

# How does the law protect adders?

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'The Vanishing Viper: Priorities for adder conservation'  
Draycott Village Hall, Cheddar, Somerset, BS27 3UE  
Sat 8 – Sun 9 October 2016

The LORD God said to the serpent,  
“Because you have done this, cursed are  
you above all livestock and above all  
beasts of the field; on your belly you  
shall go, and dust you shall eat all the  
days of your life.”

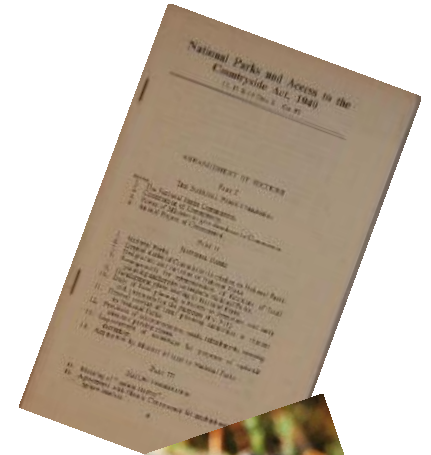
[Genesis Ch 3 v.14]





# UK legislation

- The National Parks and Access to the Countryside Act 1949
- Conservation of Wild Creatures & Wild Plants Act 1975





# European Convention

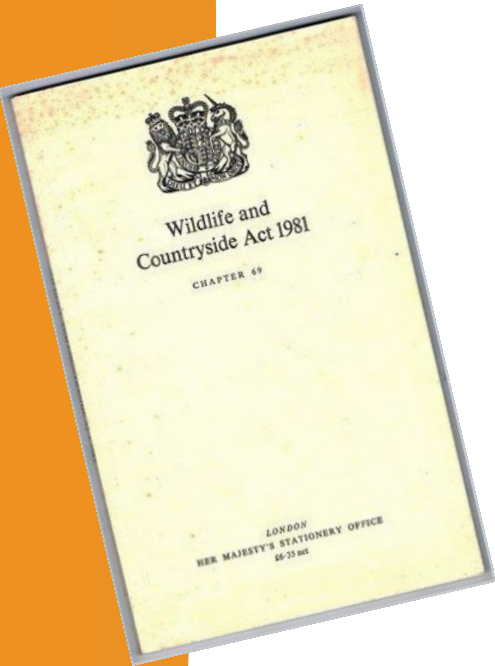
- The Convention on the Conservation of European Wildlife and Natural Habitats (the **Bern Convention**) 1979
- Came into force in 1982.
- Article 7 (1) Each Contracting Party shall take appropriate and necessary legislative and administrative measures to ensure the protection of the wild fauna species specified in Appendix III.
- **Exploitation of wild fauna in Appendix III** to be regulated in order to keep the populations out of danger, e.g closed seasons, temporary/ local prohibition of exploitation, regulation of sale, keeping for sale, transport for sale or offering for sale of live and dead wild animals.
- App III reptiles: All species not included in Appendix II ...includes the adder!







# UK legislation



- Wildlife & Countryside Act 1981
  - S 9(5): sale & trade
  - *Quinquennial Review mechanism*
- WCA Variation of Schedules Order 1988
  - Other reptiles – killing & injuring
- WCA Variation of Schedules Order 1991
  - Adder – Killing & injuring





# Wildlife & Countryside ACT 1981 (as amended)

## Protection:

- S9 (1): Prohibits intentional killing & injuring (NOT capture/ taking)
- S9 (5): sale, advertising for sale, etc
- Scottish legislation 2004 inserted word 'recklessly' into S 9(1)





# Wildlife & Countryside Act 1981 (as amended)

## Penalties

- Level 5 fine (£5,000) per offence
- Six months imprisonment
- Confiscation of items used in offence



# Wildlife & Countryside Act 1981 (as amended)

Defences:

- S10 (3)c: allows “an incidental result of an otherwise lawful activity that could not reasonably have been avoided....”
- Licensed activities

Application .. *reasonable avoidance*

- Killing / injuring as a consequence of e.g. development, habitat destruction, without ‘reasonable effort to avoid’
- Reptile rescues
- “Intentional” ...?





# Mens rea

- **Mens rea** in criminal law is concerned with the **state of mind of the defendant**. Most true crimes will require proof of ***mens rea***. Where ***mens rea*** is not required the offence is one of strict liability. There are three main levels of ***mens rea***: **intention**, recklessness and negligence.
- "intention .. only where sure the outcome was a virtual certainty as a result of the defendant's actions and that the defendant appreciated that such was the case."
- Bern Convention (Resolution 1: 1989):
  - “deliberate damage to or destruction of *breeding or resting sites*” includes ***any act committed without the intention to cause damage or destruction but in the knowledge that such would probably by the consequences*** of the act
- An "intentional act" is one in which the actor either (U.S.):
  - Consciously desires the physical result of his act, whatever the likelihood of the result happening from his conduct, or
  - Knows that the result is "substantially certain" to follow from his conduct, whatever his desire may be as to that result."

