

EPS Mitigation Licensing: Latest developments

NATURAL
ENGLAND

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Dear Stakeholder

Welcome to our February 2015 European Protected Species (EPS) Mitigation Licensing Newsletter which includes a recent update on our improvements work, progress on changes to application forms and our Case Work Management System and an update on current processing times for licences.

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. 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. Newsletters published before June 2014 can be found in our archived website [here](#).

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This content was withdrawn on 12 October 2020

1. Update: Improvements programme

We are continuing to make changes to the application forms, as reported in October 2014's newsletter. These are being made available to a few consultants for review and to feedback on before they are published at the beginning of April. With 57 different application forms (covering all wildlife licence applications) the job to remove duplication, streamline and ensure consistency plus ease of completion is a significant one. Changes will subsequently be made to our on-line Case Work Management System in the next financial year.

We also advised in the October Newsletter that we would be publishing advice on how to complete certain sections of the bat and dormice method statements. This has, unfortunately, been delayed but remains a priority and we will pick this up again shortly and report progress through this Newsletter.

We have however made significant progress in relation to mapping the locations of EPS licences, a commitment we made some time ago. Granted licence applications with case reference numbers in the range 2009-2013 will be available to view on the MAGIC system in late February 2015. Further updates, due shortly will include granted applications with cases reference numbers from 2008 to the dataset, following the validation of spatial data for these cases. There will be further updates in 2015, probably in the summer, to include 2014 case reference numbers; followed by biannual updates to the dataset to add new cases.

The dataset will include granted applications for bats, amphibians, reptiles, dormouse, and otter, along with additional species for which applications are uncommon, such as cetaceans and protected plants. The dataset includes licence details such as case reference number, species, site county, key dates, and information related to whether breeding and resting sites were impacted by the licence. The dataset will be available by visiting the MagicMap website at this link <http://www.magic.gov.uk/#> and viewing the "Interactive Map". Full instructions on how to view this dataset will be provided via a link in the next newsletter.

2. Update: Bat Low Impact licence – completion of the first sift process

Introducing the concept of Registered Consultants fits with the work Natural England is undertaking with Chartered Institute of Ecology and Environmental Management (CIEEM) to explore the potential for introducing Earned Recognition (ER) into the licensing system, which includes piloting the delivery of training through CIEEM. The initial roll-out of the Low Impact Bat Class Licence via workshops is part of this project and will be used to investigate how the Earned Recognition approach can be used to maintain and drive standards within the ecological consultancy sector.

We set the bar higher to become a Registered Consultant for the Bat Low Impact Class Licence than that to become a 'Named Ecologist' on an individual mitigation licence and invited applications to become a Registered Consultant in November 2014. Approximately 70 consultants from 121 applicants met the required criteria and have been invited to attend one of three workshops.

The workshops, to be held in late March and April, will be delivered by an external consultant, Roger Martindale, and will take consultants through the legislation, the evidence required to meet the three tests, how to register a site which meets the licence criteria, the licence conditions, maintaining compliance and reporting. There will also be an assessment of their understanding of the licence, following which, if they pass, they will receive a unique reference number and officially become a Registered Consultant able to apply to register sites under the Low Impact Bat Class licence.

We understand that many consultants have been disappointed by the outcome of their application and have received a considerable amount of feedback on the criteria set. We wish to reassure you that we will take this on board during a review of the criteria following the workshops as we intend to open the application process again in early summer.

We have received some queries asking for names of those who will become Registered Consultants. Natural England will not be hosting a list of these consultants, in the same way that we do not keep a list of ecological consultants for any other area of licensing work or recommend individual consultants. The [Professional Directorate of CIEEM](#) provides lists of ecological consultants and

the work areas which they cover and we have asked CIEEM to consider updating the Professional Directory.

3. Update: Improving licensing capability

You will be aware of the challenges we experienced last year in assessing EPS licence applications, particularly those for great crested newts. We have experienced similar challenges with bat licence applications following a considerable increase in the number of bat applications submitted; we received almost 200 new bat applications over the Christmas period alone. Our automated email response to any licence application received explains how long our current determination period is likely to be.

Natural England remains committed to delivering a high standard of service and we appreciate your understanding and support as we make the necessary improvements to our licensing service. To help meet the considerable licensing demands, we initiated the training of 7 new advisers for great crested newt applications and have recently started training 14 new bat advisers and aim to train a further 8 before the end of the financial year. We hope that with this additional resource in place, the current backlogs will be resolved and we prevent a similar situation from occurring again.

