



## Scottish Natural Heritage Dualchas Nàdair na h-Alba

All of nature for all of Scotland  
Nàdar air fad airson Alba air fad

Licensing Section  
Scottish Natural Heritage  
Great Glen House  
Leachkin Road  
Inverness  
IV3 8NW  
01463 725364  
[LICENSING@snh.gov.uk](mailto:LICENSING@snh.gov.uk)

## Species Licensing Guidance Notes

### Guidance Notes for 'Application for a licence for European protected species'

#### Introduction

This guidance note provides an introduction to the subject and is not to be used as a substitute for professional, ecological or legal advice on individual cases.

This guidance note aims to inform people involved in activities on land in Scotland on which European protected species are likely to be present and about the legal protection afforded to these animals and plants. It explains procedures for licensing certain operations affecting the species below.

#### European protected species regularly occurring in Great Britain

The Conservation (Natural Habitats, &c) Regulations 1994 (as amended) (the 1994 Regulations) implement certain requirements of the European Habitats Directive (EC Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Flora and Fauna) in Great Britain. Animals and plants listed in Annex IV of the Habitats Directive, whose natural range includes any area in Great Britain, are also listed in Schedules 2 and 4 of the 1994 Regulations as European protected species (EPS) of animals and plants. They are species of European Community Interest in need of strict protection.

Animals	Plants
Bats, Typical (all species)	Killarney Fern
Common Otter	Slender Naiad
Dolphins, porpoises and whales (all species)	Yellow Marsh Saxifrage
Great crested (or warty) newt	
Marine turtles	
Natterjack toad	
Sturgeon	
Wild cat	

Table 1 – EPS species occurring in Scotland

## **Legal protection of European Protected Species**

The species above are protected under the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended). In Scotland, regulations 39 and 43 make it an offence, with certain exceptions, to

1. Deliberately or recklessly:

- Capture, injure or kill any wild animal of a European protected species;
- Harass such an animal or group of animals;
- Disturb such an animal while it is rearing or otherwise caring for its young;
- Obstruct access to a breeding site or resting place, or otherwise deny the animal use of the breeding site or resting place;
- Disturb such an animal while it is occupying a structure or place used for shelter or protection;
- Disturb such an animal in a manner that is, or in circumstances which are, likely to significantly affect the local distribution or abundance of the species to which it belongs; or
- Disturb such an animal in a manner that is, or in circumstances which are, likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young.
- Disturb such an animal whilst migrating or hibernating

2. Deliberately or recklessly to take or destroy the eggs of such an animal;.

3. It is an offence to damage or destroy a breeding site or resting place (note that this applies regardless of whether or not the damage or destruction was carried out deliberately or recklessly);

4. Deliberately or recklessly disturb any dolphin, porpoise or whale;

5. Deliberately or recklessly to pick, collect, cut, uproot or destroy a wild plant of a European protected species.

6. Possess or control, transport, sell or exchange, or offer for sale or exchange, any live or dead animal or plant of a European protected species which has been taken from the wild, or any part of, or anything derived from such an animal or plant.

These offences apply to all stages of the animal's life, and all stages of the biological cycle of the plants.

It is advisable to check as early as possible whether European protected species are present on potential sites for development.

## Licences

### What is a licence?

Licences allow people to carry out activities which would otherwise be unlawful. Licences are granted subject to conditions and licence holders are responsible for ensuring compliance with conditions. Failure to comply with conditions is an offence.

### Avoiding the need for a licence

When considering activities that could affect European Protected Species, the primary aim should be to avoid any impact on them at all, including any activity that could otherwise constitute an offence. Offences can be avoided in a number of ways, such as;

- Modifying the location of a proposed action / piece of work
- Timing operations to avoid times when the species is likely to be present
- Retaining certain areas/structures used by the species
- Modifying working practices
- Looking at alternative solutions to problems

If there are no satisfactory alternatives to avoiding an offence, a licence may be necessary. If this is the case the applicant will need to clearly demonstrate the alternatives that have been considered and why they are not satisfactory (see Test 2 below).

### Who issues licences and how long will it take?

Scottish Natural Heritage (SNH) is responsible for the administration of most licences in relation to European Protected Species in Scotland. The exception is for purely marine species for purposes under 44(2)(e) to (f), in which case Marine Scotland are the appropriate licensing authority.

We aim to process application as soon as possible, please refer to the main licensing website for current processing times [Licensing Website](#)

### Who can be licensed?

A licence can be issued in the name of an individual or an individual on behalf of a company or partnership.

