

# EPS Mitigation Licensing: Latest developments

NATURAL  
ENGLAND

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Dear Stakeholder

Since the re-structuring process of Natural England in April 2011, our teams are settling back in and we are now continuing in earnest with our Improvements Project. We have been working on several items since the issue of the last Newsletter, including developing streamlined regulatory instruments for low and temporary impact activities and we will be involving stakeholders in discussions to ensure what we develop is workable for all. We are also developing a process for Nationally Significant Infrastructure Projects (NSIP), which impact on European Protected Species (EPS), and we will provide an update on this in the next couple of months. We have also taken stock of some of the other improvements previously put in place (e.g. the 'early notification' email and the compression guidance).

This issue of the EPS Newsletter therefore informs you of our mitigation licensing 'latest developments' but also takes the opportunity to remind you of a few issues that are being drawn to our attention regarding mitigation licensing.

Whilst these newsletters aim to provide you with news of any proposed changes in licensing and give you as much notice as we reasonably can prior to any changes being implemented, we also provide these updates via e-mail and publish them on our [website](#).

## Headlines:

1. **Headline:** 25% increase in EPS applications in 2010-11 EPS.
2. **Further reminder:** 'Early notification of FCS concerns' e-mail service.
3. **Further reminder:** Compression guidance update.
4. **Important:** Destruction of a bat roost is an absolute offence.
5. **Published:** Dormice Handy Hints for receiving a licence on 1<sup>st</sup> submission of an application
6. **Published:** Further Bat Handy Hints have been added to the guidance note.
7. **Update:** Named Ecologist Qualification Requirements Guidance and Consultation Exercise: we intend to review our consultation responses in the next quarter.
8. **Can you help?** We are looking for cases to pilot a pre-submission screening service for EPS licensing.
9. **Proposed new training courses on 'How to get a licence'**. See the text for more information and feedback your opinions.
10. **Important:** Submitting licence reports is a condition of a licence.

## 1. 25% increase in EPS applications in 2010-11.

Our [2010-11 EPS performance statistics](#) have been published on our web site. They show that the number of EPS applications processed from April 2010 to March 2011 had risen by a significant 25% in the last 12 months. The above link takes you to our web page and provides a breakdown of the number of bat, newt and other EPS new applications/re-submissions/modifications processed and show 82% of licensing decisions were reached within our citizen charter target of 30 working days. In 2010-11 licensing decisions for re-submissions took an average 14 working days to turnaround and 16 working days for modification requests. These statistics demonstrate that, despite the large increase in applications, the relocation of the WLU to a new office in Bristol and the cuts that have been made within Natural England, our team has made a considerable effort to maintain our level of service to you as best we can. Thank you for your assistance and patience helping us during this time.

## 2. Update: Early notification of FCS concerns and submission of documents.

Despite the guidance in the March Interim Newsletter, a few consultants are still failing to follow our advice which is leading to confusion and sometimes delays in issuing licences. Our various EPS teams generally feel that this service is welcomed by most consultants but the few consultants who are not complying are causing problems which could lead us to withdrawing this service.

This reminder is therefore to once again request that you do not send documents directly to Wildlife Advisers or a re-submission to the WLU until you and your client are formally requested to do so by the WLU by way of a Further Information Request (FIR). The reasons for this include

- There is an increased risk that the Method Statement may not take into account additional changes required, e.g. to the timetable, once the Overriding Public Interest (OPI) and No Satisfactory Alternative (NSA) tests have been determined. This can result in our wildlife advisers needing to assess several iterations of documents unnecessarily. Time spent doing this impacts on the processing of other applications in the system. The Method Statement may also require revisions to take into account the resolution of planning issues, such as the discharge of wildlife conditions, as a result of the 'OPI' and 'NSA' tests assessment.
- Submitting documents directly to wildlife advisers places additional burdens on them and because they are often out of the office, there may be delays in acknowledging submissions which will add to the processing turnaround time. Formal receipt of documents (whether paper or electronic) is best handled by our central processing unit which manages the administration of the service.
- It is vital that the master file for your application, held by the WLU, is kept fully up to date and holds all correspondence regarding your case. Documents may not be saved to the appropriate version of the case folder on our shared computer network since the appropriate reference will not have been issued and it is possible that staff may mistakenly regard the submitted document as a duplicate copy of the original method statement.

- It may cause problems in identifying the submitted version of the document and in our assigning it a version reference for re-assessment. This is a vital part of ensuring all documentation that arrives in the WLU is identified and tracked properly, enabling swift assessments to be made and the correct version of Method Statement to be appended to the licence when issued.
- Individual mailboxes cannot cope with large documents and if received a disproportionate amount of time is spent rectifying the situation leading to delays in assessing your and other applications.
- This will also protect you and your client should there be problems at the site as everyone will be working to the correct version of the licensed documents.

