

EPS Mitigation Licensing: Latest developments

NATURAL
ENGLAND

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Dear Stakeholder

Welcome to our August 2015 European Protected Species (EPS) Mitigation Licensing Newsletter which includes a number of important reminders and recent updates on the Bat Low Impact Class Licence application process, new licensing scenarios which avoid the need for a Reasoned Statement and other useful information which will help with submission of an EPS Licence application.

As always, to ensure this newsletter reaches as many people who are involved with EPS licensing as possible, we encourage you to share it with colleagues and anyone else who you feel may be interested. Previously published EPS Newsletters can be found [here](#). We aim to provide as much notice as we reasonably can prior to any changes being implemented and we also provide these updates via e-mail.

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1. Update: Recent application process to become a Registered Consultant for the Bat Low Impact Class Licence

We have completed the sift of the July 2015 applications received and will be hosting three two-day workshops over September and early October, with external trainer, ecological consultant, Roger Martindale. Approximately 45 consultants from across the country will be attending these workshops, following which they will undertake a post-course assessment and should they pass they will receive a unique Registered Consultant reference number, solely for this licence, and be able to apply to register sites under the Bat Low Impact Class Licence. By mid-October there will hopefully be around 110 Natural England Bat Low Impact Class Licence Registered Consultants.

We continue to receive a number of queries asking us to provide names of consultants. As previously advised, in the July Newsletter, Natural England does not hold or promote lists of consultants for any type of licensing work. Our current position is this: we are not currently able to provide details of consultants registered to use the Bat Low Impact Class Licence due to data protection issues and Natural England does not recommend individual consultants. The directory on the CIEEM website, [Professional Directorate of CIEEM](#), does provide details of ecological consultants and it also enables people to search by area. Registered Consultants who are members of CIEEM are able to update their entry on this Directorate and a significant number of them have, however using

an internet search engine should also identify a number of other Registered Consultants able to apply to register sites, where they've chosen to promote it.

For further information on the Bat Low Impact Class Licence please read the Questions and Answer section of the [July 2015 Newsletter](#).

2. **Advanced Notice: Two new categories which may avoid the need to submit a Reasoned Statement with an EPS licence application**

We are currently updating the .GOV.UK web page covering when a Reasoned Statement may not be required ([link here](#)) and introducing two new categories which, additionally, may avoid the need for Reasoned Statements to be submitted for certain types of 'development' work with an EPS mitigation licence application pack. These are for applications:

- a. By Public Utility Companies for works that have only a temporary impact on the habitat of hazel (or common) dormice, and great crested newts, and
- b. To maintain or improve Public Buildings and develop land that is part of the Public Estate impacting bat species and great crested newts.

Full details of the requirements that must be met and work that these new categories cover will be included within the .GOV.UK website in the next couple of weeks so please keep an eye on the web site and ensure that you read and follow the criteria before omitting to submit a Reasoned Statement with an application. As an applicant, if your case avoids the need to submit a Reasoned Statement you must keep the evidence to demonstrate this. You may be required to produce this evidence should a compliance check be undertaken.

For applications which do meet one of the categories, Natural England will satisfy itself that the relevant licensing tests have been met. Please be mindful that aspects relating to mitigation design and timing, which form part of the 'No Satisfactory Alternative' test, but linking to the 'Favourable Conservation Status' test, will be included in the Method Statement for assessment.

As explained in the June 2015 Newsletter, with regard to bat applications, even if your application meets one of the scenarios should your proposal affect a nationally or regionally important population of bats then we may still require a

Reasoned Statement to be submitted. We expect applicants and their consultants to make a decision as to whether a regionally or nationally important population of bats will be affected.

The following paper may help with this: Wray S; Wells D, Long E and Mitchell-Jones T (2010). In Practice December 2010, 23-25; *Valuing Bats in Ecological Impact Assessment* which sets out:

'A regionally important population of bats typically include mating sites (rarer/rarest species) including well-used swarming sites; maternity sites of the rarer species; hibernation sites of the rarest species and significant hibernation site for rarer/rarest species or all species assemblages.

A nationally important population of bats includes maternity sites (rarest species) and sites meeting SSSI guidelines.

Rarer bat species in England – lesser horseshoe, whiskered, Brandt's, Daubenton's, Natterer's, Leisler's, noctule, Nathusius pipistrelle, serotine
Rarest bat species in England - greater horseshoe, Bechstein's, Alcaethoe. greater mouse eared, barbastelle, grey long-eared'.