Regulation 106 makes special provision for offences by bodies corporate and partnerships and states that where an offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to prosecution. The same applies to partners within a partnership.

### Purposes for which a licence may be granted

Licences can only be issued for specific purposes. Under Regulation 44(2) these are as follows;

- (a) Science, research and education
- (b) Ringing, marking or examining rings or marks
- (c) Conserving wild birds, wild animals or wild plants or introducing them to particular areas
- (ca) Conserving any area of natural habitat
- (d) Collecting zoological or botanical collections

- (e) 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
- (f) Preventing the spread of disease; and
- (g) Preventing serious damage to livestock, foodstuffs for livestock, crops, fruit, growing timber, or any other form of property or to fisheries.

Scottish Natural Heritage may also grant licences to permit the possession or control of certain specimens of any species listed in Annex II(b) (other than any bryophyte) and Annex IV to the Habitats Directive (this is a more extensive list than the list of European protected species) that were taken between 10 June 1994 and 15 February 2007. The grant of such licences is to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species listed in Annex IV in limited numbers. After 15 February 2007, SNH will not grant licences for new specimens of Annex II(b) (other than any bryophyte) and Annex IV species.

### **'The three tests'**

There are three strict legal tests which must all be passed before a licence can be granted;

1. That there is a licensable purpose (see above),
2. That there is no satisfactory alternative; and
3. That 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.

#### **Test 1 – Licensable purpose**

Licences can only be issued for the purposes listed above. It is the responsibility of the applicant to demonstrate (and provide supporting evidence where necessary) why their proposal is necessary for that purpose. Please consult the licensing pages of the SNH for further information and guidance.

#### **Test 2 – No satisfactory alternative**

The application should explain alternatives that were considered, for example, whether within the general area of need served by this activity or proposal, there are any alternative sites at which the activity could reasonably be accommodated with no, or reduced, implications for European protected species; and whether the activity or proposal on the site subject to the licence application could have been achieved in a way that would mean no, or reduced implications for European protected species. The alternative of 'doing nothing' should not be discounted without justification. Scottish Natural Heritage will consider the justification provided. The applicant should provide objective evidence of a lack of satisfactory alternative.

See our guidance on this test on our website.

#### **Test 3 – Favourable conservation status (FCS)**

Favourable conservation status for species is defined in Article 1(i) of the EC Habitats Directive which states that the conservation status will be taken as 'favourable' when:

- population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and
- the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and
- there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long term basis.

When considering this test Scottish Natural Heritage will take into account any possible impacts of development proposals on favourable conservation status of the species concerned in their natural range. The applicant will need to provide detailed proposals (to be included in the 'Supporting information') of all the mitigation and compensation measures that they will undertake to ensure that impacts on the species concerned are kept to a minimum. Please see the 'Guidance notes on providing the supporting information'. SNH will base their decision on whether the proposed mitigation work is sufficient to maintain the conservation status of the species concerned.

**Please note that completion of a licence application does not guarantee that a licence will be granted.** Licences can only be granted if all three tests are passed. If an application is refused, SNH will inform the applicant in writing of the basis for the refusal.

## **European Protected Species and the planning system**

Developers need to be aware of the implications of encountering European protected species on or near potential development sites or structures requiring work for public health and safety. If an activity is likely to result in any of the offences listed above, then a licence will usually be required. An understanding of the legislation, processes for obtaining licences and ideal procedures at the initial stages of development is likely to help ensure that the nature conservation considerations are fully-addressed, particularly if considered at the early stages of the planning process. Finding European protected species on a site at a later stage could result in delays whilst a licence is sought, or even in offences being committed.

Once a site is identified as a potential development site, it is recommended that a survey of the site is carried out, particularly if European protected species are likely to be present. In some cases, a licence may be required to carry out surveys for European protected species. Applications for survey licences can be obtained from Scottish Natural Heritage. After a survey has taken place professional advice should be sought to assess the implications of any development proposal upon the European protected species.

In this context, 'development' should be interpreted broadly to include plans or projects such as the carrying out of building, engineering, mining or other operations, on, over, or under land, or the material change in use of any buildings or other land. This would also include the demolition of buildings, rebuilding, structural alterations of, or additions to, buildings and operations on structures required for public health and safety purposes. Developments in the in-shore marine area (up to 12 nautical miles) are also included (although these may be licensed by Marine Scotland).

