policies provided by local planning policies will aim to resist developments adversely affecting LNRs and as such, rewilding activities which adversely affect these areas may be limited for a substantial period of time. A manager of a LNR will be responsible for caring for and protecting the LNR’s natural features, rather than the area being publicly managed. It is not a formal requirement to open the LNR to the public, but government guidance provides that at least part of it should be publicly accessible.

There are over 1,500 LNRs in England covering 35,000 hectares.

4. PROTECTIONS APPLICABLE TO SPECIFIC HABITAT TYPES

4.1 Peatlands

Due to the interaction of peatland habitats with a variety of land uses and their use in tackling a number of environmental issues (such as water quality and climate change), peatlands may be protected under a number of different protected area designation types and fall under a number of government policies.

The government launched the England Peat Action Plan in May 2021 with the aim of reversing the decline in peatlands. The plan confirms that only 13% of England’s peatlands are in a near natural state. In order to improve the state of peatlands, NE and Defra launched a grant scheme in 2021 (The Nature for Climate Peatland Grant Scheme) to enable restoration of degraded peatlands.

Peatlands may also be protected under designation as a SPA, SAC or a SSSI. See relevant section of the note for applicable restrictions/requirements depending on designation.

Any burning of heather, rough grass and other vegetation is regulated by the Heather and Grass etc. (Burning) Regulations 2007. In general, heather, rough grass and other vegetation may be burned provided certain rules are followed and provided that it is carried out during permitted burning season (1 October to 15 April for uplands, otherwise 1 November to 31 March), with particular precautions taken. See Government guidance.

However, more restrictive rules apply to certain protected peatland sites or where the activity is outside of the burning season and/or has a particular impact due to the size or topography of the site.

In particular, in relation to protected peatlands, additional prohibitions are contained within the Heather and Grass etc. Burning (England) Regulations 2021 which aim to prevent further damage by burning to protect blanket bog habitat. The government is required under the Habitats Regulation to protect this habitat type.

Given the Action Plan and the crossover with other protected area designation, rewilders undertaking any activities on peatlands other than restoration should consider whether there may be any applicable restrictions to such activity.

4.2 Coastal habitats

The UK coast supports a range of well-known habitat types. Coastal saltmarsh and coastal shingle habitats occur within reach of the tides and are subject to periodic saltwater inundation and wave action. Further inland, where the sea seldom reaches, coastal sand dune, machair and coastal cliff habitats occur. Moving inland, habitats become increasingly terrestrial, with various types of coastal grassland, heathland and scrub types predominating. In fact, there are 17 coastal habitat types listed under Annex I of the Habitats Directive and five coastal priority habitats listed under the UK Biodiversity Action Plan.

UK coastal habitats are a priority for nature conservation. This is partly due to the variety of specialised species associated with them, but also because of their naturalness, fragility, scarcity and intrinsic appeal.

A number of international Conventions, European Directives and pieces of national legislation apply to UK coastal habitats11. These have been instrumental in the design of biodiversity strategies, priority habitat lists, and site-based designations.

Finally, to close this section, it is worth mentioning that on 5 November 2021, the Environmental Agency published three restoration handbooks12 setting out best practice for creating new estuarine and coastal habitats. These handbooks cover saltmarsh, seagrass and restoration of estuarine and coastal habitats with dredged sediment. They include advice on planning and implementing such schemes as well as case studies and lessons from previous examples.

4.3 Hedgerows protection

Hedgerows meeting certain size and location criteria are protected under the Hedgerows Regulations 1997 (SI 1997/1160) (“Hedgerows Regulations”) from being removed or worked on without control. This excludes hedgerows within or bounding the curtilage of a dwelling-house.

A countryside hedgerow is protected if it is located on or next to:

(a) land used for agriculture or forestry;

(b) land used for keeping horses, ponies or donkeys;

(c) common land or a village green;

(d) a SSSI, SAC or SPA;

(e) a NNR or LNR;

(f) a public right of way; or

(g) Crown land;
and if it is:
(a) a boundary line of trees and shrubs that at one time was a continuous line;
(b) more than 20m long with gaps of 20m or less in its length;
(c) less than 20m long, but meets another hedge at each end; or
(d) less than 5m at its base.

Regulation 3(1) of the Hedgerows Regulations state that “important hedgerows” have additional protection. The criteria for determining whether a hedgerow is “important” are listed in Part II of Schedule 1. The hedgerow must have existed for 30 years and meet additional detailed criteria relating to archaeology and history, wildlife and landscape value.

A person who intentionally or recklessly removes, or causes or permits another person to remove a hedgerow in contravention of regulation 5(1) or (9) of the Hedgerows Regulations is guilty of an offence and liable on conviction to an unlimited fine. This liability also applies if the hedgerow is uprooted or otherwise destroyed.14

4.4 Limestone Pavement Order (LPO)

A limestone pavement is an area of limestone which lies wholly or partly exposed on the surface of the ground and has been fissured by natural erosion.

NE or NRW must notify any LPA of any limestone pavement in that authority’s area.14 Where the SoS for the Environment or the LPA considers the character or appearance of any such notified land would be likely to be adversely affected by removal or disturbance of the limestone, the SoS or LPA may make a limestone pavement order (“LPO”) designating the land and prohibiting removal or disturbance of the limestone.