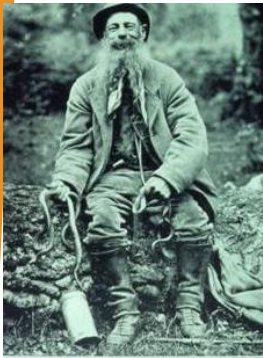




# Other UK legislation



- Dangerous Wild Animals Act 1976
  - Keeping licensed by LA Env Health Dept
- Welfare legislation, e.g. Animal Welfare Act 2006
  - it is under the control of man whether on a permanent or temporary basis, or
  - it is not living in a wild state





# Site & Habitat Protection

- Byelaws
- SSSI, SAC legislation
- SSSI Designation
  - Opinion of Council: Guidelines
  - Adders not a reason
  - ‘Reptile assemblage’
  - SSSI series under review in England





# Biodiversity Duty

- Natural Environment & Rural Communities Act (2006)
  - S.40-42
- Nature Conservation (Scotland) Act 2004
  - S.1
- Wildlife & Natural Environment (Scotland) 2011
  - Duty to report on compliance with biodiversity duty
- Well-being of Future Generations (Wales) Act 2015
  - Joined up approach
- Environment Act (Wales) 2016
  - S6 & S7 (*in place of NERC S. 42*)





# Biodiversity Duty

“Duty of every public body ...

- to have regard to .. the purpose of conserving biodiversity .. including restoring or enhancing a population or a habitat (E) /
- to further the conservation of biodiversity (S)
- to maintain and enhance biodiversity .. to promote resilience of ecosystems (W)
- To prepare, implement, report on and review plans (W/S)

List of ‘principle importance’/ key significance to conserving biodiversity (S41/ S2/ S7 (ex-S42) lists)

- Ministers to take steps to promote conservation and encourage others to do so
- List developed by SNCOs against criteria for Ministers





# Biodiversity Plans

Biodiversity Plans.....

.....*can be a legal duty (implicit or explicit)*

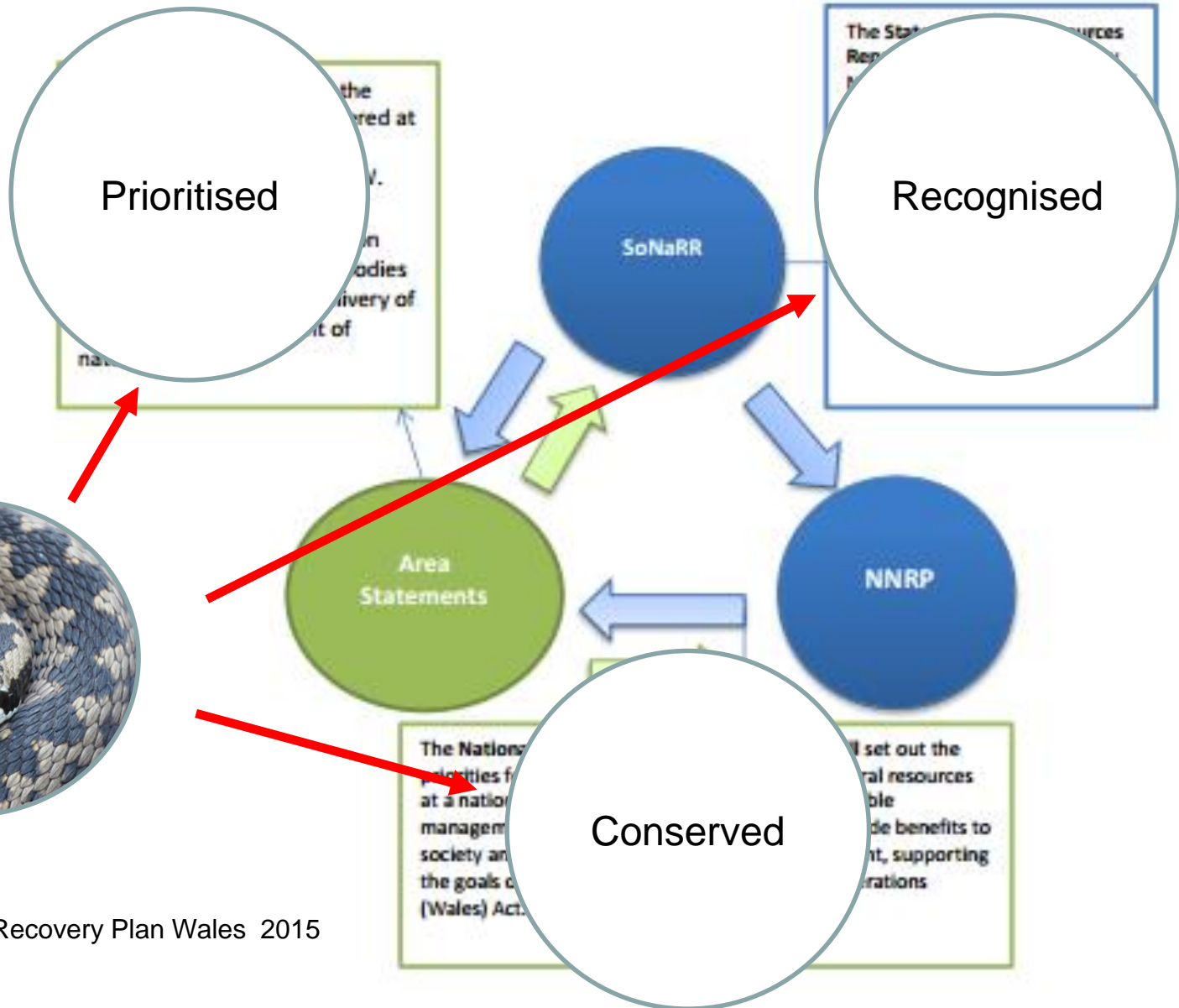
- UK BAP 1994
- England Biodiversity Strategy 2011
- Nature Recovery Plan Wales 2015
- Environment (Wales) Act 2016
  - Linking to Sustainable Development & ecosystems
  - think and plan more holistically, looking for whole system approaches ....
- Scotland's Biodiversity Strategy *It's in your hands* 2004







