

## **Environmental Legislation – How does it impact on The Crown Estate?**

The Crown Estate's rural portfolio comprises approximately 146,000 hectares and is diverse in its coverage. It includes grassland and arable farms, woodland, uplands and peat areas. The Crown Estate owns land within environmental designations including National Parks, Areas of Outstanding Natural Beauty and Sites of Special Scientific Interest.

There are other environmental designations that apply to rural land and additional statutory provisions apply to all these areas as a consequence of the designations.

In some cases it is not clear whether The Crown Estate, being a unique organisation, is bound by these designations. The Crown Estate wish to provide clarity for its customers and business partners by explaining the environmental designations that are binding upon it and those that are not. In all cases, even where The Crown Estate is not technically bound by the legislation, or it is unclear from the legislation whether it is bound, as a matter of policy and consistent with its core values, The Crown Estate confirms it will act in accordance with the legislation, treating itself as if bound.

The designations that are binding on The Crown Estate are as follows:-

### **1 Environmentally Sensitive Area**

The term Environmentally Sensitive Area (ESA) derives from legislation<sup>1</sup> that came into force in 1987. It means an area that must be protected because of its landscape, wildlife or historical value. The scheme is now closed to new entrants, having been replaced by Environmental Stewardship but the designation will be relevant until 2014. The legislation expressly states that it is binding upon The Crown Estate.<sup>2</sup>

### **2 National Nature Reserve and Marine Nature Reserve and Ramsar Site<sup>3</sup>**

There are 224 National Nature Reserves (NNR) in England and one Marine Nature Reserve (Lundy Island). They are designated by Natural England and represent the very best of the Sites of Special Scientific Interest. Ramsar Sites (RS) are wetland sites designated under the Ramsar Convention. Natural England have the power to designate land owned by The Crown Estate as either NNR or MNR and advises government on Ramsar Sites. The Crown Estate is

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<sup>1</sup> Agriculture Act 1986

<sup>2</sup> s.18(1) Agriculture Act 1986

<sup>3</sup> sections 35-37 Part II Wildlife & Countryside Act 1981

bound by the legislation and is committed to working with Natural England to allow them to regulate the management of those areas.

### **3 Sites of Special Scientific Interest**

Some land within the rural portfolio is designated as Sites of Special Scientific Interest (SSSI)<sup>4</sup>. Natural England are responsible for overseeing the management of these areas and have entry and enforcement powers that can be exercised over the land within the rural estate with the consent of The Crown Estate<sup>5</sup>.

Since it acts as a public body, The Crown Estate also complies with the general duties imposed on such organisations by the legislation<sup>6</sup> namely to conserve and enhance the flora, fauna, geological or physiographical features that make each site an SSSI.

### **4 Special Protection Area for birds**

There are a large number of Special Protection Areas (SPA) within the UK<sup>7</sup>. They safeguard sites for rare and vulnerable birds and regularly migratory species. Land held by The Crown Estate can be designated an SPA and The Crown Estate are committed to assisting Natural England in the management of SPAs.

In relation to other designations, there are some which are not binding on The Crown Estate unless it consents. These are:-

### **5 Local Nature Reserve**

Local Nature Reserves (LNR) are often established by local authorities in order to protect sites of scientific interest, to improve amenities or protect wildlife<sup>8</sup>. Land held by the rural estate can be included within LNRs where The Crown Estate consent.<sup>9</sup>

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<sup>4</sup> pursuant to s28 Part II Wildlife and Countryside Act 1981

<sup>5</sup> s.67 Wildlife and Countryside Act 1981

<sup>6</sup> s.28G Wildlife and Countryside Act 1981

<sup>7</sup> pursuant to EC Directive 79/409/EEC ("the Birds Directive") transposed by s.3, Part I Wildlife & Countryside Act 1981

<sup>8</sup> Part III National Parks and Countryside Act 1949

<sup>9</sup> s.101(5) National Parks and Countryside Act 1949

## 6 National Parks

There are 15 National Parks in the United Kingdom<sup>10</sup>. The Crown Estate owns land which falls within these areas, for example, on Exmoor. The consent of The Crown Estate is required before land that it owns can be designated as a National Park<sup>11</sup>.