You will also be aware, last year Natural England moved from national directorates to local delivery teams and responsibility for EPS licensing now resides with 14 local Area Teams. Generally speaking there is local delivery of licensing for badgers, birds, other species and the Wildlife Investigation Incident Scheme. However due to the large volume of European Protected Species licence applications, which are spread unevenly across the country, EPS applications continued to be processed nationally. We are however moving to local delivery 'clusters' and method statements for new licence applications for EPS will now be assessed within a 'delivery cluster'.

You are likely to be contacted by one of the managers or Team Leaders in the Area Team cluster where the site lies if there are delays or problems to your application. Likewise if you have any concerns about your application or issues you wish to raise, you do this via the Area Team where your application falls. Details can be found [here](#).

4. Important reminder: Do not submit applications which do not have the necessary consents in place

Natural England would like to remind applicants not to submit licence applications without having all the necessary consents in place. The need to have all necessary consents secured before a licence can be issued has been a long standing procedural requirement, with very few exceptions. Due to the increasing number of applications being received, to make best use of our resource, should an application be submitted without all the necessary consents in place, the applicant will be informed that their application will not be processed further. They will be invited to submit when all necessary consents are secured. This will also help reduce unnecessary delays for those applicants who have submitted their application at the correct time.

5. Advanced notice: new Reasoned Statement templates

We intend to introduce two new Reasoned Statement templates in March. These introduce a change to the format in which we ask for information to be provided in specific relation to the purpose and no satisfactory alternative (NSA) tests. There will be a template for applications made under the purpose of 'Imperative Reasons of Overriding Public Interest' (IROPI) and another for applications made under the purpose of 'Preserving Public Health and Safety'. The latter application form is reserved solely for genuine health and safety situations where action needs to take place imminently. It is not intended for routine operations such as removing vegetation adjacent to rail tracks or other similar situations and we advise applicants use the template for IROPI for applications for these types of work.

We have reported in previous newsletters that we regularly receive Reasoned Statements with large numbers of supporting documents often running into many hundreds of pages with no indication on where the evidence to meet the test is held. To address this, the new template will require the applicant to clearly set out where the evidence is (e.g. providing extracts of the evidence stating the document name, page number, paragraph etc). These new templates will be living documents and we will take on board feedback and revise if necessary.

In addition to this we have identified development type scenarios where it will not be necessary to submit a Reasoned Statement as part of the application pack. Natural England, in identifying these scenarios, is able to make a generic assessment of the purpose and NSA tests. Aspects relating to mitigation design and timing, which form part of the NSA test but linking to the Favourable Conservation Status test, will be included in the Method Statement for assessment. If an application meets one of the identified scenarios, an applicant will have to declare which this is.

We will publicise these new Reasoned Statement templates and the types of development scenarios which may avoid the need for a Reasoned Statement shortly.

6. For awareness: Natural England's guidance on GOV.UK

As previously reported, Defra and its regulators are simplifying all of their guidance to make it quicker to understand and easier to use. The first phase of this is now complete and all our application forms and much of our more general licensing guidance have moved over to GOV.UK. Our new web address is www.gov.uk/natural-england.

There remains a full copy of our existing website on The National Archives which is available to all in the [UK Government Web Archive](#). Work has started on the Phase 2 of this project and Defra writers are currently writing guidance on the more detailed advice for specific user needs, such as ecological consultants, homeowners, developers, local planning authorities, etc. Existing Natural England website URLs still work and a comprehensive redirects system will take users either to content on GOV.UK or to The National Archives copy. For ease, until the more detailed guidance is complete, estimated to be complete around the end of March, our detailed guidance and advice (such as the Great Crested Newt Mitigation Guidelines, the Bat Mitigation Guidelines, How to write a master plan, etc) can be found at this quick link [here](#).

7. Important Advice: The use of environmental DNA test for Great crested newt licensing purposes during 2015

In 2014, Natural England accepted the use of environmental DNA (eDNA) to detect the presence or presumed absence of Great crested newt (GCN) in water bodies (see [April 2014 Newsletter](#)). We have received a number of enquiries asking what our current position is in relation to eDNA testing. Experience of eDNA collection and analysis to detect GCN is still a novel technique and our assessment is that for 2015 our position is broadly the same as last year.