Schedule 11 to the WCA sets out the procedure for making LPOs. There are powers to amend or revoke an LPO. It is an offence for any person without reasonable excuse to remove or disturb limestone on or in any land designated by an LPO. An offender is liable on conviction to an unlimited fine (section 34(4)). Planning permission amounts to reasonable excuse if it authorises the removal or disturbance of the limestone (section 34(5)).

5. NATIONAL PARKS AND AREAS OF OUTSTANDING NATURAL BEAUTY

National Parks (“NPs”) and Areas of Outstanding Natural Beauty (“AONBs”) are landscape scale designations which will typically cover large areas of land which will be owned by many different people or organisations. The protection of nature is an aspect of the management of NPs and AONBs alongside cultural and access priorities but the real impact of these designations is to restrict planning and development. Many rewilding sites will exist within NPs and AONBs and may be impacted by particular restrictions applicable to those areas.

5.1 National parks (NPs)

NPs in England and Wales are designated under Part II of the NPACA15, under which they have the specific legal purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of an area.

There are 15 NPs in the UK, with the ones in England and Wales being the following:

(a) **England**: Broads, Dartmoor, Exmoor, Lake District, New Forest, Northumberland, North York Moors, Peak District, Yorkshire Dales, and South Downs; and

(b) **Wales**: Brecon Beacons, Pembrokeshire Coast, and Snowdonia.

Each NP is administered by its own authority, but that authority does not own the land within the park. They are independent bodies funded by central government who have statutory duties to:

(a) conserve and enhance the natural beauty, wildlife and cultural heritage; and

(b) promote opportunities for the understanding and enjoyment of the special qualities of the NP by the public.

If there is a conflict between these two duties, the duty of conservation takes precedence (this is known as the Sandford principle).

While pursuing these duties, NP authorities must attempt to encourage the economic and social well-being of local communities within the NP, and cooperate with local authorities and public bodies whose functions include the promotion of economic or social development within the area of the NP.

There are 10 NP authorities in England and three NP authorities in Wales. The Norfolk Broads have a status similar to a NP, but the Broads authority was established under its own Act of Parliament, the Norfolk and Suffolk Broads Act 1988. The NP authorities and Broads authority have particular obligations with regard to access to the land, management and maintenance of footpaths and conservation.

From a practical perspective, land sitting within a NP boundary will be subject to a high level of protection against inappropriate development through the planning system. Each NP authority may also offer financial support under particular schemes which aim to help achieve the NP’s statutory purpose. It may be that some of these will be applicable to rewilding projects.
5.2 Area of Outstanding Natural Beauty (AONB)

An AONB is a designation to protect landscapes. AONBs are designated under the NPACA. AONBs are fine landscapes, of great variety in character and extent, and the designation provides special protection for their outstanding natural beauty.

NE and NRW are responsible for designating AONBs and advising government on policies for their protection. Once designated, each AONB must have a management plan within three years of an AONB’s designation and a review must take place within five years of the start of the plan. The local authority will be responsible for producing and reviewing the plan and its purpose of conserving and enhancing the natural beauty of the AONB. Furthermore, a local authority will be responsible for giving permission for any developments in or affecting an AONB, which will include rewilding activities.

ENDNOTES

6. Regulation 20, Habitats Regulations.
7. Regulation 27, Habitats Regulations.
8. Regulations 28 to 30, Habitats Regulations.
9. Regulation 32, Habitats Regulation.
11. E.g. the Convention on Biological Diversity; the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention); the Conservation of Habitats and Species Regulations 2017; the Conservation of Offshore Marine Habitats and Species Regulation 2017; the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019; the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017; and the WACA (plus amendments & supplements).

Thank you to Clifford Chance LLP for their legal support in producing this briefing note.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice. You should not assume that the case studies apply to your situation and specific legal advice should be obtained.

The hyperlinks to legislation, guidance and various other external sources within this briefing are correct as of January 2023.
WHO'S BEHIND THIS GUIDANCE?

This note is part of a range of information produced by Rewilding Britain and The Lifescape Project to provide practical guidance to rewilders. Each is designed to help rewilding practitioners across Britain overcome common barriers in their rewilding journey, as identified through conversations with members of our Rewilding Network.

Rewilding Britain’s Rewilding Network provides a central meeting point for landowners, land and project managers and local groups in Britain, offering opportunities for collaboration and allowing smaller landowners to take on larger-scale rewilding together. If you find this useful, please consider joining the Network, where those in Britain can explore these issues further with others in the same boat.

The Lifescape Project is a rewilding charity using a multi-disciplinary approach to achieve its mission of catalysing the creation, restoration and protection of wild landscapes. Lifescape’s legal team is working to support rewilders in understanding how the law applies to their activities and pursuing systemic legal change where needed to support the full potential of rewilding. These notes form part of Lifescape’s Rewilding Law Hub which aims to provide a legal resource centre for those wanting to manage land in accordance with rewilding principles.

JOIN THE CONVERSATION

We’d love to hear what you’ve found useful in these notes and where we can help fill gaps in the guidance so that we can make sure they remain an up-to-date practical tool for rewilders.


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