As it acts as a public body, The Crown Estate are committed to complying with the duties imposed by the legislation on such bodies<sup>12</sup> to have regard to the purposes of conserving and enhancing the natural beauty, wildlife and cultural heritage of these areas and will work to promote opportunities for the understanding and enjoyment of those areas by the public.

In other cases, the legislation either makes no reference to The Crown Estate or is unclear as to whether the provisions are binding on it. The following is a list of those designations and a short explanation. In all cases where The Crown Estate is not technically bound by the legislation, consistent with its core values, it is committed to complying in everyway with the legislation, as if bound.

## 7 Areas of Outstanding Natural Beauty<sup>13</sup>

Areas of Outstanding Natural Beauty (AONB) comprise 47 designated areas across the UK, safeguarded in order to protect their wildlife, historical links and natural beauty.

Legislation does not expressly state that the AONB designation is binding on land owned by The Crown Estate however it includes provisions that govern how public bodies should conduct their functions in relation to an AONB<sup>14</sup>.

The Crown Estate regard the AONB designation as important in preserving the landscape and as a matter of policy, will treat all land owned by it (which falls within an area designated as an AONB) as bound by the provisions that apply to that designation.

Further, since The Crown Estate acts as a public body, in exercising any functions relating to an AONB, in common with all other public bodies, it will have regard to the purpose of conserving and enhancing the natural beauty of the AONB<sup>15</sup>.

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<sup>10</sup> established pursuant to Part II National Parks and Countryside Act 1949

<sup>11</sup> s.101(2) National Parks and Countryside Act 1949

<sup>12</sup> s.11A National Parks and Countryside Act 1949

<sup>13</sup> AONB was introduced by the National Park and Access to the Countryside Act 1949 and sections 82 –93 of the Countryside and Rights of Way Act 2000 now apply.

<sup>14</sup> s.85(2)(a) Countryside & Rights of Way Act 2000 which applies to "a relevant authority" and includes public bodies.

## **8 European Site (including Special Area of Conservation (SAC))and European Marine Site**

Regulations updated in 2010, implement the Habitats Directive, a piece of European legislation, from which the above terms are derived.<sup>16</sup> There is no mention, in either the Habitats Directive, or the regulations themselves of land owned by The Crown Estate and for that reason there has been some uncertainty as to whether the provisions bind The Crown Estate.

The Crown Estate take the view that it is implicit from the legislation that the provisions are binding on it and confirms it will conduct itself as if bound.

Further, The Crown Estate acts as a public body and therefore considers itself to be bound by the general duties imposed on public bodies by the legislation<sup>17</sup>. This means it will exercise its functions relevant to marine conservation so as to comply with the Habitats Directive. In addition, The Crown Estate will, in exercising any of its functions, have regard to the Habitats Directive's requirements so far as they may be affected by the exercise of those functions.

## **9 Nitrate Vulnerable Zones**

Nitrate Vulnerable Zones (NVZs) have received a great deal of press coverage in recent years. They are designated areas of land draining into waters polluted by nitrates. Regulations<sup>18</sup> require farmers within NVZs to implement measures to reduce the nitrate loss from agriculture. It is not clear from the legislation whether The Crown Estate is bound. However, The Crown Estate take the obligations under the legislation very seriously and treat itself as if bound.

## **10 Protection of Wrecks**

Wreck sites can be protected for their historical, archaeological or artistic value<sup>19</sup>. The Crown Estate may not be bound by this legislation but is committed to complying with its provisions and as a matter of policy will act as if it is bound.

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<sup>15</sup> Pursuant to s.85(2)(a) Countryside & Rights of Way Act 2000

<sup>16</sup> EC Directive 92/43/EEC ("The Habitats Directive") implemented by The Conservation (Natural Habitats) Regulations 1994/2716 and now transposed by The Conservation of Habitats and Species Regulations 2010/490

<sup>17</sup> Para 9 Conservation of Habitats and Species Regulations 2010/490

<sup>18</sup> EC Directive 91/676/EEC ("the Nitrates Directive") transposed by Nitrate Pollution Prevention Regulations 2008/2349

<sup>19</sup> s.1 Protection of Wrecks Act 1973 (this is due to be repealed by the Marine (Scotland) Act 2010, date of commencement still pending)

**Although we have taken care over the information and strive to ensure that it is as up-to-date as possible this note is for guidance only and is not intended to be an exhaustive statement of the law.**

**9 July 2010**