

# Protected Species

## A Reminder!

Owing to rarity and vulnerability to habitat changes some plants and animals and the key habitat that they rely upon are protected by law.

These species are listed as 'European Protected Species' (EPS) under the Conservation of Habitats and Species Regulations 2017.

And they also receive additional protection under the Wildlife and Countryside Act 1981.



In England most are woodland species and include:

- All 17(18) species of bat
- Dormouse
- Otter
- Great crested newt
- Smooth snake and sand lizard



UK required to provide legal protection

Subsequent amendments to Habitats Regulations (2007 & 2010) have:

- Increased protection afforded to EPS
- Removed the 'incidental result of a lawful activity' defence
- Provided further clarification

Most recent changes – 30 November 2017

- Consolidation of Habitats and Species Regulations 2017 and Conservation of Offshore Marine and Habitats and species Regulations 2017

- Conserving rare species present in a wood is best achieved through long term planning
- Ensuring that the requirement of the Habitats Regulations are also satisfied is an additional challenge
- A systematic approach will be required in order to minimise the risk of committing an offence
- Forward planning is essential and may solve future problems
- Plant Health – new dynamics

We will cover:

- Some principles
- The decision-making and woodland planning process
- Evidence, Good practice & Licences



It is an offence to:

- (a) Deliberately capture, injure or kill any wild animal of a European protected species*
- (b) Deliberately disturb wild animals of any such species*
- (c) Deliberately take or destroy the eggs of such an animal, or*
- (d) Damage or destroy a breeding site or resting place of such an animal*

- (a) = 'harm'*
- (b) = 'disturbance'*
- (c) = 'harm'*
- (d) = 'damage'*



- Causing 'damage', even when the animal is not present, is an **absolute offence**!
- 'Disturbance' or 'harm' is only considered an offence when caused **deliberately**
- 'Deliberate' is interpreted as being somewhat wider than just **intentional** and could be thought of as including an **element of recklessness**



- A person would be acting recklessly if they could reasonably have been expected to foresee that an operation could cause disturbance or harm to a protected species but took no action to assess the risk and what to do about it.
- Where an operation is carried out with sensible precautions then the risk of deliberate disturbance and harm can be greatly minimised.
- When the risk of disturbance and harm has been considered and minimised then it is unlikely that an offence will occur, as such actions are unlikely to be considered as deliberate.

For the purposes of para (1) (b) disturbance of animals includes in particular any disturbance which is likely: -

(a) to impair their ability:

(i) to survive, to breed or reproduce, or to rear or nurture their young or,

(ii) in the case of animals of a hibernating or, migratory species, to hibernate or migrate or,

(b) to affect significantly the local distribution or abundance of the species to which they belong.



- Woodland conservation requires intervention.
- Protection of rare species should not stop work which will help conserve wider biodiversity.
- Some protected species aren't exactly rare (in UK).
- Overall aim is - conservation of populations - not the protection of every individual.
- Work that complies with Good Practice will not require a EPS Licence.
- If you comply with Good Practice or a Licence you should not be committing an offence.

***Presence***

*Are there any EPS in my wood?*

***Good practice***

*If so, what should I do?  
What can I do?  
And what can't I do?*

***Licence***

*Must meet three tests*

## European Protected Species and woodland operations. (V3)

Complete all sections of the Checklist

### Checklist

1

Are you within, or close to, the known mapped range of any of the protected species **OTHER THAN BATS** which are potentially everywhere? Tick any that apply.  
See distribution maps in the Good Practice Guidance for each species -

- ☐ Dormice
- ☐ Otters
- ☐ Great crested newts
- ☐ Sand lizards
- ☐ Smooth snakes

2

Does your wood contain any of the following habitats? Tick any that apply.

- ☐ Old trees with holes and crevices which might be used bats
- ☐ Extensive coppice suitable for dormice
- ☐ Rivers on which otters might be found
- ☐ Ponds which might be occupied by great crested newts
- ☐ Open areas on heathy soils

3

Have any of the protected species been recorded in this wood or on adjoining sites? Tick any that apply.

Indicate which sources of information you have checked:

- ☐ National Biodiversity Network ([www.nbn.org.uk](http://www.nbn.org.uk))
- ☐ Local Biological Records Centre
- ☐ Local Wildlife Trust
- ☐ Other

Specify Other:

4

Have your inspections or any expert surveys found any of the following signs or evidence? Tick any that apply.

- ☐ Signs (e.g. otter spraint, nuts gnawed by dormice, leaves folded by newts)
- ☐ Sightings (or echo-location)
- ☐ Potential breeding or roosting sites (e.g. veteran trees, old trees with crevices, riverside hollow trees, ponds, timber stacks, large fallen deadwood)
- ☐ Confirmed breeding or roosting sites (i.e. evidence of sites actually being used)

Details:

### Details

#### CHECK POINT

If you have answered NO to ALL of the above then only bats need to be considered in your operations.

If you have answered YES to any of the above then the species concerned must be considered as well as bats.

5

Do the operations comply with Good Practice for bats and any other species found (or likely to be found in your wood) or can the operations be modified to do so?

Details: Use reverse of form to expand as required:

YES

NO

6

#### Whether or not a licence is required...

Has the information been communicated to operators (including the location of breeding sites and sensitive areas)? Tick any that apply.

- ☐ Included in documentation (e.g. contract, letter of instruction, site assessment or other management plan)
- ☐ Shown to operators and/or their supervisor
- ☐ Marked with paint or hazard tape
- ☐ Shown on the site plan

Other means:

YES

NO

7

Have arrangements for supervision been made to ensure Good Practice guidance is complied with during the operations?

Details:

YES

NO

- Are you within the existing geographic **range**?
- Does your wood contain suitable **habitat**?
- Are there **records** of the species for this area or site?
- Is there any **field evidence** of their presence?
- **If in doubt, assume it's there and follow the guidance.**

- Checklist with each application sent out
- Encourage completion by owner / agent
- Not normally require completed form submitted unless in doubt - likely to change
- If not satisfied that EPS is being addressed we must ask for more details before issuing licence / grant contract
- **We will not give approval if we are not satisfied the issues are being addressed**

- 5 sets of Good Practice first published in 2007 take full account of the needs of the species/population concerned. Make sure you are using latest good practice! FC web site has latest up to date good practice.
- Good practice for routine woodland operations which should maintain and improve habitat for EPS and minimise the risk of harming and disturbing animals or damaging their breeding sites or resting places.
- If you follow good practice, and carry out operations as described, you will not require a protected species licence.

If you cannot comply with Good Practice, you can apply for a licence.

But an owner must be able to demonstrate that all of the following three tests are met:

- Done to conserve wildlife, public safety, delivers the Government's woodland strategy and provides public benefit
- No satisfactory alternative
- Overall package of works will not be detrimental to overall population of the species.

NE remains the statutory body for protected species.  
FC will help implement it for the 'woodland species' and woodland management operations.

FC and NE have jointly:

- produced Good Practice;
- developed simplified licensing documents & processes.

FC will:

- check compliance when processing Grant Schemes & FLAs;
- carry out initial processing of licence applications;
- provide a single point of contact for applicants.

NE will:

- make the final decision on licences (esp. the 3rd test);
- issue any licences (via FC) & retain legal responsibility.

- What's good for EPS is good for most other wildlife
- Check whether **any** protected species are **present**
- Try to comply with relevant **good practice**
- If you really can't, then apply for an **EPS licence**

See: [www.forestry.gov.uk/england-protectedspecies](http://www.forestry.gov.uk/england-protectedspecies)