- NE will continue to accept eDNA test results as evidence of presence or presumed absence of GCN from consultants and developers, provided the method set out in the [Technical Advice Note](#) is strictly followed. See further below on what to include in any licence application.
- We are aware of three suppliers that provided eDNA tests to the market in 2014 (Spygen/FHT, ADAS and FERA). Others may come into the market as more consultants and developers are aware of its application and suppliers are more prepared. **Natural England, however, does not endorse or maintain a list of suppliers.**

For GCN licence applications: advice when using this technique to support a licence application includes:

1. Use of eDNA is another survey technique – it is not a mandatory requirement. We will accept this new survey technique to determine GCN presence or absence if samples are undertaken in strict accordance with the published technical advice note and they are collected by a suitably trained and experienced licensed GCN surveyor.
(No survey licence is required to take the water samples but for licence applications we will require evidence and confirmation that experienced, licensed GCN surveyor/s collected the samples to support the proposals in the method statement. Natural England requires this because eDNA is not evenly distributed in the pond water and surveyors experienced in knowing where to look for GCN within a pond are more likely to be successful in sampling for eDNA).
2. Applicants, wishing to submit eDNA test results as evidence of presence or absence of GCN, must declare that:

- This content was withdrawn on 12 October 2020
- a. They have strictly followed the technical advice note;
 - b. Only licensed GCN surveyors (provide names and references) have taken the samples to support their licence application; and
 - c. Present the field and laboratory results as part of their application, by including a separate WORD document with the application pack clearly setting out:
 - i. The referenced water bodies which were tested;
 - ii. Dates that samples were taken; and
 - iii. The results (presence or absence) in tabular form - which must also be reflected on the survey maps/figures submitted (see point 3).
3. Method statements must also include on the relevant survey figure/s water bodies sampled and surveyed, clearly indicating water body references and results (presence or absence).
 4. The age of samples and results must conform to current 'age of survey' within the guidance set out in the method statement template.
 5. We are only accepting eDNA results from samples collected following the onset of suitable weather conditions for surveying GCN in late April until 30 June.
 6. This technique will not provide population size class assessments.
 7. Should a population size class assessment be required for the proposed development/project then the applicant will require 6 survey visits using conventional survey methods, in accordance with current recommendations within the "*Great Crested Newt Mitigation Guidelines, 2001*" (GCNMG).
 8. Until the GCN method statement template is adapted in due course, this advice on what we will typically expect if an applicant wishes to use this technique is to be followed. Should population size class estimates be required then the survey section of the method statement must be completed as usual.
 9. Applicants must ensure they retain or have access to the records set out in the technical advice note, and used to support the licence application, for at least 12 months from the first licence return (which will be set out in any licence granted).
 10. eDNA can also be used for post development monitoring surveys if presence or absence only surveying is required under licence.

In deciding whether or not to use this test you will need to make an informed **risk based judgement** about whether eDNA or conventional surveys to detect presence and absence best meets your needs. In particular applicants should be aware of:

- The factors that affect the likelihood of false negatives when collecting water samples.
- The need for training and recognising there will be difficult or less suitable sites for this technique.
- Factors affecting laboratory performance. When commissioning laboratory analysis users should satisfy themselves that they can achieve a satisfactory level of performance.
- The test requires GCN to have been recently active in the areas sampled. Expert judgement should be applied to ensure samples are collected at the optimum time bearing in mind geographical location and conditions early in the year.
- Whether their project timetable allows sufficient time to undertake the required number of population size class assessment surveys (i.e. the conventional 6 surveys between March-June – see the GCNMG for details) if an eDNA test shows presence of GCN and as such a population assessment is required for the proposed development and impacts. This will require careful forward planning.
- The study looked at one type of eDNA test – quantitative Polymerase Chain Reaction (qPCR).

For the immediate future we will therefore only accept eDNA evidence using the qPCR test set out in the technical advice note. Industry will need to demonstrate equivalence or better for any alternative tests used.

Natural England met with CIEEM, the Freshwater Habitats Trust and FERA in February to explore user and supplier perspectives in the use and development of eDNA for great crested newt surveying. We had a very positive meeting and discussed a number of opportunities over the coming year and the role of the ecological sector in developing new sampling and testing techniques. We will provide a more detailed report once roles and responsibilities have been finalised. In the meantime, CIEEM are also advertising training in the taking of [eDNA samples](#).