If your proposal will impact a nationally or regionally important population of bats advice on whether a Reasoned Statement is required can be sought from Natural England and your enquiry will be passed on to the local team:

EPS.Mitigation@naturalengland.org.uk or 0845 6014523.

3. Important Advice: Reasoned Statements, supporting evidence and avoiding delays

Since the introduction of the new Reasoned Statement templates (May 2015) we are aware of a couple of issues that we would like to bring to your attention in order to help us determine your licence application as quickly as possible and avoid unnecessary delays:

- Although the format of the Reasoned Statement has recently changed, the level of information we require in respect of meeting the 'Purpose' and 'No Satisfactory Alternative' tests remains the same.
- At section B1(b) of the new '*Imperative Reasons of Overriding Public Interest*' Reasoned Statement ('Did you consider any other alternatives to your proposed solution?'), we have noticed that a number of applicants are ticking

'No' to this question and then not completing the subsequent tables in order to consider other alternatives (e.g. alternative sites, designs, construction methods etc.) even though it is apparent that there are other options that would be reasonable for an applicant to consider.

We would consider there to be very few developments where it is not appropriate to consider any alternatives to the proposed solution and therefore, please ensure that the tables in section B1(b) are always completed to avoid the need for us to contact you for further information.

- Please also ensure that you include the appropriate supporting evidence within your Reasoned Statement to demonstrate why an alternative has been discounted (e.g. either because the alternative won't meet the identified need, it is not feasible or it will have a greater impact upon the species in question than the proposed solution). Omitting this information causes delays to the determination of the application whilst we contact the applicant or their consultant ecologist to seek this required information.
- As with any other licence application, all relevant consents for the proposal must have been secured with all relevant conditions or reserved matters discharged as appropriate. If your application does not fully meet one of the criteria as detailed above then please do not submit your application without a Reasoned Statement, as this is likely to cause delays to your application and we will not be able to grant a licence until a Reasoned Statement has been received with all relevant information included.
- We would also like to remind applicants and their consultant ecologists to ensure they have read the guidance closely when submitting an application *without* a Reasoned Statement to ensure that their application meets the criteria. We have received a number of applications that have not met our stated requirements and we have had to ask for a Reasoned Statement to be submitted, which causes delays in assessing the application. The full guidance on when a Reasoned Statement is not required is found [here](#) (also see item 2 above).

4. Update: Pilot project with Woking Borough Council and great crested newt licensing

Natural England recently published a press release ([link here](#)) on a new innovative project being undertaken with Woking Borough Council. The aim of the project is to take a more strategic approach to the conservation of great

crested newts (GCN), whilst remaining compliant with the law, ensuring that resources are focused on newt populations and habitat that will bring the greatest benefits to the species whilst making the licensing process more straightforward for developers on sites where newts are present.

The pilot project will involve survey work to establish location and connectivity of GCN populations. This information will then be used to produce a local conservation plan for GCN, which will retain, enhance and link up the most significant populations, identify areas where development will have the least impact and specify where new habitat will be created to ensure a healthy overall population.

The Council will put in place the new habitat, so that when development results in habitat loss, the habitat gains will already be in place to compensate. Where there are sites of high conservation value for GCN it is likely that developers will seek to avoid those areas. This system aims to not only improve the habitat legacy for GCN, but also to reduce delays and cost to developers of survey and setting up their own schemes to protect newts.

Following completion of the pilot Natural England will discuss findings with stakeholders and highlight the successes, work through the process and address any issues before identifying where additional pilots might be possible. This will not be a compulsory model and there will be options within it as to how it could be implemented by other planning authorities.

Natural England is looking to extend this approach to certain bat species and is interested to hear from local authorities who are keen to be part of our pilots.

Should you have any further queries please contact

EPS.Mitigation@naturalengland.org.uk and these will be passed on to the relevant people.

5. Update: Project licences granted for two Rail Schemes

We have reported in previous Newsletters that Natural England is working on new strategic licensing approaches, including for organisations. We are pleased to report that over the last year, we have granted Network Rail for their Great Western Electrification Scheme (in England) and the Midland Main Line Electrification Phase 1 project with “project wide” licences which permit the

closure of badger setts along the route of their scheme. This means that they do not have to come to us for an individual licence for every sett along the line which will be impacted reducing the licensing burden on Natural England and the customer.

