

Legislation and planning policy

Legal protection of species and habitats within the UK is implemented through the following main pieces of legislation;

- Conservation of Habitats and Species (Amendment) (EU Exit) Regulations;
- Wildlife and Countryside Act 1981 (as amended);
- Protection of Badgers Act 1992; and
- Hedgerow Regulations 1996

Additional protection is given through the planning process to those species and habitats listed as priority species/ habitats as published under;

- The Environment (Wales) Act 2016; and
- The Wildlife and Natural Environment (Scotland) Act 2011.



Additional protection is afforded to local wildlife sites and local priority species within planning policies with Local Development Plan.

Local Planning Authorities must have due regard to these species and habitats when determining a planning application.

Planning process

As part of any planning application a Preliminary Ecological Appraisal (PEA) of the site is typically required to support the planning application. This PEA is also referred to as a Phase 1 survey or extended Phase 1 habitat survey. This PEA may identify the need for further survey work to determine if legally protected or otherwise notable species are present on the site. If further survey work is required the results of these surveys are typically reported within an Ecological Impact Assessment (EclA) which can incorporate the PEA.

It is important to note that European protected species are a material planning consideration and the results of any survey work must be provided as part of the planning application to inform the LPA decision. The need for protected species surveys cannot be conditioned as part of any planning permission. Where



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survey data is not submitted as part of the planning application the LPA may refuse to assess the application.

In order for planning permission to be granted the LPA must be satisfied that any impacts on protected species can be mitigated for and that with regards to European protected species, the three 'tests' (see Derogation licences) can be met.

Permitted development

Certain developments, listed under Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 can be undertaken under permitted development rights, which avoids the need to go through the formal planning process.

However, it is important to note that under the Conservation of Habitat and Species Regulations 2010 any likely significant effects arising from a proposed permitted development on a European designated site (Special Protection Area (SPA) or Special Areas of Conservation (SAC)); requires prior approval from the Local Planning Authority (LPA).

Permitted developments must also comply with relevant protected species and habitats legislation. The LPA may still require the developer to submit baseline ecology data to inform any prior approval of a permitted development if impacts on protected species and habitats are considered likely.

Derogation licences

Derogation licences also referred to as mitigation licences can be applied for from Natural England, Natural Resources Wales and Scottish Natural Heritage (the 'Statutory Nature Conservation Organisation (SNCO)') to allow certain actions to be undertaken which would otherwise be illegal under the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019..

Licences are only granted if a genuine need for the action can be shown and where sufficient survey data has been gathered so that impacts on the species can be fully assessed.

Under the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019, licences to undertake activities which would otherwise be unlawful are only permitted if the following three 'tests' are met;

- preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment;
- 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.

The first two test are normally determined through the planning process with detailed input required from your appointed ecologist to assess if the third test can be met. This typically requires detailed survey work in accordance with published best practice guidelines



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In England, where impacts on some protected species (great crested newts and bats) are considered to be sufficiently low, works can be supervised by an ecologist who holds a low impact class licence relevant to the specific species. This removes the need for a separate application to Natural England but is only applicable to specific types of scenarios.

Other licences

Water voles

Unlike other protected species licences for the translocation of water voles and destruction of habitat cannot be issued for the specific purpose of development. However, in some circumstances Natural Resources Wales and Natural England will consider issuing a licence in relation to a development proposal if the licensed action is going to provide a conservation benefit for water voles.

Natural England now issues low impact class licences which allows those who hold such a licence to oversee small scale mitigation works which would otherwise be unlawful, such as the displacement of water voles through temporary habitat removal over short (less than 50 m) sections of bank.

Badgers

Where impacts on a sett cannot be avoided a licence can be applied for from the relevant SNCO, which allows disturbance to a sett or in some cases the closure of a sett.



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