



European Protected Species (Terrestrial)

European Law

European Protected Species (EPS) are animals and plants listed under Schedule 2 of the Conservation of Habitats and Species Regulations 2010 (Conservation Regulations) and as such receive protection under Regulation 41 of these Regulations. For EPS that are animals it is an offence to:

- Deliberately capture or kill any such animal or take or destroy their eggs;
- Deliberately disturb any such animal;
- Damage or destroy a breeding site or resting place of any such animal;
- Have in one's possession or control, any such animal live or dead.

Under the Conservation Regulations, disturbance includes in particular any disturbance which is likely to:

- Impair the ability of an EPS to survive, breed or reproduce, or to rear or nurture their young or to hibernate or migrate;
- Significantly affect the local distribution or abundance of the species in question.

In the case of *Vivienne Morge vs. Hampshire County Council* (2010), the Supreme Court has defined deliberate disturbance as 'an intentional act knowing that it will or may have a particular consequence, namely disturbance of the relevant protected species.'

Since 2007 it is no longer a valid defence to show that the killing, capture or disturbance of a species covered by the Conservation Regulations or the destruction or damage of their breeding sites or resting places was the incidental and unavoidable result of an otherwise lawful activity.

For EPS plant species it is an offence to:

- Deliberately pick, collect, cut, uproot or destroy a wild plant;
- Possess, sell or exchange a wild plant.

Best Practice: Avoid Committing an Offence

Before carrying out land management activities or maintenance works or producing proposed development schemes, the presence of EPS should be considered. If any EPS are present, works should be designed to prevent disturbance to the species and avoid damaging their resting or breeding site.

EPS Licence Application

Where best practice guidance either cannot be followed or is not applicable, a licence can be obtained to permit otherwise illegal activities. The licensing authority may grant licences for:

- Preserving public health or public safety or other imperative;
- Reasons of overriding public interest;
- Preventing the spread of disease;
- Preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries;
- Science or education, conservation, ringing or marking;
- Possession of species or derivatives.

The licensing authority can only issue a licence if it is satisfied that:

- the activity meets one of the above purposes;
- there is no satisfactory alternative; and
- the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.



Under Regulation 9(5) of the Conservation Regulations, Planning Authorities also have a legal duty to 'have regard to the requirements of the Habitats Directive in the exercise of their functions'. As demonstrated by the case of Woolley vs. Cheshire East Borough Council and Millennium Estates Ltd (2009), this means that they must consider the 3 Habitats Directive tests (see Licence Application section above) when determining whether Planning Permission should be granted for developments likely to cause an offence under the Conservation Regulations. As a consequence, Planning Applications for such developments must demonstrate that the 3 tests will be passed.

What Terrestrial Species are Protected by European Law?

Terrestrial EPS that occur in the UK are:

- Amphibians - Great Crested Newt and Natterjack Toad
- Invertebrates - Large Blue Butterfly
- Freshwater species - Sturgeon
- Plants - Creeping Marshwort, Early Gentian, Fen Orchid, Floating leaved water Plantain, Killarney Fern, Lady's Slipper, Shore Dock, Slender Naiad and Yellow Marsh Saxifrage
- Reptiles - Sand Lizard and Smooth Snake
- Terrestrial Mammals - all bat species, Common Otter,
- Dormouse and Wild Cat

Activities Requiring a Licence

Following an analysis of survey information and using specialist knowledge of the EPS concerned, a consultant ecologist will recommend obtaining a licence for development if the proposed activity is reasonably likely to result in an offence under regulation 41.

A licence is not required if the consultant ecologist considers the proposed activity is reasonably unlikely to result in an offence. However, if at any time EPS are found, all works must cease until an assessment of whether an offence could be committed is made. A licence would be

required if offences were unavoidable and work could not continue until the licence is obtained.

Note that 'development' should be considered in the broad sense, such as the carrying out of building, engineering, mining or other operations on, over, or under land, or the material change in use of land or any buildings (including demolition, rebuilding, structural alteration or additions). It also includes any work on trees, including felling and arboriculture works. Developments in the marine area are covered by a separate guidance note.

Process for Obtaining an EPS Licence - England

Licence applications are submitted to Natural England, the licensing authority in England. Applications in respect of development have been split into 3 sections, all of which must be completed and submitted together.

- Licence Application Form – completed by the client and appointed ecologist
- Method Statement including a survey and site assessment, an impact assessment and details of mitigation measures – completed by the appointed ecologist
- Reasoned Statement summarising the proposed works and how it meets the above purposes – completed by the client, planner or environmental lawyer

Process for Obtaining an EPS Licence - Wales

Licence applications are submitted to the Welsh Assembly Government for Wales (WAG), the licensing authority in Wales. Applications comprise:

- Licence Application Form - completed by the client and appointed ecologist
- Method Statement including a survey and site assessment,



an impact assessment and details of mitigation measures – completed by the appointed ecologist

- Local Planning Authority (LPA) Consultation Form – completed by the LPA

Process for Obtaining an EPS Licence – Scotland

Licence applications are processed by the Natural Resources Division of the Scottish Government though Scottish Natural Heritage are consulted regarding the 'favourable conservation status' test. Applications comprise:

- Licence Application Form - completed by the client and appointed ecologist
- Supporting information including a survey and site assessment, an impact assessment, details of mitigation and compensation measures, and a method statement - completed by the appointed ecologist

Process for Obtaining an EPS Licence – Northern Ireland

The Biodiversity Unit of the Northern Ireland Environment Agency (NIEA) are responsible for determining EPS licence applications in Northern Ireland. Applications comprise:

- Licence Application Form – completed by the client and appointed ecologist
- Method Statement including a survey and site assessment, an impact assessment and details of mitigation measures – completed by the appointed ecologist
- Reasoned Statement summarising the proposed works and how it meets the above purposes – completed by the client, planner or environmental lawyer

Licence Compliance Checks

Statutory Nature Conservation Organisations (SNCOs) monitor compliance of licences issued. Licensees should be aware that they may receive a request for a site visit by a member of the SNCO to assess site conditions against the details given in the licence. It is possible that an SNCOs representative may undertake a site visit prior to the issue of a licence to confirm that the details of the site are accurately stated in the application.

This information was accurate, to the best of our knowledge, at the time of publication (07/06/2011). These notes are intended as guidance only. Professional advice from an ecological consultant should be sought in relation to protected species and development. Surveys, impact assessment and the design of mitigation strategies must be considered on a site-specific basis.