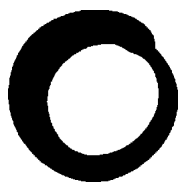


How to win

Saving wildlife sites



**Friends of
the Earth**

Written by Alan Stanley on behalf of Friends of the Earth

Edited by Helen Barron

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Friends of the Earth inspires solutions to environmental problems, which makes life better for people.

Friends of the Earth
26-28 Underwood Street
London N1 7JQ
Tel: 020 7490 1555
Fax: 020 7490 0881
Email: infoe@foe.co.uk

website: www.foe.co.uk

This is an extract

A full copy of How to win: Saving wildlife sites can be downloaded from Friends of the Earth's website.

http://www.foe.co.uk/resource/local/saving_wildlife_sites/

8 Appendices

1 Appendix one

Sites of Special Scientific Interest

SSSIs were first introduced in the 1949 National Parks and Access to the Countryside Act. Today they are regulated by the 2000 Countryside and Rights of Way Act (CRoW) which itself amends the 1981 Wildlife and Countryside Act.

i) SSSIs and CRoW

Sites are notified on scientific grounds by the wildlife agencies. Areas are surveyed with the permission of the landowner, and the site is assessed against detailed guidelines to determine whether it is of a sufficient standard to be designated. These guidelines are available from the agencies (*Guidelines for the selection of biological SSSIs*, NCC, 1994). If a site satisfies the criteria for selection the agency then has a duty to send notification to a number of organisations and individuals including the landowner, local planning authority and the Secretary of State. The notification consists of a map marking the boundaries of the site, a description of the site including the species or features which are of special interest, and a list of 'operations likely to damage' those features. After a period of consultation where objections to the notification can be made and resolved, the appointed council of the agency confirms the designation.

Once designated, the wildlife agencies have significant powers to ensure the sites are managed properly and to prevent damage. The CRoW Act requires all SSSIs to have a management statement agreed with the owners and/or occupiers of sites and, in certain circumstances, the agencies can impose a management order to ensure positive management of the site. They also have a right of access to SSSI land to monitor its condition. If the owners or occupiers wish to undertake an activity which would result in damage to the special features of a site then they must notify the wildlife agency which now has legal powers to refuse consent. To balance these powers a new system of appeals and arbitration will allow owners to challenge agency decisions.

Deliberate damage to SSSIs by owners, occupiers or third parties, can result in prosecution and convicted parties can be fined and ordered to restore the damaged site. A number of defences can be offered however, for example if the operation which caused damage was undertaken as the result of an emergency such as a burst gas pipe or water main.

Significantly, public bodies whose work affects SSSIs now have a statutory duty to 'further conservation and enhancement' of those sites in their work and decision making. Utility companies (referred to officially as Statutory Undertakers) that have a legal right of access to land are treated as owners and/or occupiers. Local authorities also have powers to refuse development on SSSIs (see Section 5).

It is important to note that SSSIs in Scotland are not covered by the CRoW Act.

ii) Areas of Special Scientific Interest

ASSIs are the broadly equivalent measure to SSSIs in Northern Ireland. There are some differences in the ways in which they are designated and the responsibilities of the various parties for their protection. The ASSI system is dependent upon the voluntary principle similar to that which governed SSSI management prior to the CRoW Act. When an ASSI is declared, owners and occupiers receive a list of notifiable operations. These are activities which the agency considers damaging to the special interest of the site. Should an owner or occupier of an ASSI wish to carry out such an operation the agency can offer to enter into a management agreement, with the possibility of a compensatory payment on conclusion of the negotiations. If no agreement is reached within a certain time, however, the operation can go ahead.

Relevant ASSI laws in Northern Ireland are: the 1985 Wildlife Order, the 1985 Nature Conservation and Amenity Lands Order, and the 1995 Conservation (Natural Habitats etc) Regulations.

More information on ASSIs can be obtained from the Environment and Heritage Service Northern Ireland at www.ehsni.gov.uk/NaturalHeritage/StaticContent/sitedesignation.htm

2 Appendix two

The Habitats and Species Directive

The directive is enacted in UK law by Regulations. For many years FOE and others have argued that the UK Regulations were not sufficient to fully implement the Directives, resulting in an insufficient number of sites being designated and poor management of those that were. At the time of writing it is anticipated that a review of the Regulations implementing the Habitats Directive will begin shortly following the CRoW Act and pressure from the European Commission. In 2000 the Government significantly increased the number of sites and it is now unlikely that any new Natura 2000 sites will be designated.

i) Favourable conservation status

According to the Habitats Directive, the conservation of a habitat is favourable when:

- its natural range and the areas it covers within that range are stable or increasing
- the specific structures and functions which are necessary for its long term maintenance exist and are likely to continue to exist for the foreseeable future
- the conservation status of its typical species is favourable.

