

LEGISLATION AND GOVERNMENT POLICY RELEVANT TO ASHDOWN FOREST

Notes for the Board of Conservators of Ashdown Forest

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BACKGROUND TO THE DOCUMENT

Ashdown Forest has a long and complicated history of land ownership, usage and relevant legislation. This document lists and summarises historical and modern legal instruments that protect or regulate land managed by the Conservators and those who use it. It is written by a non-lawyer to provide sources of reference material for those who wish to discover more about the position in 2007. It is believed to be accurate and reasonably comprehensive but is confined to law or policy particularly relevant to AF issues (eg it does not look at The Protection of Badgers Act 1992) and the author would welcome any information on errors or substantial omissions. Throughout the document, Ashdown Forest is referred to as 'the Forest' or 'AF'.

Relevant legislation falls into two major categories: British law and EU law:

The former consists of Acts of Parliament (for example, The Commons Act 2000) and relevant Schedules and also Regulations (for example the Conservation (Natural Habitats, & c.) Regulations 1994).

The latter comprises Directives originating from the Council of the European Union (not to be confused with the European Council or the Council of Europe) consisting of Articles and Annexes (for example, Council Directive 79/409/EEC). EU Directives are encapsulated into GB law by means of Statutory Instruments (Regulations).

Both categories cover matters ranging from public access and governance to protection of endangered wildlife; UK law listed here deals with governance matters as well as the implementation of European Council Directives. Policy documents on UK wildlife matters are provided by Statutory Bodies eg Natural England.

Matters of potential conflict between different pieces of legislation are likely to need detailed legal scrutiny for clarification and are outside the scope of this document. Sources are quoted as published documents or Web links. UK Public Acts from 1988 and Local Acts from 1991 are available at <http://www.opsi.gov.uk/acts.htm#acts>. Legislation made before 1988 is only available in its original print format. <http://www.tso.co.uk/> or HMSO

Historical background

The following 1830-2001 extracts are taken from the AF website summary of Ashdown Forest legislation and organisational history. Source: http://www.ashdownforest.org/history_1700_2000.html

1830 - Formation of a committee of four Commoners, a nominee of the Lord of the Manor and four employed Lookers to enforce regulation.

1875 - Lord De La Warr and his steward challenged whether or not the Commoners had any rights other than estovers and "herbage by bite of mouth".

1878 - Action brought by the Earl against Commoner Bernard Hale, Deputy Lieutenant of Sussex and East Grinstead Magistrate. The Earl won. William Augustus Raper, a Hastings solicitor, was responsible for accumulating much of the evidence on behalf of the Commoners.

1881 - The appeal failed to establish a right of common for Hale, but did allow that he had a Right by Usage (i.e. a Prescriptive Right). In an attempt to protect the rights of all the Commoners, the committee prepared a case against the Earl. He capitulated and under the Common Lands Regulation (Ashdown Forest) Provisional Order Confirmation Act of 1885, a Board of Conservators was appointed with powers to regulate the common land usage.

1937 - Ashdown Forest Act strengthened the powers of the Conservators to enforce the new byelaws drawn up in 1935, especially in respect of digging up plants and litter cutting. It arranged for grants from local authorities in exchange for representation on the Board.

1949 - further Ashdown Forest Act formalised and regulated the use of the Forest for army training.

1961 - Formation of the Society of Friends of Ashdown Forest.

1974 - Most recent Ashdown Forest Act.

1988 - Purchase of the Forest from Earl De La Warr by East Sussex County Council.

1994 - Purchase of sixty-nine acres of woodland at Chelwood Vachery.

1996 - Forest designated a Special Protection Area, further conserving the bird life.

1996-1998 - Phased fencing and re-introduction of grazing to 1300 acres on the south/west chases.

2001 - Forest designated a Special Area of Conservation to help conserve vulnerable habitats. Forest entirely closed for six weeks due to Foot and Mouth Disease precautions.

2006 – August; HLS agreement signed

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The following paragraphs chronologically list and provide notes on Acts of Parliament, EU directives and government policy that are believed to have a bearing on Ashdown Forest:

Commons Act 1876

This sets out the provision for inclosure (sic) under the Inclosure Acts 1845 to 1868, whereby the Inclosure Commissioners may, by provisional order, authorise the inclosure of a common, provided they are satisfied that, among other things, the public interest is protected, and provided they have regard to ‘the benefit of the neighbourhood’.