In addition to this, we recently granted a project licence for the Midland Main Line Electrification Phase 1 project for great crested newts. This permits employees of Network Rail and their Authorised Persons to essentially pick up and move a short distance individual newts into suitable habitat should any be found when trial pits are being excavated, foundations to support gantries are being created and when troughs and lineside cables are being inspected.

These licences enable greater certainty over programme delivery and for the Midland Electrification Scheme it has been estimated that the costs of delays incurred through gantry installation without licences covering these protected species could be in the region of £10,000-20,000 per night.

Licences of this type have specific terms and conditions, relevant to the project, which must be met, including reporting requirements. The great crested newt licence enables temporary or minor habitat losses only and does not permit the routine removal of vegetation from the rail track or to disturb, damage or destroy great crested newt breeding or hibernation sites.

6. Update: Charging and new tariff consultation

Regular readers will be aware Natural England launched our commercial services in September 2012 with a charging policy, including a charge out rate that sought to simply recover the costs of delivering the non-statutory services. This charge out rate was based upon the assumed costs of running those services and has not been increased in the three years since that time. Unless we are able to fully cover our costs we will be unable to continue to subsidise these services from taxpayer's money.

We have now undertaken a scheduled review of the running costs of our discretionary services, the hourly charge out rate and the structure of the fixed cost tariffs used for both the Discretionary Advice Service, for work related to

planning applications, and the Pre-submission Screening Service for European Protected Species. The review has concluded that:

- We have not been covering the cost of the central overhead within our existing charge out rate of £92 per hour and that it should rise to £110 per hour; and
- That the fixed tariffs we use should be substantially reviewed and potentially discontinued.

It should be noted that in order to comply with HM Treasury guidance to recover our costs in the delivery of these services and ultimately to continue to provide them it is imperative that we raise our charge out rates in this way.

We are open to customers seeking more efficient ways of contracting with us in order to reduce the delivery cost of our services. To this end we would welcome large customers seeking to enter into Service Level Agreement type arrangements with us. It may be possible to reduce the headline hourly rate in these circumstances.

We welcome any comments or follow up discussion about the proposed changes and as such we have been consulting on the subject for the last 4 weeks. This consultation closes on 1st September. If you have missed the consultation period additional comments can be sent to andy.groves@naturalengland.org.uk.

7. Update: Revised Great crested newt method statement template

If you are a regular reader of this newsletter, you will be aware we have been undertaking a series of improvements on the EPS Licence applications packs (ie application form, Reasoned Statement (where applicable), Method Statement and supporting documents). We have completed the changes to the application forms, published our new Reasoned Statements and categories which avoid the need to submit a Reasoned Statement and have been working on removing duplication from the Method Statements. As the bat and dormice Method Statements were the most recently revised (April and June 2014) we have been concentrating on the great crested newt (GCN) Method Statement template, which, like Marmite, customers either love or hate.

We took on board feedback received by individuals over the years and during the 2012-13 customer survey plus involved our assessors of GCN Method Statements. The end result remains an Excel based template, so we do not lose the functionality of the self-calculating formulas, but it looks like a Word document and enables people to write more text. The revised template is currently being reviewed by Natural England's Customer Panel, which includes several consultants who regularly submit EPS Licence applications, and we will make further minor changes before publishing. We hope to publish in the next few weeks and when we do we will issue a separate EPS Mailshot outlining the changes made and the process to follow in more detail.

8. Important Advice: Work Schedule for Great crested newt mitigation licences

For some licensable works on development sites, things do not always run to schedule and as a result we receive a number of requests to modify great crested newt licences, particularly in relation to Work Schedules every year. We simplified the process to modify licences a couple of years ago, and to reduce the risk of breaching your licence and the need to submit modification requests we advise that you avoid being too specific with the timing of each licensable activity. It is acceptable to overlap timings for some licensable activities (e.g. newt fence installation and capture) and allow lengthier periods of time for completion at a suitable time of year (e.g. newt capture through to October), providing it is made clear which order each activity will commence within the 'comments box' (of the Work Schedule template) and that construction will not begin until licensable activities such as newt capture and translocation are completed, which could be within a specified compartment and not across the entire site.

9. Important advice: EPS applications and missing information

The European Protected Species (EPS) Wildlife Licensing Team are reporting very high numbers of applications received which are missing key information which leads to delays in them being processed and in licensing decision being made.

