

Standing advice for planning consultations - Otters

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Consideration of protected species in development management

Scottish Planning Policy requires that the presence (or potential presence) of legally protected species is factored into the planning and design of development proposals, and that any impacts on protected species are fully considered prior to the determination of planning applications. Where impacts on a protected species cannot be avoided, certain activities may only be undertaken with a licence from NatureScot. It is important that any licensing issues are considered as part of a planning application to avoid any unnecessary delay to a development proceeding.

Legal protection for otters

There is no change to the protection of European Protected Species (EPS) as a result of EU Exit.

Otters are classed as EPS under the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended). It is therefore an offence to deliberately or recklessly:

- kill, injure, capture or harass an otter;
- disturb an otter whilst it is occupying a holt (underground den) or other place it uses for shelter or protection, or while it is rearing or otherwise caring for its young, or in any way that impairs its ability to survive or breed, or significantly affects the local distribution or abundance of otters;
- obstruct access to an otter breeding site or resting place, or otherwise prevent their use.

And whether or not deliberate or reckless:

- to damage or destroy an otter breeding site or resting place.

This means that if otters could be affected in these ways by a development, and no action is taken to prevent it, an offence may be committed. The advice below will help ensure that impacts on otters are minimised and no offences occur.

When a development could affect otters

Otters could be affected by a development proposal anywhere in Scotland close to a water course, wetland, coastline or estuary. See also the [Atlas of the Mammals of Great Britain & Northern Ireland](#) (The Mammal Society/Pelagic Publishing 2020).

An otter survey should be carried out for any proposal within 200m of suitable habitat

Carrying out an otter survey

Surveys should be done by persons with the appropriate knowledge of otter ecology and practical experience of otter survey work. All suitable otter habitat within 200m of the proposed works should be surveyed, including a systematic search for spraints, paw prints, otter paths, slides, food remains, holts and places used for shelter.

Trail cameras and/or endoscopy can help to check whether holts are in use and if breeding is taking place. These intrusive methods can cause disturbance and will require a survey licence from NatureScot (contact: licensing@nature.scot). They should only be used where confirming the status of a holt is essential in designing

appropriate mitigation, or where damage or disturbance of a holt cannot be avoided.

Otter surveys can be carried out at any time of year, but should avoid periods following prolonged heavy rainfall and/or high water when spraints and other signs of otter may have been washed away. Heavy frost or recent snow can also make finding spraints difficult.

The survey information needs to be sufficiently up-to-date when a planning application is submitted. Pre-application otter surveys normally remain valid for two years, and should be repeated if the application is delayed beyond that. Unless it is clearly evident that there has been no substantive change in number, distribution or activity of otters since the original survey was undertaken.

Reporting survey results

If a development proposal has needed an otter survey, a survey report must be submitted as part of the planning application. The report should include:

- names and experience of surveyors;
- details of any information gathered from Local Record Centres or other sources;
- descriptions of habitat surveyed and any limitations to the survey, such as access;
- survey methods, including survey area, date, time and weather conditions;
- a map showing otter habitat and the location of otter signs, holts or shelters in relation to the development;
- an assessment of how the development might affect otters

If otters could be affected by the proposal, the report must include a protection plan. The plan should include:

- measures proposed to minimise impacts on otters, including annotated maps and/or photographs showing the location of any measures proposed and how they relate to survey information and construction work;
- a summary of any residual impacts once the above measures are taken into account;
- details of any licensing requirements.

Measures to minimise impacts on otters

Measures to minimise impacts on otters should follow a hierarchy of avoidance, mitigation and compensation:

Avoidance

- Design the development and construction methods to avoid damage or disturbance to otters or otter habitat, including avoiding any obstructions to established otter access to open water.
- Avoid working in the vicinity of otter habitat during the hours of darkness and within two hours after sunrise and two hours before sunset. This can be reduced to one hour between November and February (inclusive) because of the limited daylight. These restrictions are not necessary in coastal habitat where otters are more diurnal.

Mitigation

- Mark work exclusion zones around any holts and shelters. If otters are breeding, the zone should be at least 200m. However, it could be reduced to 100m depending on the nature of the works, topography and natural screening. This will require judgement from an experienced ecologist. For holts and shelters where otters are not breeding, the exclusion zone should be 30m. **Where exclusion zones of the required size are not possible, works will require a licence from NatureScot before they can proceed.**
- Cap exposed pipe systems when contractors are off site, and cover or provide exit ramps from exposed trenches or holes, to prevent otters becoming trapped.
- Erect fencing or plant thicket-type vegetation to reduce noise and visual disturbance.
- Build tunnels or culverts under new roads and passageways under bridges to provide safe access and crossing points. For more details see Design Manual for Roads and Bridges (Highways Agency 1999).

Compensation

- Construct artificial holts to replace any natural holts that have to be destroyed. **The destruction of any holts or shelters will require a licence from NatureScot.**
- Restore or improve habitat to replace lost habitat or habitat connectivity.

For all development proposals where otters are a consideration, pre-construction surveys should be timetabled into project plans. This is to enable checks for any new holts or resting places that may have become occupied after the original survey, and to ensure the measures proposed to minimise impacts on otters remain appropriate. Pre-construction surveys should be completed as close to the construction period as possible, and no more than 3 months before the start of works.

Licensing development works affecting otters

Licences for development works that would otherwise result in an offence with respect to EPS, such as otters, can only be issued if it can be demonstrated that the following three tests are all met:

Test 1 - that the purpose of the licence is to preserve public health or public safety or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment.

Test 2 - that there is no satisfactory alternative.

Test 3 - that the proposed action will not be detrimental to the maintenance of the population of the species at a favourable conservation status in their natural range.

There is a presumption against licensing disturbance to breeding otters and damage or destruction of an otter holt while being used for breeding. Licensed activity in this situation would have to wait until the otters had finished breeding and cubs are fully mobile.

For advice on applying Tests 1 and 2 see our guidance [European Protected Species Licensing Test 1 - Licensable Purpose](#) and [European Protected Species Licensing Test 2 - No satisfactory alternative](#). For advice on applying Test 3 and whether or not a licence is likely to be granted, planning applicants and planning officers may contact the [NatureScot licensing team](#). An up-to-date otter survey and an otter protection plan for the proposed development must be submitted with the enquiry, together with details of the development proposals. We would normally only expect these enquires when proposals may lead to the damage or destruction of breeding holts, or may restrict access to or disturb otters using these structures.

Guidance on applying for an otter licence for development purposes, along with the application form can be found on our [website](#). For further information on protected species licensing see [Protected Species Licensing: Legislation, Appropriate Authorities and Licensing Purposes](#).

Contact

If you already have a licence number, include it in the subject line of your email, or have it to hand when you call.

Licensing Team

01463 725364

licensing@nature.scot