36 commons in England and Wales are or were regulated under the Commons Act 1876. The Act enabled commons to be regulated or inclosed (sic) by means of an Order that generally provided for management to be assigned to a Board of Conservators, twenty or more of which remain today.

Sources: <http://www.defra.gov.uk/wildlife-countryside/issues/common/manage/acts.htm> and <http://www.opsi.gov.uk/acts/en2006/2006en26.htm>

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Ashdown Forest Act 1885 - the full title is the ‘Common Lands Regulation (Ashdown Forest) Provisional Order Confirmation Act of 1885’

This Act established a Board of Conservators viz. 12 elected Commoners plus a representative of the Lord of the Manor (Earl De La Warr). It provided the power to make and oversee Forest bye-laws, protect the rights of and regulate the numbers and activities of Commoners and preserve the Forest in its natural state. Many small, previously illegal, enclosures were recognized.

The three subsequent Ashdown Forest Acts of 1937, 1949 and 1974 further strengthened the powers of the Conservators to enforce new bye-laws, formalised and regulated the use of the Forest for army training and arranged for grants from local authorities in exchange for representation on the Board.

Source: <http://www.ashdownforest.com/history.html>

In 1893 the Law of Commons Amendment Act was passed. This was designed to prevent owners of common land circumventing the 1876 act by reliance on the Statute of Merton (the Commons Act 1236) which allowed them to inclose the common provided that they left a sufficiency for the freehold tenants.

Source <http://www.oss.org.uk/news/wisley%20common%20judgment.htm> (<http://www.defra.gov.uk/wildlife-countryside/issues/common/manage/pdf/commonsact.pdf>)

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Commons Act 1899

This enables District Councils to manage commons where their use for exercise and recreation is the prime consideration and where the owner and commoners do not require a direct voice in the management, or where the owner cannot be found.

Source: <http://www.defra.gov.uk/wildlife-countryside/issues/common/definitions.htm>

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National Parks and Access to the Countryside Act 1949

This Act gave powers to Natural England (then called the Nature Conservancy) to designate Sites of Special Scientific

Interest (SSSIs) and National Nature Reserves (NNRs), and to local authorities to designate Local Nature Reserves (LNRs).

Source:

http://www.devon.gov.uk/index/environment/natural_environment/biodiversity/wildlife_guidelines/wildlife_legislation.htm

Ashdown Forest reasons for notification: http://www.english-nature.org.uk/citation/citation_photo/1001983.pdf

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The Commons Registration Act 1965

The registration authorities' duties and responsibilities are set out in the 1965 Act, and in regulations made under the Act. These responsibilities are replaced by those set out in Part I of the Commons Act 2006

<http://www.defra.gov.uk/wildlife-countryside/issues/common/registration/functions.htm>

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Countryside Act 1968

The 1968 Act empowered the Secretary of State to make grants to local authorities for Country Parks and amended the 1949 Act to allow grants payable under that Act to be dealt with in the same way as grants made under the 1968 Act. The memorandum sets out the terms and conditions for payments under the two Acts in respect of expenditure on the following: National Parks land and areas of outstanding natural beauty; the establishment of country parks and facilities therein; the countryside generally (including the above) and long distance routes.

Source: <http://www.bopcris.ac.uk/bopall/ref13839.html>

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Local Government Act 1972

Reformed the organisation of local government, including ESCC. Laid down standing orders for regulating Council procedures

Source:

[http://www.warwickshire.gov.uk/Web/corporate/pages.nsf/Links/FD8176B90B62A522802571A000414B52/\\$file/The+Local+Government+Act+1972+-+A+Summary.pdf](http://www.warwickshire.gov.uk/Web/corporate/pages.nsf/Links/FD8176B90B62A522802571A000414B52/$file/The+Local+Government+Act+1972+-+A+Summary.pdf)

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Ashdown Forest Act 1974

This is the most recent legislation specifically about Ashdown Forest that covers its finance and the duties of its Board of Conservators. All Board members are provided with a printed copy of this but the lines below highlight major points. Section references are in brackets

(15) The Clerk ... shall prepare and keep a register of the commoners ...

(16) It shall be the duty of the Conservators at all times as far as possible to regulate and manage the Forest as an amenity and place of resort subject to the existing rights of common and to protect such rights of common, to protect the forest from encroachments and to conserve it as a quiet and natural area of outstanding beauty.