During July 2015 we received a total of 287 applications. Over 40% (129) of these applications were returned to Customers, as they were considered incomplete (see breakdown below). August figures show that currently 44% of applications were submitted with missing information

Application Type	Applications Received	Applications Returned
	July 2015	July 2015
New Application	174	101
Modification	78	25
Resubmission	35	3
Total	287	129

A large proportion of the forms were returned due to simple incidents of boxes not being checked or the omission of required supporting documents (e.g. mandatory maps/figures, planning consent documents). The time taken to review these applications and the administration involved in putting these applications on hold whilst we wait for missing documents to be submitted is considerable.

As you may be aware, we are currently receiving high volumes of applications and the time taken to return incomplete applications significantly reduces our ability to process applications for assessment. In a bid to reduce the number of incomplete applications, we have produced the following appended checklists (see [here](#)) so that you can ensure the applications you are sending are complete.

A couple of final notes and requests:

- If you choose to submit your documents via email and post, please highlight this clearly on **both copies**, otherwise there is a risk of duplication.
- If the purpose of your application is **Preserving Public Health or Public Safety**, please make this **clear** in the covering email or letter sent with the application.

We hope you will find this guidance useful.

10. Update: MagicMap website and updating bat licence application fields

We continue to improve the MagicMap Data layer for EPS licences granted. The data layer already includes all EPS licences granted from late 2008 to the end of 2013 and an October Magic update will see the vast majority of 2014 licences added to the existing data. Around 200 licences from 2014 will be added at a later date as they were issued by Natural England during the hiatus between our old and new licence administration systems and are stored in a way that prevents their inclusion in the next update.

With the October update, for licences granted after the launch of the Case Work Manager System (CWMS) we have the ability to distinguish between those permitting damage and destruction of breeding or resting places. Previously we were only able to show that a licence had been granted to allow damage and destroy; we were unable to be specific. Unfortunately we do not have the resource to revisit thousands of historic licences prior to the introduction of CWM to extract the data to display this more accurately.

The dataset is available by visiting the MagicMap website at <http://www.magic.gov.uk/#> and viewing the “Interactive Map” (go to Table of contents (THS) and select Habitats and Species – Species – EPS – Licences granted). If you are unable to find a licence granted at a specific location where you know it should be please contact Richard Clarke (richard.clarke@naturalengland.org.uk). We have done all we can to ensure that this data set includes all relevant licences granted, however, occasionally an application grid reference may have been entered into the system incorrectly. Please note that due to the way in which we stored application data prior to October 2008 we are unable to map any EPS licences granted by Natural England before that date.

11. Reminder: Identification of long-eared bats for bat licence applications

Positive identification of long-eared bats is required for any bat licence application (including standard licence applications and site registration requests under the Bat Low Impact Class Licence) in the south and west of England. Grey long-eared bats are not only confined to the coastal areas. There are records from further inland and a (dead) grey long-eared lactating female and juvenile

were recently picked up from Weston-Super-Mare (BS24). This is on the edge of the apparent known range of grey long-eared bats, and highlights the importance of confirming which species of long-eared is present, in this part of the country. Natural England expects reasonable efforts to be made to determine species, such as the use of DNA analysis of droppings or positive identification by capturing and identifying in the hand. Should it prove not possible to determine the species, what efforts were made must be clearly set out within the Method Statement. Natural England will consider each application on a case by case basis.

12. Important information: Bats and lighting as a deterrent measure

If you are not already aware, recent research has raised serious concerns about the use of lighting as a deterrent or exclusion method for bats and Natural England urges caution with this. If the use of lighting as a deterrent is proposed within a licence application (which we expect will be a rare occurrence), it must be suitable for the species and roosts concerned, with appropriate safeguards employed to ensure bats are not entombed in roosts. Applications which include lighting as a deterrent will be considered on a case by case basis, and it must be apparent that this method, rather than or alongside others, is necessary for the works proposed for it to be licensed.