For these reasons, should we receive documents *prior* to the issuing of a FIR then they will not be processed, nor be saved on our shared drives or assessed. It is extremely important that the correct versions of the applications are being saved and the correct licensed method statement is sent out and adhered to. Please refer back to the [Interim March Newsletter](#) to re-acquaint yourselves with our requirements.

### **3. Reminder: Compression guidance available to reduce application size – first issued in January 2011.**

Many thanks to everyone who has taken on board our request and advice on how to reduce the size of their electronic applications before submitting to the WLU. Some people already have their own established ways and means of compressing documents that form part and parcel of their EPS application and continue to use these. However, a few individuals have been emailing particularly large documents to the WLU (and in some instances directly to several members of the team) which are well in excess of the 5MB limit. Please can we take the opportunity to remind you not to send in applications in excess of 5MB by email to [EPS.mitigation@naturalengland.org.uk](mailto:EPS.mitigation@naturalengland.org.uk) or to send copies directly to members of our team as it can cause considerable problems and lead to delays in processing applications. We also request that you do not submit documents in several smaller size e-mails since we receive a high volume of e-mails and there is a significant risk that documents may not be married up and could delay the processing of your application. The WLU will respond to such emails by sending the [Compression guidance](#) to follow and asking you to re-send in an appropriate manner (either compressed to <5MB or to submit by CD) before the documents are processed and subsequently assessed.

### **4. Important: Destruction of a bat roost is an absolute offence and requires a mitigation licence from Natural England.**

We are receiving an increasing number of reports that, on occasion, some consultants are advising that bat roosts can be destroyed or damaged without a mitigation licence being required, with works instead taking place under 'an unlicensed method statement' or other similar advice. In addition to this, some consultants are also directly informing our Wildlife Advisers that they can move up to 5 bats before applying for a mitigation licence to enable or to facilitate development. Obviously this raises some serious concerns as persons acting on that advice are highly likely to be committing offences. This could result in the consultant ecologist and land owner being investigated by the Police and/or

Natural England and make them liable to prosecution. Under The Conservation of Habitats and Species Regulations 2010 it is an absolute offence to damage or destroy a bat roost. The Regulations fully protect bats and their breeding sites or resting places, making it an offence to:

- Deliberately capture (take), injure or kill bats;
- Deliberately disturb bats;
- Damage or destroy a bat breeding site or resting place.

In addition, the Wildlife & Countryside Act 1981 (as amended) makes it an offence to:

Intentionally or recklessly

- disturb any bat whilst it is occupying a structure or place which it uses for shelter or protection;
- obstruct access to any structure or place which any bat uses for shelter or protection.

Please note that any work undertaken under the principle of Continuing Ecological Functionality (CEF) must be completed at a time of year when bats are not present in a roost. The CEF concept may not be invoked to allow the taking and transporting of bats, or the permanent alteration or destruction of a roost.

Therefore a mitigation licence must be applied for if a roost will be damaged or destroyed (or bats disturbed) during works related to over-riding public interest (OPI) (development), Health & Safety (H&S) etc. The impacts of the (licensed) works must be mitigated for accordingly to ensure 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. We'd also like to take the opportunity to remind people that survey licences do not cover licensee's to carry out works in connection with OPI or H&S activities. A mitigation licence is required to 'take' and move one or more bats (or any other European Protected Species) (i.e. 'deliberately capture') when works are being undertaken.

New damage/destruction guidance from Defra (due to be completed soon) will provide additional clarification on this issue and the bat and newt mitigation guidelines (currently being revised) will also aim to reduce uncertainty around these issues. We wish to draw this to your attention to help avoid offences being committed and enforcement action being taken when it can be avoided. Should Natural England learn of licensable actions being undertaken with no mitigation licence in place we will consider what enforcement action to take. This may be carried out ourselves in line with our Enforcement Policy or a referral to the Police depending on the circumstances of the case. Our enforcement action may include reporting a member to their professional body, advising our partners in Scotland and Wales, adding additional licence conditions or revoking a licence when this is proportionate to the individual case.

**5. Published: Dormice Handy Hints for receiving a licence on 1<sup>st</sup> submission of an application.**

Please click on this [link](#) to read this new guidance. We hope you find it useful when applying for a dormouse mitigation licence.

**6. Published: Bat Handy Hints have been updated.**

Please click on [this link](#) to read the updated guidance which has recently been revised taking reasons for applications not receiving a satisfied decision on the FCS test on the first submission into consideration.

**7. Update: Named Ecologist Qualification Requirements Guidance and Consultation Exercise.**

Many thanks to all those who kindly commented on the draft document of the above guidance. We intend to review the consultation responses in the next quarter.

**8. Can you help?** We are looking for cases to pilot a pre-submission screening service for EPS licensing. Please see below for more information and who to contact.