(17) The Conservators have the power to:

subject to the consent of the lord of the manor engage in all manner of tree conservation, including planting, felling cutting and lopping of trees and shrubs...

protect any part of the forest and ... erect fences therefor;

conserve the fauna and flora and ... improve grazing;

conserve those parts of the forest which are of historical, archaeological and physiographical interest;

provide and maintain vehicles, plant ... and buildings ...;

provide and maintain recreational facilities which ... do not involve the erection of new buildings ... of any kind ...;

make, provide, maintain and extend car parking places for vehicles;

appoint officers and staff for the purpose of more efficiently and properly carrying out the duties of the Conservators...;

(20) The Conservators may acquire by agreement ... purchase, exchange, lease, gift or otherwise any land within or outside the forest, and hold such land as part of the Forest...
... sell ... let or mortgage any land held by them.

(21) ...the public shall have access on foot to the Forest for quiet recreation and enjoyment.

(24 and 25) East Sussex County Council and Wealden District Council should meet the expenses of the Conservators in so far as such expenses are not defrayed by the proceeds of the rate levied on the Commoners and out of other income.

Section 19 of the Act allows the Conservators to 'make, alter or repeal byelaws for the regulation and better administration of the forest'. Advice is believed to have been obtained some years ago that changing one byelaw, eg anachronistic levels of fines for breaches, would require review of all byelaws and such 'draconian' laws would be very difficult to get through. However, information from Defra at <http://www.defra.gov.uk/wildlife-countryside/issues/byelaws/index.htm> suggests that the situation may now have changed.

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The Wildlife and Countryside Act 1981

This is still the major legal instrument for wildlife protection in Britain, although other significant Acts have been passed since. It has numerous parts and supplementary lists and schedules many of which have been amended since publication; it was amended in 1985 and 1991 and schedules amended 1988, 1991, 1992 and 1998. It is therefore often referred to as 'The Wildlife and Countryside Act 1981 (as amended)'.

This legislation is the means by which the Convention on the Conservation of European Wildlife and Natural Habitats (the 'Bern Convention') and the European Union Directives on the Conservation of Wild Birds (79/409/EEC) and Natural Habitats and Wild Fauna and Flora (92/43/FFC) (see below) are implemented in Great Britain see **Statutory Instrument 1994 No. 2716** below.

- * Part I is concerned with the protection of wild plants and animals
- * Part II relates to the countryside and national parks (and the designation of protected areas),
- * Part III covers public rights of way,
- * Part IV deals with miscellaneous provisions of the Act ie prevention of release of non-native plants or animals

Sources: <http://www.jncc.gov.uk/page-1377> and <http://www.naturenet.net/law/wcagen.html#other>

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Road Traffic Act 1988

Section 34 prohibits driving off road vehicles without lawful authority on land not forming part of a road. It also prohibits driving without lawful authority onto or upon any common land, moorland or land of any other description not being part of a road.

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STRATEGIC PLAN FOR THE CONVENTION ON BIOLOGICAL DIVERSITY

At the 1992 Earth Summit in Rio de Janeiro, world leaders agreed on a comprehensive strategy for "sustainable development". One of the key agreements was the Convention on Biological Diversity. The Convention established three main goals: the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits from the use of genetic resources.

1. In 2002, 10 years after the Convention on Biological Diversity was opened for signature, the Parties developed a Strategic Plan to guide its further implementation at the national, regional and global levels.
2. The purpose is to halt effectively the loss of biodiversity so as to secure the continuity of its beneficial uses through the conservation and sustainable use of its components and the fair and equitable sharing of benefits arising from the use of genetic resources.

In decision VI/26 The Conference of the Parties took note of the conclusions of the Seychelles Workshop on the Strategic Plan and the report of the Open-ended Inter-Sessional Meeting on the Strategic Plan, National Reports and Implementation of the Convention on Biological Diversity (19 - 21 November 2001, Montreal, Canada) and adopted a Strategic Plan for the Convention on Biological Diversity.

2010 Biodiversity Target

In April 2002, the Parties to the Convention committed themselves to achieve by 2010 a significant reduction of the current rate of biodiversity loss at the global, regional and national level as a contribution to poverty alleviation and to the benefit of all life on Earth.

This target was subsequently endorsed by the World Summit on Sustainable Development and the United Nations General Assembly and was incorporated as a new target under the Millennium Development Goals.