Many European protected species licence applications relate to developments which are subject to planning permission. Guidance on the consideration that local planning authorities should give to nature conservation interests is contained in '*European Protected Species, Development sites and the Planning System: Interim guidance for local authorities on licensing arrangements*' (The Scottish Government, October 2001) (the Interim Guidance) [see <http://www.scotland.gov.uk/Resource/Doc/158490/0042962.pdf> ]

This advice is reinforced by a letter from the Scottish Government Planning Division to Planning Authorities in May 2006. The Interim Guidance supplements Scottish Office Circular 6/1995 (up-dated in June 2000) on the implementation in Scotland of the Habitats and Birds Directives and the general guidance to be found in NPPG 14 Natural Heritage on the protection of species and habitats. NPPG 14 states 'where there is a risk of damage to natural heritage, authorities should consider whether planning conditions or legal agreements might mitigate the impact sufficiently to allow the development to proceed.'

Scottish Natural Heritage advises local planning authorities on their policies for European protected species and also on any implications of individual planning decisions affecting European protected species.

Mitigation plans can be important considerations when assessing the impact of planning applications upon European protected species. Mitigation (aiming to minimise impacts of the proposed works) and compensation (provision of replacement resources) measures should be developed to promote good practice and ensure the favourable conservation status of the species concerned is maintained. It is the developer's responsibility to produce a mitigation plan for consideration, normally through an experienced environmental consultant. SNH can advise Local Planning Authorities of the suitability of mitigation plans and give general advice to developers, but it is not the role of SNH to produce mitigation plans on behalf of developers.

### Activities that require planning permission

This category includes the majority of applications. Regulation 3(4) of the Conservation (Natural Habitats) Regulations 1994 (as amended) requires “every competent authority in the exercise of their functions to have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions”. Where a licence application relates to a development that requires planning permission it is necessary for Scottish Natural Heritage to consider information from the planning authority which granted planning permission in order to help assess whether the first two tests mentioned above are met.

Before a licence application can be considered it is essential that the planning position resulting in any impact on European protected species has been resolved. Until full planning permission has been granted (or approval of reserved matters, concerning European protected species, granted for a site with outline permission) then a developer cannot implement a development proposal and it therefore should not be necessary to undertake work on site. It should be noted that if conditions or reserved matters relevant to the nature conservation aspects remain to be resolved, then a licence cannot be determined until those conditions or reserved matters have been approved.

According to the Interim Guidance, it is clearly essential that planning permission is not granted without the planning authority having satisfied itself that the proposed development either will not impact adversely on any European protected species on the site, or that, in its opinion, all three tests necessary for the eventual grant of a Regulation 44 licence are likely to be satisfied.

### Activities that do not require planning permission

If specific planning permission is not required for the activity then the licence will be determined on the basis of the information supplied by the applicant. In these circumstances, Scottish Natural Heritage requests that you provide detailed information on the proposed activity, the purpose of the development and the legal basis under which it may take place (e.g. the development or associated activity may result from a statutory requirement under other legislation or be permitted under a Permitted Development Order, or may be work required for reasons of public health and safety).

### Is a licence required?

A licence is required if your proposed activity results in the committing of any of the offences set out in ‘Legal protection of European protected species’ above. You may be able to obtain advice from a consultant ecologist. An offence can be committed by reckless as well as deliberate conduct. This is the case for offences under regulations 39(1)(a), (b) and (c), 39(2) and 43(1). The offence under regulation 39(1)(d) is strict liability.

## **Completing the application form**

Licence applications and enquiries should be directed to Scottish Natural Heritage at the address on page 1. Licence applications should be made as early as possible.

### **The application form**

#### **Section A    Applicant Details**

Please provide details of the individual you wish to be named on the licence. The licensee is responsible for ensuring compliance with the licence and its conditions. Under the Conservation (Natural Habitats) Regulations 1994 (as amended) it is an offence to fail to comply with the terms and conditions of a licence.

#### **Section B    Outline of proposals and purpose**

##### *Species and Activities*

Please provide details of the species that will be affected by the work, the location of the site and a summary of what the actual work is. This only needs to be a brief summary as more detailed information is required later in the application (and/or in any supporting information). Check to see if the proposal covers any area with a nature conservation designation, and if so provide details. Information and maps showing designated sites in Scotland can be found at <http://gateway.snh.gov.uk/sitelink/index.jsp>

##### *Purpose and Justification*

Please indicate the purpose of the licence application, the first of the legal tests. Provide a rational and reasoned justification as to why the proposed activity relates to the licensing purpose. Please explain why the proposed work is necessary. This is 'the first test'.

#### **Section C    Alternatives**

Please provide your consideration of why there is no satisfactory alternative. This could include the other options that have been evaluated, the alternative sites that were considered by you and why they were rejected (if no other sites were considered, you must provide the reasons why), or alternative methods of carrying out the work.