# Statutory Plans to Activities (Wales)

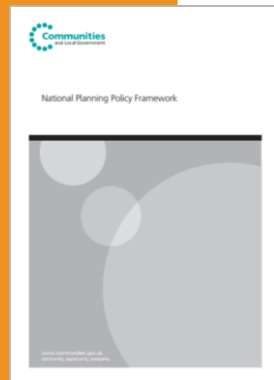
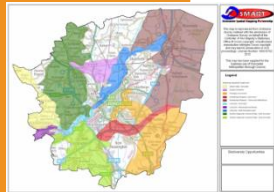




# Policies & Guidance

## Planning Policy: Legislative in origin:

- Town & Country Planning Act (1990) s. 106
  - Planning Policy NFFP 2012
  - The planning system should contribute to and enhance the natural and local environment by: minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
- The Planning (Wales) Act 2015,
  - Technical Advice Note 5, Nature Conservation and Planning (2009)
- Town and Country Planning (Scotland) Act 1997
  - National Planning Framework 3 (Scotland) 2014
- Local Sites (SINC)s





# Other Rules, Policies & Guidance

Can :

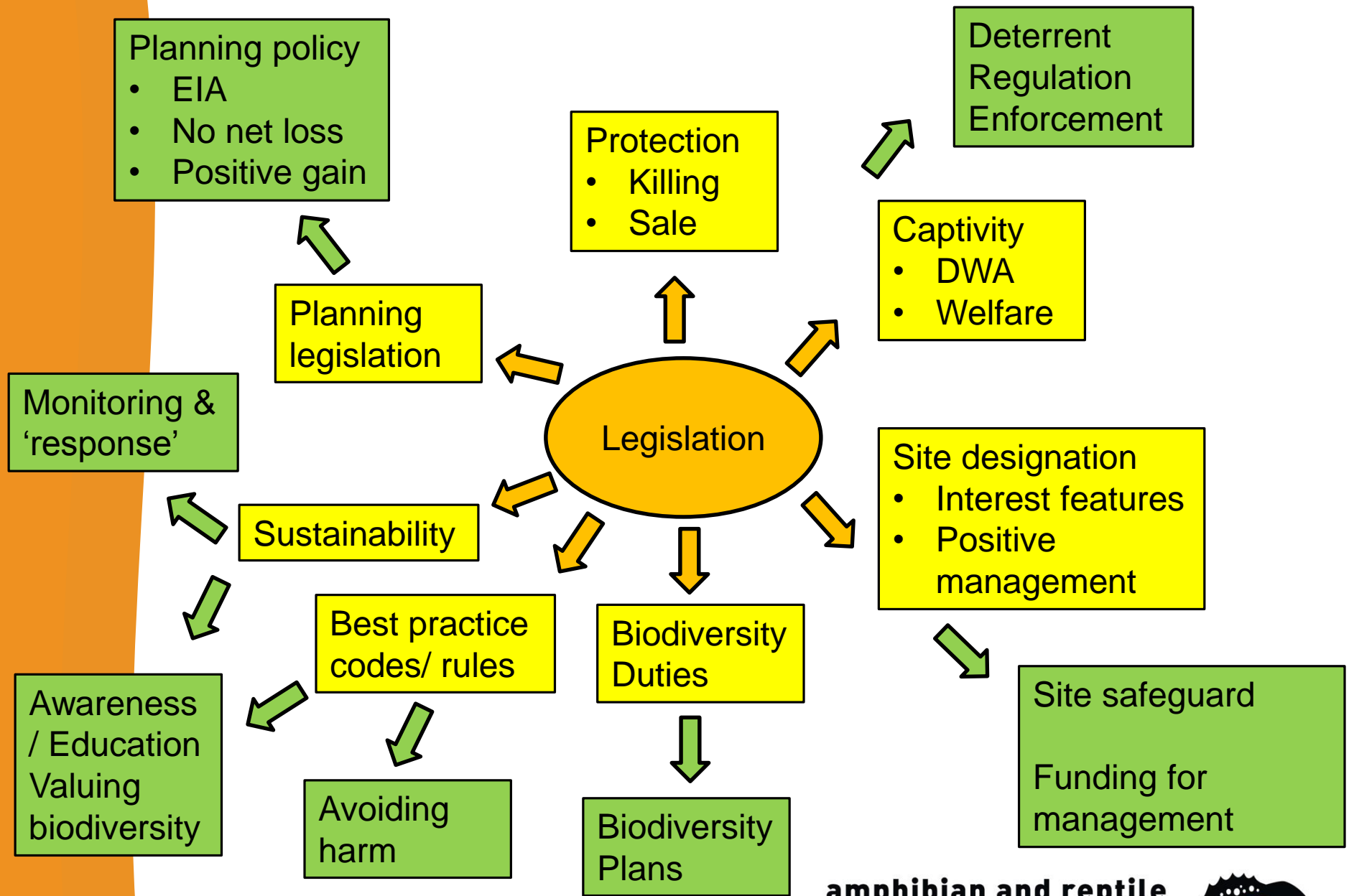
- Be enforceable
- Impact on funding ('compliance')
- Inform risk : Mean that consequences should be known?



For example:

- Heath & Moorland Burning Regulations
  - 1 October to 15 April in upland areas
  - 1 November to 31 March in other areas
  - If you don't follow the rules for burning grass or heather you can be prosecuted and fined up to £1,000.
- Good Agricultural & Environmental Condition
- Grazing Impact Assessment

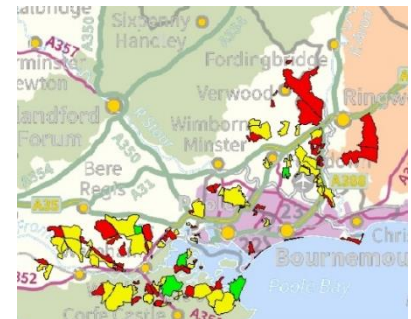






# But is it working?

- Protective legislation
  - Addressing the right threats?
  - Being enforced? Resourced?
- Site designation
  - Representative coverage?
  - Achieving positive management?
- Planning Policies
  - Levels of interest/awareness
  - No nett loss/ positive gains?
- Biodiversity Plans & Statutory Duties
  - Awareness/ interest
  - Enough attention paid to adders? Lack of a 'species focus'!
- Funding schemes
  - Agri-environment helping adders?
- Status assessments & monitoring
  - No requirement/ no mechanisms







# Legislation based options?

- Enhance protection
  - Protect habitats?
  - Recklessness?
- Improve site designation
  - New guidelines/ review series
  - Increase coverage?
- Develop & better implement planning policies
  - Increase interest/awareness: stronger 'steer'
  - New approaches for positive gains ... offsetting?
- Enhance Biodiversity Plans & Statutory Duties
  - Reinvigorate and increase 'status' of plans ; legislative basis
  - Awareness/ interest: statutory reporting
  - Ensure adders remain as a priority species?
- Develop & target funding schemes
  - Agri-environment: make less damaging & more relevant to reptiles!!
- Status assessments & monitoring
  - Outcome focused legislation/ statutory duty