8. Important advice: Changes to Natural England's chargeable service

Natural England's chargeable services will now include advice on species protected under the Wildlife and Countryside Act 1981 (as amended) and the Protection of Badgers Act 1992. Guidance will appear on [Natural England's website](#) shortly. This will also extend to early advice provided on NSIP applications (please also see below, item 8). This will enable Natural England to

- provide greater capacity than presently;
- it will produce better environmental outcomes;
- it will improve customer service through clear and consistent delivery standards;
- it will reduce workloads during statutory consultations.

Please see our website for details on chargeable service available [here](#).

9. Important information: Nationally Significant Infrastructure Projects (NSIPs) and introducing a chargeable service for review of draft NSIP licence applications

Since the introduction of Letters of No Impediment (LONI) (previously known as 'letters of comfort'), for NSIP developments, Natural England has determined 42 draft NSIP licence applications, covering bats, otters, water vole, badger and great crested newt, and issued to date 35 LONIs. LONIs provide the Planning Inspectorate (PINs), who are responsible for examining planning applications for NSIPs, with confidence that Natural England, as the relevant licensing authority, has considered the issues relating to protected species and can then make a recommendation to the relevant Secretary of State, who will make the decision on whether to grant or refuse the Development Consent Order (DCO).

Natural England is now in a position to extend its chargeable services for the advice it provides on draft NSIP licence applications and any associated meetings or teleconferences on a cost recovery basis for non-statutory elements. Natural England will offer fixed price contracts or undefined scope contracts up to an agreed ceiling.

NSIP developers engaging with Natural England with regard to receiving a LONI is not a mandatory process but one which is strongly encouraged. If licensing

matters are not resolved then there is a significant risk that these issues may prevent an NSIP application proceeding past the application or examination stage. By charging for this service Natural England will be able to secure resources needed to maintain this service in the future and therefore ensuring a more certain outcome for applicants.

To summarise:

- Chargeable services for Natural England's advice on draft NSIP licence applications will be launched in March 2015, except for a couple of cases where this service has already been put in place. *We will no longer be able to provide free advice on draft NSIP licence applications.*
- Charges will be introduced for a number of elements of the process e.g. review of any first or subsequent draft NSIP licence applications and associated teleconferences or meetings in order for a LONI to be issued, but there will be no charge for initial advice (direction setting/scoping up to 2 hours)
- Any 'live' draft or subsequent draft NSIP licence applications which Natural England is in the process of reviewing will not be subject to charge at this stage.
- There will be no charge for the formal licence application determination, should the DCO be granted, or granting of any licence.
- Where services are chargeable (see [here](#)), Natural England adviser time is recovered on the basis of a full cost recovery rate, currently £680 per day plus VAT or £92 per hour plus VAT.

If you want to discuss submitting a draft NSIP licence application with a view to receiving a LONI, or a better understanding of what elements of the process are chargeable, please get in touch via eps.mitigation@naturalengland.org.uk marked 'NSIP – FAO Kathryn Murray and John Gordon'. We intend to provide more detail on this service on our [chargeable advice](#) webpage shortly, and we will notify you when it is launched. We wish to reassure you that the process for submission of draft NSIP licence applications will remain the same and the above mailbox and contacts should be used until further notice.

10. Reminder: licences with bat boxes and minimum licence periods

In April 2014, we introduced [annexed licensing for bats](#). At that time 2 new special licence conditions were introduced: one to include a toolbox talk and

another to ensure that bat boxes provided (regardless of impacts) were protected under a licence for a minimum of 5 years from completion of development to try and maximise the opportunity for bats to find and use them, and to prevent the boxes being taken down prematurely. Should bats not be using the boxes when the licence had expired after 5 years, they would not remain protected under licence; if they were being used they would be protected by the legislation.

This licence condition does not introduce an additional burden on typical low impact cases by asking for monitoring and management of bat boxes provided. Each licence granted is tailored to the specifics of the case and will clearly set out what is to be undertaken. For the vast majority of applications affecting small number of common species of bats and low conservation status roosts there is usually no requirement to provide monitoring or maintenance (as set out in the Bat Mitigation Guidelines). Where boxes are required as part of the special annex licence conditions, the licensee as a minimum will be required to inform us at the end of the licence period that the compensation measures are in place. Any other additional measures required, depending on the specifics of the application, will be set out in the licence annex.