Achieving favourable conservation status is dependent on more than just designating sites. We also need habitat creation to link existing fragments of, say, chalk downland; and we need action against threats to habitats which cannot be addressed by creating protected areas – for example acid deposition or nutrient enrichment. This requires a new approach to conservation in the UK which involves enhancing the wider countryside outside protected areas.

ii) Protection under the EU Habitats and Species Directive

The measures for protection of wildlife in the directive are comparatively strong. The habitats and species listed in the directive may be damaged only in the overriding public interest. At the time of writing, this rather vague definition has yet to be tested and there is no legal precedent in the UK. There have however been a number of other legal challenges concerning the designation of SACs (Special area of conservation) and SPAs (Special protection area). These include:

i Lappel Bank (REF: www.foe.co.uk/campaigns/biodiversity_and_habitats/wildplaces/case_studies/cs_medway.html)

In 1993, the Government decided, on the advice of its statutory agency English Nature, to designate the Medway Estuary and Marshes SSSI as a Special Protection Area under the European Birds Directive. However, a small part of the site, known as Lappel Bank, near the port of Sheerness, was excluded from the designation despite the fact that it supported what the RSPB has described as ‘significant numbers of at least eight species of wading birds’. The reason was, that in the Government's view, the economic benefit of the planned expansion of the port of Sheerness was in the ‘overriding public interest’.

The RSPB challenged the decision to exclude this area from the designation and in July 1996 the European court found that economic requirements cannot enter into consideration when designating European sites. (This does not mean that overriding public interest cannot be taken into account when final approval is given to the site after consultation).

Unfortunately, there are no powers under European law to prevent work from going ahead whilst such cases are being considered. By the time the ruling was made, Lappel Bank had already been destroyed.

ii Severn Estuary (REF: www.greendirectory.net/news/news.cfm?newsid=269) but you need to register at www.green directory.net first (no charges)

The European Court of Justice ruled that EU Member States may not use ‘economic, social or cultural requirements, or regional or local characteristics’ to delete sites listed as candidates for the Natura 2000 network and that only criteria relating to the nature conservation of the site could be applied.

The judgement arose after the operator of Bristol docks, First Corporate Shipping (FCS), objected to the estuary being nominated as an SAC and sought a Judicial Review of the procedures for designation.

The directive also places strong responsibilities on planning authorities to formally determine that any activities which may affect a designated site, directly or indirectly, will not have a negative impact (see article 6 part 3 of the directive). If, for reasons of overriding public interest, it is agreed that a damaging activity can take place, then the government must ensure that ‘all compensatory measures necessary’ are taken ‘to

ensure that the overall coherence of Natura 2000 is protected'(see article 6 part 4). In practice this means that a proposal for development which could impact on a European site should be the subject of a public inquiry.

Implementation of the directive is overseen in the European Commission by its environment department known as DGXI (directorate general eleven). If you think you may have specific grounds to complain about the implementation of the directive, DGXI is where you should send your complaint. It is also worth sending copies of your complaint to the wildlife agency to ensure they are aware of the issue and to your MEP who may (or may not) give support to your action. Furthermore you should inform the local council or any private contractor or company involved in the activity that contravenes the directive of their legal obligations.

iii) Species protection under Annex VI of the directive

Article 12 of the Directive requires that member states should introduce 'strict protection' measures for the species listed under Annex 4. Protection should prohibit deliberate capture, killing or disturbance of these species or their breeding sites or resting places, including the taking or destruction of eggs. In the UK, this aspect of the directive is implemented by scheduling these species under the provisions of the 1981 Wildlife and Countryside Act (see Section 4).

The habitats (many of which are semi-natural) and species which the directive deems to be of 'community importance' are listed in a series of Annexes to the directive as follows.

Annex I: habitat types of community interest whose conservation requires the designation of SACs

Annex II: animal and plant species of Community interest whose conservation requires the designation of SACs

Annex III: criteria for the selection of sites eligible for identification as sites of community importance and designation as SACs

Annex IV: animal and plant species of community importance in need of strict protection.

Annex V: animal and plant species of community importance whose taking in the wild and exploitation may be subject to management measures.