

# PROTECTED SPECIES ADVICE FOR DEVELOPERS



## OTTER

### Legal protection for otters

Otters are classed as European Protected Species (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 structure/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 (e.g. holt or couch), 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 your development, and you take no action to prevent it, you run the risk of committing an offence.

Where impacts that would result in an offence cannot be avoided, a species licence can be issued in some cases to allow the works to proceed. Such licences will only be issued if certain tests are met (see licensing section below). **It is important that any licensing issues are considered as part of your planning application.** This is to avoid a situation where planning permission is secured but the lack of a species licence prevents the development from proceeding.

### When a development might affect otters

Otters occur throughout Scotland. Places where they might be present and could be disturbed by development works includes water courses, coasts, estuaries and wetlands. Any of these habitats within 200m of the development should be surveyed for otters.

### Carrying out an otter survey

#### When

Otter surveys can be carried out at any time of year, but 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.

#### How

All suitable otter habitat within 200m of the proposed works should be surveyed. The survey should be undertaken by an experienced otter surveyor, and should include a systematic search for spraints, paw prints, otter paths, slides, food remains, holts and places used for shelter.

### Checking holts

Trail cameras and/or endoscopy can help to check whether holts are in use and if breeding is taking place (otters can breed all year round). Cameras utilising “no glow” LEDs are preferable. **These intrusive methods can cause disturbance and will require a survey licence from SNH** (contact [licensing@nature.scot](mailto: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 (see mitigation section below).

#### Your survey report should include:

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

#### Preparing an otter protection plan

If your survey finds otters that could be affected by your proposal you will need to prepare a species protection plan.

#### Your protection plan should include:

- details of how the development is likely to affect otters;
- mitigation measures to be employed to avoid any offence and minimise impacts on otters;
- summary of any residual impacts once mitigation measures have been taken into account.

#### Typical mitigation measures:

- avoiding otter habitat where possible and avoiding creating any obstructions to established otter paths/access to open water;
- avoiding working in the vicinity of otter habitat during the hours of darkness and within 2 hours after sunrise and 2 hours before sunset. This can be reduced to one hour between November to February (inclusive) because of the limited daylight. These restrictions are not usually necessary in coastal habitat where otters tend to be more diurnal;
- marking exclusion zones around any holts and shelters. If otters are known or suspected to be breeding, the exclusion zone should normally be at least 200m radius. 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 shelters, or holts where otters are not breeding, the boundary of the exclusion zone should be a minimum of 30m. **Where exclusion zones of the required size are not possible, works will require a licence from SNH** (see licensing section below);
- screen fencing or planting of thicket-type vegetation to reduce noise and visual disturbance;
- tunnels or culverts under new roads or passageways under bridges to provide safe crossing points. For further information see [Design Manual for Roads and Bridges](#) (Highways Agency 1999)
- capping any exposed pipe systems when contractors are off site, and providing exit ramps from any exposed trenches or holes (to prevent otters entering and becoming trapped);
- planning recreational areas, footpaths and cycleways to minimise disturbance from people and dogs;
- constructing artificial holts to replace any natural holts that have to be destroyed. **The destruction of any holts or shelters will require a licence from SNH** (see licensing section below);
- pre-construction surveys and regular surveys throughout works to check for any new holts or resting places that may arise after the original survey.

Annotated maps and photographs are a useful way of showing the location of mitigation measures proposed, and how they relate to survey information and construction work. For further details regarding assessment and supporting information see our licensing guidance below.

### Licensing development works affecting otters

If your development cannot avoid an offence with respect to otters, an EPS licence will be required from SNH to allow work to proceed. Such a licence can only be issued if it can be demonstrated that:

- a) 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;
- b) there is no satisfactory alternative; and
- c) the proposed action will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

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

For further information on EPS licensing see the following SNH guidance notes:

[Guidance notes for application for a licence for European Protected Species;](#)  
[European Protected Species Licensing Test 1 – Licensable Purpose;](#)  
[European Protected Species Licensing Test 2 – No satisfactory alternative;](#)  
[Application for a licence for European Protected Species: Guidance notes on providing supporting information.](#)