Source: <http://www.cbd.int/sp/default.shtml>

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UK Public Service Agreement Targets on SSSI's

There are 4,111 Sites of Special Scientific Interest (SSSIs) in England covering 1,076,704 ha. Defra has a Public Service Agreement (PSA) target to have at least 95% of the SSSI area in recovering or favourable condition (FC) by 2010.

<http://www.publications.parliament.uk/pa/cm200506/cmselect/cmenvfru/693/69308.htm>

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1979 Birds Directive

Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds - 19 Articles

The Declaration of 22 November 1973 on the Programme of Action of the European Communities on the Environment calls for specific action to protect birds, supplemented by a resolution on 17 May 1977 on the continuation and implementation of European community policy and its action programme on the environment.

Source:

http://ec.europa.eu/environment/nature/nature_conservation/eu_nature_legislation/birds_directive/index_en.htm

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1992 EC Habitats Directive

In 1992 the European Community adopted Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora (EC Habitats Directive). The Directive contains 24 Articles and is the means by which the Community meets its obligations as a signatory of the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention). Member States are required to protect species listed in Annexes; monitor habitats and species and report every six years on implementation.

The 189 habitats listed in Annex I and the 788 species in Annex II are to be protected by means of a network of sites, each State proposing sites for evaluation to form a European network of Sites of Community Importance (SCIs), designated as Special Areas of Conservation (SACs).

These, with Special Protection Areas (SPAs) under the EC Birds Directive, form a network of protected areas known as Natura 2000.

The Directive was amended in 1997 by a technical adaptation Directive. The annexes were further amended by the Environment Chapter of the Treaty of Accession 2003.

The Habitats Directive introduces the precautionary principle that projects can only be allowed after judging that there are no adverse effects on the integrity of the site. Projects may still be permitted if there are no alternatives and there are imperative reasons of overriding public interest. In such cases compensation measures will be necessary to ensure the overall integrity of network of sites. These measures also apply to SPAs. Member States shall also encourage the management of features of the landscape to support the Natura 2000 network.

In the UK the Directive has been transposed into national laws by means of the Conservation (Natural Habitats, & c.) Regulations 1994 (as amended), known as 'The Habitats Regulations'.

Most SACs on land or freshwater areas are underpinned by notification as Sites of Special Scientific Interest (SSSIs). In the case of SACs that are not notified as SSSI, positive management is promoted by wider countryside measures, while protection relies on the provisions of the Habitats Regulations.

The site list for the Atlantic Biogeographical Region (which includes the UK) was formally adopted by the Commission in December 2004. The UK's first SACs were subsequently designated in Wales in December 2004, in Scotland in March 2005, and in England in April 2005.

The Joint Nature Conservation Committee (JNCC) advises government on the application and interpretation of the Directive, including the sites that meet the criteria for consideration as SCI.

Source: <http://www.jncc.gov.uk/>

Ashdown Forest SPA : <http://www.jncc.gov.uk/default.aspx?page=2052>

Ashdown Forest SAC : <http://www.jncc.gov.uk/protectedsites/sacselection/SAC.asp?EUCode=UK0030080>

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Statutory Instrument 1994 No. 2716

The Conservation (Natural Habitats, &c.) Regulations 1994

These Regulations make provision for the purpose of implementing, for Great Britain, Council Directive 92/43/EEC

It describes the protocol for Selection of sites and the designation of Special Areas of Conservation and establishes priorities for the designation of sites.

Source: http://www.opsi.gov.uk/SI/si1994/Uksi_19942716_en_1.htm

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Protection of NATURA 2000 sites

The text of Article 6.4 of the Habitats Directive 92/43/EEC

"If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted. Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest".

This provides for exceptional circumstances but emphasises the international importance given to NATURA 2000 sites

Sources: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992L0043:EN:HTML> and
<http://www.proact-campaigns.net/infoandlinks/id10.html>

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Local Government Act 2000

Part I: introduced a new power for local authorities to promote the economic, social or environmental well-being of an area.

Part II: required that all local authorities move away from the traditional committee style of decision-making, where all members had a formal decision making role, to one of four executive models ie, leader or cabinet, mayor or cabinet, mayor or council manager, or alternative arrangements.

Part III: introduced a new ethical framework for councils, including, a requirement to adopt a code of conduct for members and implement a standards committee. The general functions of the standards committee are to promote and maintain high standards of conduct within the local authority and to assist members of the authority to observe the code of conduct.