In relation to each alternative considered, please provide an explanation of why you consider it to be satisfactory or unsatisfactory. In respect of any alternative sites please provide the location(s) and details of the alternative site(s), or your views on how the activity/proposal might have been achieved differently, and any other helpful information; e.g., pros and cons of alternative sites, or whether there is likely to be demand for all suitable sites to be used to meet an identified need. Please explain how this conclusion was reached.

#### **Section D    Planning or other permissions or consents**

Please provide brief details of the planning position or of any other consents. A licence will not be granted unless all other consents in relation to the activities that could affect the species concerned, have been granted. A copy will be required if consent has been granted.

#### **Section E    Detailed description of works**

We require up-to-date survey information to support any application. This can either be provided in an Annex to the application (and see Section I), or as an additional document.

The impacts of the proposed work on the species in question (i.e. the specific activities which require to be licensed) should also be clearly defined as well as the number of animals, plants or protected places that will be affected.

A detailed description of the works proposed should also be provided. This should clearly show what is proposed, locations, timings, durations and methods to be employed. Maps clearly showing key locations, working areas, protection areas, distances etc. are invaluable and can greatly improve the quality of an application and subsequently the speed at which it can be processed.

Details of mitigation or compensation measures (i.e. measures to reduce impacts on the species involved or to provide alternative compensatory habitat or structures) should also be provided to demonstrate how impacts on the species concerned will be minimised. We encourage you to consult appropriate best practice documents in this regard.

The information in Section E should, in most cases, be backed up by a 'Species Protection Plan'. This combines the survey information, discussion of impacts together with a plan as to how to carry out the work and incorporate mitigation or compensation.

We strongly recommend that applicants follow our '*Guidance notes on providing supporting information*' document in relation to this section.

#### **Section F Additional Persons**

If a licence is granted, it will give permission to the applicant to carry out the work covered by that licence. If other persons are to be covered by that licence this information should be provided on the applications form so that they can also be covered.

There are two categories of associated persons that can be added to a licence; Agents and Assistants.

Agents may work independently of the licence holder but assistants must be accompanied by the licence holder. The licence holder is responsible for ensuring that Agents and assistants have the appropriate training and experience and that they are fully aware of the terms and conditions of any licence granted.

#### **Section G Previous experience**

The undertaking of certain technical activities such as catching and handling animals, invasive surveys, modifying, damaging or destroying resting places, or any other situation where expert judgement or specialist technical skills are required will only be permitted by persons with appropriate experience. If this is proposed please provide details of your own experience in this area or the name and contact details of the person you intend to carry out this work on your behalf

#### **Section H Checklist**

This section is provided as a guide to help ensure that you have attached all of the appropriate information. Remember that incomplete or sub-standard applications are likely to take longer to process and result in delays to the project.

#### **Section I Additional Information**

Please provide any additional information that you feel is relevant to your application.

#### **Declaration**

The declaration must be signed and dated before submitting to SNH for consideration.

## **Further information**

### **Bats and dwelling houses**

Where a person wishes to undertake works on a dwelling house specialist ecological advice may be needed to determine whether the proposed activity is likely to breach the protection afforded to bats (e.g. it will result in disturbance to bats or damage or destruction of a bat roost, whether or not the bats are present in the roost) and if a licence application is required.

There are two application forms for work affecting bats in dwelling houses. If the proposed work on the dwelling house is minor, or in the interests of public health and safety, and does not require planning permission, the form is 'Application for a licence for bats in dwelling houses'. There are also guidance notes for the licence application for bats in dwelling houses. If the proposed work does require planning permission , the form is 'Application for a licence European protected species' .

### **Site visits and compliance checks**

It is possible that Scottish Natural Heritage may undertake a site visit prior to the issue of a licence. The majority of site visits will be arranged several days in advance and will be conducted in the presence of the licensee (or applicant) however there may be occasions when a site visit will be made at short notice.

Licensees should be aware that they may receive a request for a site visit by a member of SNH staff or a person authorised by SNH, to assess site conditions against the conditions of the licence. It is essential that if any of the agreed mitigation measures contained in the Method Statement are changed for any reason, SNH is informed as soon as possible.

Scottish Natural Heritage will monitor compliance with licences issued based on the information included in licence returns.

### **Where to seek further information**

Further information can be obtained from the Licensing Section, Scottish Natural Heritage at the address below or from your local SNH office.

**Licensing Section  
Scottish Natural Heritage  
Great Glen House  
Leachkin Road  
Inverness  
IV3 8NW  
01463 725364**

**LICENSING@snh.gov.uk**