We explained in the [January 2014](#) EPS Newsletter that as a regulator we require sufficient mitigation or compensation to address the impacts of the proposal (including wider and longer-term impacts associated with phased or multi-plot developments). However, we recognise that from a wider environmental perspective, additional biodiversity enhancements are welcome and indeed they are often offered and secured for the purpose of meeting planning requirements. Therefore we have included a 'note' (which is not an enforceable condition) in the annex to the licence which will help distinguish any enhancements or additional mitigation or compensation being provided as part of a planning condition, other consent, or because the applicant wishes to do so. These could include providing numbers of different bat boxes, additional monitoring and maintenance requirements, or anything else that may be specified by the planning permission but not required as part of the licence.

11. For Awareness: Bats and Listed Places of Worship Roof Repair Fund

In December 2014, the Church of England launched a one-off £15million fund for church roof repairs through the National Heritage Memorial Fund on behalf of the

Department of Culture Media and Sport (DCMS) and in conjunction with Heritage Lottery Fund, website [here](#).

Individual applications were invited from listed places of worship for between £10,000 and £100,000 and these grants will pay for roof repairs and associated bat surveys and any subsequent bat mitigation. The deadline for applications to this fund was 30th January 2015.

A potentially large number of listed places of worship, many of which are likely to be medieval churches, will have applied to carry out roofing works. A significant number of these buildings are likely to require bat surveys over the coming active season and bat consultants should therefore be aware.

As well as funding bat surveys, the repair fund also states that applications can be made to 'support measures to encourage bats to change their routine or roosting habits where the presence of bats is impeding the public use of a place of worship and/or adversely affecting historic fabric or fittings'. Further to this, mention is made to 'deterrents' and 'bespoke roosting features', all of which relate to a 'Bats in churches' class licence which is currently being developed by Natural England (see item 11). The 'Bats in churches' class licence has not yet been launched and, when it is, it will only be authorised for use by a relatively small number of specialised consultants. Please be mindful of this if you receive specific enquiries from churches about using deterrents or the bats in churches class licence.

12. For Awareness: Bats in Churches Class Licence proposal

We are interested to hear from consultants who have significant experience and a proven history of working with bats in churches and who would be willing to attend a development workshop in April to help develop a new 'Bats in churches' class licence. We have a small number of places available and are looking specifically for those bat consultants who have worked on large 'bats in churches' type projects i.e. where bats are causing significant disruption or and/or damage, or those who have unique or specialist skills in this area. Some consultants have already responded to a similar item in a recent BCT newsletter and if you have contacted us already, you do not need to do so again. If you are interested in this proposal, please email stephen.rudd@naturalengland.org.uk.

13. Update: Breathable roof membranes (BRM), bats and licensing

Stacey Waring has now completed her PhD which investigated the impacts of breathable roof membranes (BRMs) on bats. The results are not unexpected and as we last reported in January 2014 there are no BRMs that are considered 100% bat friendly. Natural England is currently agreeing advice with other statutory agencies (e.g. Natural Resource Wales) but we are able to advise that Natural England will be maintaining the position that BRMs must be avoided in known bat roosts. Should you be submitting a licence application that proposes their use, you can expect a further information request. When/if roofing felt is to be installed in a roof that is used by bats we will specify in the licence annexed conditions that bituminous roofing felt of type F1 must be used. Bituminous felt is dark-coloured, with a rough surface that bats can grip onto and will help maintain a suitable and safe environment for bats within the roof void/structure. Sarking boards, as used in Scotland, may be an alternative to bituminous felt.

BRMs are made from spun-bond polypropylene/polyethylene filaments and the long fibres that make up BRMs have a tendency to be pulled out by roosting bats and pose an entanglement threat to the bats. BRMs are also not obligatory under any Building Regulations, which appears to be a common misunderstanding. Ventilation, regardless of the roofing felt or BRM used, is still required (see British Standard BS 5250:2011). When installing roofing membranes, it is essential that bat access points are maintained and any licence application should ensure that this is clearly indicated in text and figures.

For further detail on the outcome of Stacey's work please see: Waring, S., Essah, E.A., Gunnell, K. & Bonser, R.H.C. 2013. Double Jeopardy: The Potential for Problems when Bats Interact with Breathable Roofing Membranes in the United Kingdom. *Architecture & Environment*, 1 (1): 1-13.

Kind regards

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