Source: <http://www.idea-knowledge.gov.uk/idk/core/page.do?pageId=71599>

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Countryside and Rights of Way Act CRow 2000

This Act provides a new right of public access on foot to areas of open land eg mountain, moor, heath, down and registered common land. As the 1974 Ashdown Forest Act states 'The public shall have access on foot to the Forest for quiet recreation and enjoyment.' this is not a new right for Ashdown Forest.

It places a duty on Government Departments to have regard for the conservation of biodiversity and maintain lists of species and habitats for which conservation steps should be taken or promoted, in accordance with the Convention on Biological Diversity.

It renames the Nature Conservancy Council - English Nature (later renamed again 'Natural England')

It increases protection for Sites of Special Scientific Interest (SSSI) and strengthens wildlife enforcement legislation including legal enforcement. If Natural England refuse to give consent to an operation that may damage the special features of a SSSI, that operation may not legally take place.

It requires local authorities to produce management plans for each Area of Outstanding Natural Beauty (AONB)

It enables the creation of Conservation Boards to assume responsibility for AONBs, particularly where the land designated crosses several local authority jurisdictions.

The Act also requires all relevant authorities to have regard to the purpose of conserving and enhancing the natural beauty of AONBs when performing their functions.

Source: <http://www.jncc.gov.uk/page-1378>
<http://www.opsi.gov.uk/acts/acts2000/20000037.htm>
<http://www.english-nature.org.uk/special/sssi/protection.cfm>

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Commons Act 2006

This Act enables commons councils to be set up with powers to regulate grazing and other agricultural activities. Defra is now looking to bring this part of the Act into force in late 2007.

The Act enables "missed" commons to be registered and enables wrongly registered land to be deregistered - through an overhaul of the registration system for common land (and town and village greens).

It sets out new criteria for the registration of town or village greens.

It prohibits the severance of common rights, preventing commoners from selling, leasing or letting their rights away from the property to which rights are attached. The Act prohibits the severance of rights with effect from 28 June 2005.

Defra claims that it provides better protection for common land and greens by streamlining the consents system for works and fencing on commons and ensure that existing statutory protections are applied consistently. This includes reinforcing existing protections against abuse, encroachment and unauthorised development. However, this appears to be an unusual piece of legislation in that it has been passed by Parliament but the details are still the subject of consultation and deliberation; lengthy consultation papers covering fundamental governance, public engagement and administrative points have been provided to AF. It potentially complicates management activities on AF but clarification is still being sought.

Source: <http://www.defra.gov.uk/wildlife-countryside/issues/common/commonact/index.htm>
<http://www.opsi.gov.uk/acts/acts2006/20060026.htm>

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The Natural Environment and Rural Communities Act (NERC) 2006

In 2004 following the review of 'rural delivery' carried out by Lord Haskins, Defra published its Rural Strategy.

NERC 2006 established Natural England (NE), an independent statutory Non-Departmental Public Body (NDPB), formed by merging the Countryside Agency's landscape, access and recreation functions with the activities of English Nature and the larger part of the Rural Development Service (RDS). NE is described as having 'responsibility for enhancing biodiversity and landscape and promoting access and recreation and new Commission for Rural Communities to act as an independent advocate, adviser and watchdog for rural people'.

The Act also covers the inappropriate use of byways by motor vehicles by putting an end to claims for motor vehicle access on the basis of historical use by horse-drawn vehicles.

It provides powers for the Secretary of State to fund activities directly within Defra's remit and to allow both the Secretary of State, and designated bodies, to delegate Environment, Food and Rural Affairs (EFRA) functions to one another (although regulatory and enforcement functions cannot be delegated to private bodies).

The explanatory notes alone run to 42 pages. http://www.opsi.gov.uk/acts/en2006/ukpgaen_20060016_en.pdf

Source: <http://www.defra.gov.uk/rural/ruraldelivery/bill/>
<http://www.opsi.gov.uk/acts/acts2006/20060016.htm>

Natural England's SSSI Enforcement Policy Statement

CRoW 2000 provides additional legal powers to NE to 'ensure better protection and management of SSSIs and safeguard their existence into the future'.

<http://www.english-nature.org.uk/special/ssi/protection.cfm>

Statutory Instrument 1159: The Local Authorities (Model Code of Conduct) Order 2007

This sets standards of conduct for members of Local Authorities, eg ESCC Councillors appointed to the AF Board and is referred to in current AF Standing Orders

<http://www.opsi.gov.uk/SI/si200711.htm>

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