13. Notice: Do we have your current contact details?

Each time we send out the EPS Newsletter to our current mailshot list we receive a considerable number of 'undeliverable' messages. If you have recently changed your email, or are about to do so, or you know someone who is involved with EPS Licensing work and would like to receive our mailshots, please do let us know. Send your current email address to the EPS.Mitigation@naturalengland.org.uk with an email header: *Change of email address for EPS Newsletter mailshot list.*

Best wishes

Kathryn Murray

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ANNEX 1: Licence documentation

1. [New application](#)
2. [Re-submission](#)
3. [Modification request](#)

New Application Checklist

Please check that you can answer **yes** to the questions below before submitting a **new** EPS licence application:

Mandatory Requirement	Complete?
Have you used the latest version of the Method Statement, Reasoned Statement, Work Schedule and appropriate species Application Form? (Available on the website – please check regularly for updated templates)	
Have you provided the Applicant’s email, telephone number and postal address? (<i>Application Form - Section 1</i>)	
Have you included a site address and grid reference? (<i>Application Form – Section 6</i>)	
Have you held an EPS licence for the same species in the last three years? (<i>Application Form – Section 10</i>) If 'No', you must provide two references and details of your experience.	
Have you obtained the necessary planning consents and included copies of these? (<i>Application Form – Section 11</i>) Please note: <i>These are required even if your application does not need a Reasoned Statement.</i>	
Have you indicated whether your application requires a Reasoned Statement (<i>Application Form – end of Section 11</i>) If you do not need a Reasoned Statement have you explained why not?	
Have you confirmed you have no previous wildlife convictions? (<i>Application Form - Section 16</i>)	
Have you fully completed, signed and dated the declaration page of the application form? (<i>Application Form - Section 16</i>)	
Have you included the site name and date on the Work Schedule?	
Have you separated the figures into individual PDF documents and ensured that they all include a date on the document?	
Have you included all compulsory figures? (<i>See Method Statement – Section 1 – Checklist of Figures</i>)	
If your application is phased or multi-plot, have you included a Master Plan and Habitat Management and Maintenance Plan ?	
Have you completed all mandatory questions (marked with *) on all forms?	

Re-submission Checklist

Please check that you can answer **yes** to the questions below before resubmitting your application in response to a **Further Information Request**:

Mandatory Requirement	Complete?
Did Natural England issue the Further Information Request (FIR) within the last 6 months? If 'No', you will be required to submit an entirely new application using the most recent forms	
Have you included a cover letter outlining the changes? <i>(Please highlight these changes within documents using different coloured font/block-coloured text and strikeout deleted text).</i>	
If your application is for GCN and you have been asked to make amendments to your Method Statement or supporting documents, have you included your updated Method Statement in its entirety including maps, figures, plans and appendices?	
If your application is for Bats/Dormice and you have been asked to make amendments to your Method Statement, have you included all updated documents requested by the Wildlife Adviser in the FCS Report?	
If any of the Imperative Reasons of Overriding Public Interest (IROPI), Preserving Public Health or Public Safety (PH&S), or No Satisfactory Alternative Tests were not satisfied , have you included all updated Reasoned Statement documents as requested by the EPS Adviser in the Determination Report?	

Modification Checklist

For all modifications please ensure you include the reference number and can answer **yes** to the following questions:

Mandatory Requirements	Complete?
If your licence is Annexed	
Have you completed a Modification Request Form? <i>(see appropriate species page on the website)</i>	
Has the Modification Request Form been signed by the Ecologist and the Licensee?	
Have you included all amended documents/figures as stated on your request form? <i>(Please highlight changes within documents using different coloured font/block-coloured text and strikeout deleted text)</i>	

If your licence was pre-annex (ie and includes a licensed Method Statement) , have you included a cover letter detailing

A summary of progress (what has been completed and what is left to complete)?	
A summary of the animals captured/disturbed during the licensed works so far?	
A list of the changes to the licensed Method Statement and other documents?	
Any implications for the 'favourable conservation status' of the species licensed as a result of the changes proposed?	

Have you included an updated Method Statement with all changes clearly highlighted? (Even if you only need to modify the Work Schedule)	
Have you included all of the maps and figures that support your Method Statement?	

In addition for both Annex and pre-annex licences:

If your Modification includes a change of Licensee :	
Have you included a letter or email from the previous Licensee quoting the licence reference number and explaining what is proposed?	
Have you included a letter or email from the new Licensee quoting the licence reference number and confirming that they accept the agreed mitigation proposals relating to this licence?	
Have you included an Application Form with Sections 1 & 16 completed?	

If your Modification includes a change of Named Ecologist :	
Have you included a letter/email from the previous Ecologist quoting the licence reference number and explaining what is proposed?	
Have you included a letter/email from the new Ecologist quoting the licence reference number and confirming that they accept the agreed mitigation proposals relating to the licence?	
Have you included an Application Form with Sections 2, 10 & 16a/c completed?	