**“Developing a new service to screen draft EPS mitigation licence applications”**

Readers of this newsletter will know that Natural England is constantly working to improve the licensing services it provides to customers. Within the next 6 to 8 months, we aim to launch a service that will allow applicants to obtain an early view from Natural England on the acceptability of any **European Protected Species mitigation proposals** that they are seeking to put in place. This new service, which will be funded on a cost recovery basis when it is formally launched, aims to reduce the risks and uncertainty for applicants by allowing Natural England to give an ‘in principle’ view about mitigation proposals either ahead of or in parallel with the planning decision. As now, the formal licence application will still need to be submitted once planning and other permissions are in place.

We are ready to pilot this service now but we need your help to identify a small number of cases to help fine tune certain aspects and to ensure the service fully meets your needs. So, if you meet following criteria:

- are working on a medium-sized housing or commercial development case which involves great crested newts, bats and/or dormice,
- have completed the necessary surveys,
- are in the process of drawing up mitigation proposals and could have a draft application ready in the next 6 to 12 weeks,
- and are happy to take part in the (free of charge) pilot of this service,

then please do get in touch with Angus Barrett ([angus.barrett@naturalengland.org.uk](mailto:angus.barrett@naturalengland.org.uk)), telephone 0300 060 1856.

The service Natural England is aiming to provide will offer:

- A completeness check of the draft application pack to ensure that everything that needs to be included.
- Peer review of draft application documents by desk assessment, to help prevent a Further Information Request when the application is formally submitted as any delays might be costly.
- Follow up telephone call with ecological consultant/applicant.
- A site visit and written report of the advice given during the site visit.
- A written advice note highlighting any issues that need to be addressed and giving our 'in principle' view on the tests. This note will aim to provide the applicant with a degree of certainty that, provided they adequately cover the issues highlighted as needing to be addressed they will be successful in getting the licence on their first formal application.
- Where required, adviser telephone support to clarify any highlighted issues prior to formal submission. Note however, this will be capped at roughly 2 hours of staff time.
- It is expected that where an applicant wishes to seek further screening of the next iteration of the application, this will constitute a separate stage, with the clock restarting and a further fee applied where appropriate.

#### **9. Proposed new training courses on 'How to get a licence'.**

Feedback from customers has indicated that you would welcome additional services from Natural England in relation to its wildlife licensing function.

We are looking to meet this demand by providing:

1. Workshops for ecological consultants and others, initially concentrating on 'How to get an EPS mitigation licence' and
2. Pre-submission screening - a service allowing applicants to get earlier advice on the likely success of licence applications. See the above article in this newsletter about the pilot of this service.

We are hoping to launch the training workshops later this year but would welcome feedback from readers on their level of interest in this training and whether the proposed content meets your needs.

Two types of workshop are initially planned: one with a bat focus and the other on Great Crested Newts. Experienced Natural England wildlife advisers, with responsibility for assessing licence applications, will lead the training to ensure that participants get a valuable insight into what Natural England is looking for when it assesses EPS mitigation licence applications.

The training will be tailored to the specific licensing issues for bats or newts but in outline each workshop is likely to cover:

- Natural England's role – what we do and don't do
- Use of best practice to avoid the need for a licence
- Timing – co-ordinating the licence application with other consents and the development timetable
- A detailed walk-through, using case studies relevant to either bats or great crested newts, of the application pack

- Time on each of the key sections on the application form, reasoned statement and method statement.
- Including a focus on issues such as: ecological experience, meeting the evidence requirements for the Habitats Regulations tests, Master Plans (for great crested newts), making best use of Natural England's guidance, timetabling of mitigation activities, reporting, and enforcement & compliance.

The expectation is that each event will run for two days in order to allow sufficient time to cover the material in adequate detail, provide opportunity for Q&A and discussion opportunities. Costs will need to be recovered through a modest charge for attending each event.

We would particularly like feedback from readers of this newsletter on:

- Whether the outline content meets your needs?
- Is there anything else you would like us to cover?
- Whether you consider two days to be too long for such a training event?

Please e-mail Angus Barrett [angus.barrett@naturalengland.org.uk](mailto:angus.barrett@naturalengland.org.uk) with your feedback and to register your interest in either or both of these training events (covering bats and GCN for the time being).

**10. Important reminder: It is a condition of a mitigation licence to submit a report or a return.**

Licence holders will be aware that it is a condition of licences to submit a report or return providing some limited information on the activities carried out. We ask for this information so that we can properly fulfil our role as the competent authority responsible for licensing activities under the regulations, and we are very keen to make sure that our records are complete as possible. The European Commission does scrutinise the completeness of these records. The return generally falls due shortly after expiry of the licence, and we would urge you to please submit any outstanding records as soon as possible.

Regards

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