

# Duties in relation to wild bird habitat; Regulation 9A of the Conservation of Habitats and Species Regulations 2010 (as amended).

## Overview

The [Conservation of Habitats and Species \(Amendments\) Regulations](#) amend the [Conservation of Habitats and Species Regulations 2010](#), which make provisions transposing the European Habitats Directive and certain aspects of the Wild Birds Directive.

Regulation 9A imposes duties on public authorities in relation to wild bird habitat.

Ministers are required to provide advice to public bodies on the interpretation and implementation of Regulation 9A, and the steps it would be appropriate for public bodies to take to comply with that regulation. This note provides an overview of Regulation 9A and is linked to [joint guidance](#) produced by Defra and the Welsh Government.

## Regulatory background

The **objective** under Regulation 9A is;

*the **preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds** in the United Kingdom, including by means of the upkeep, management and creation of such habitat, as appropriate, having regard to the requirements of [Article 2 of the Wild Birds Directive](#)*

There are three main duties for public bodies related to Regulation 9A;

*The appropriate authority, the nature conservation bodies and, in relation to the marine area, a competent authority **must take such steps in the exercise of their functions as they consider appropriate to secure the objective**, so far as lies within their powers (Regulation 9A (1)).*

*Except, in relation to the marine area, the Environment Agency, the Forestry Commissioners, local authorities, the Broads Authority and National Park authorities **must take such steps in the exercise of their functions as they consider appropriate to contribute to the achievement of the objective** (Regulation 9A (2)).*

*So far as lies within their powers, a competent authority, in exercising any function in or in relation to the UK **must use all reasonable endeavours to avoid any pollution or deterioration of habitats of wild birds** (Regulation 9A (8)).*

Ministers are required to give guidance to those bodies listed under Regulation 9A(2) and any other competent authority they consider appropriate to help those organisations determine the extent to which the diversity and area of habitat for wild birds is sufficient and on the steps that it may be appropriate for them to take (Regulation 9A (10)).

A body to which such guidance has been given must have regard to that guidance in exercising a function to which the duty applies (Regulation 9A (11)).

The reference to “the conservation or improvement of the marine environment” in section 123 (3)(a) of the [Marine and Coastal Act 2009](#) includes the Regulation 9A objective.

## Principles

What is a ‘sufficient diversity and area’?

For the purposes of the guidance the objective is taken to mean that the area and diversity of habitat should be such that wild bird populations in England and Wales are capable of maintaining their numbers, on a long-term basis, in the places they naturally live.

Focus for management actions should be on preserving or restoring, or where necessary, re-creating habitats of those species with populations in decline, whilst also ensuring that habitats supporting viable populations of all wild birds are maintained.

In complying with the Regulation 9A duties, relevant public bodies must consider how they can best contribute to the protection, enhancement and restoration of habitat available for wild birds, both through the management of the areas of land / sea under their control and areas of land / sea that is influenced by their wider functions. To do this they could:

- Identify habitats that are present that they own and/or manage, which are (or could be) important for groups of wild bird species.
- Decide how their current or future initiatives and management regimes and policies could deliver improvements for wild birds.
- Promote and deliver habitat management, restoration or creation through their wider functions.
- Remediate existing pollution and use all reasonable endeavours to avoid pollution or deterioration of wild bird habitats.
- Keep information on how they’ve complied with the duty - ministers, Natural England or Natural Resources Wales may ask for this.

Measures aimed at delivering benefits for groups of birds using the same broad habitat type are likely to be more efficient and provide the greatest gains. In addition to this 'habitats-based' approach, there may be some occasions when a more focused measure with the broad habitat type will be required for certain species.

To help support the delivery of the guidance the British Trust for Ornithology (BTO) were commissioned by Natural England and funded by Welsh Ministers, Natural Resources Wales and Defra to collate the evidence for declines across a range of bird species and to identify a range of management measures and delivery mechanisms that could be used to improve habitat and assist in reversing declines. See [Birds of Conservation Concern and Delivery Mechanisms](#).

## Policy Context

The conservation of wild birds and their habitats is a significant component of the UK's biodiversity policy as well as being an important indicator of the health of our natural environment.

The Welsh Government is developing a more joined up approach to the management of our natural resources based on a legislative and policy framework for sustainable management. This framework includes:-

- [Well-being of Future Generations \(Wales\) Act 2015](#) - aims to improve the social, economic, environmental and cultural well-being of Wales. Making public bodies focus on the long term, work better together with people and communities and each other, seek to prevent problems and take a more joined-up approach. There are seven goals, including a 'resilient Wales' which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change (e.g. climate change).
- [Environment \(Wales\) Bill](#) - The overarching aims of the bill are to put in place legislation that will enable Wales' resources to be managed in a more proactive, sustainable and joined-up way and to establish the legislative framework necessary to tackle climate change. The Bill will enhance the existing biodiversity duty, highlighting biodiversity as an essential component of ecosystem resilience. It is expected that the bill will receive Royal Assent by spring 2016.
- [Planning \(Wales\) Act 2015](#) - aims to create an efficient process to ensure the right development is located in the right place. Planning policy provides for a presumption in favour of sustainable development to ensure that decision-makers balance and integrate social, economic and environmental issues at the same time when taken decision on individual planning applications. The Act introduces the requirement for a National Development Framework, every five years, and the designation of strategic planning areas and strategic development plans.

- [Nature Recovery Plan for Wales](#) – the biodiversity strategy and action plan for Wales. The Plan is aimed at addressing the underlying causes of biodiversity loss by; putting nature at the heart of our decision making; increasing the resilience of our natural environment and; taking specific action for habitats and species. Part 1, ‘Our Strategy for Nature’ was issued at the end of 2015. It sets out how our current and proposed action, particularly through the Well-being of Future Generations (Wales) Act 2015, and through the Sustainable Management of Natural Resources, will contribute to reversing the loss of biodiversity in Wales. Part 2, the ‘Action Plan’ describes the actions which have been specifically identified to reverse the decline of biodiversity. They include embedding biodiversity into all policies and strategies, safeguarding species and habitats, restoring degraded habitats, and using nature based solutions to address the pressures on biodiversity.
- [Natural Resources Wales LIFE Natura 2000 Programme for Wales](#) - developing a strategic programme to manage and restore Natura 2000 species, habitats and sites in Wales. The programme will result in an agreed set of priorities for the designated species and habitats in Natura 2000 in Wales, both on land and at sea. It will identify pressures and plan the actions which are required to significantly improve the condition of these features, safeguarding them for the future. Actions may be changes to policy, small-scale practical improvements, or major innovative conservation projects. The programme will also determine sources of funding, so actions can be delivered by 2020.