

Guidance for Developers and Ecologists: Economic Downturn – Impacts on European Protected Species (EPS) Mitigation Licences



The aim of this note is to provide developers and ecologists with some high level generic advice and suggested actions that may be required where financial pressures have impacts on developments that are subject to European Protected Species mitigation licences. These pressures may have forced developers to re-think the timings for the development or may have forced them to postpone or abandon the development project entirely. The primary focus of this note is on providing advice to those who already have a licence, but we have also included some suggestions for those who are in the process of applying for a licence.

Natural England recognises that the current economic climate has had, and will continue to have, a major impact on many development projects. Where projects are delayed or changed this may have a consequential impact on meeting the terms and conditions of any related European Protected Species mitigation licence. The implications of rescheduling or changing projects on species licences must be given proper consideration at an early stage. Please remember, the conditions of licences are legally binding. Below we have set out some key principles we believe will help you properly assess the implications and take appropriate action.

- Establish and maintain good communication between the developer and ecologist.
- Be realistic and open about the future of the development or scheme when deciding what action should be taken.
- Prioritise mitigation measures being implemented where habitat has been destroyed or damaged.
- Make sure that any information submitted to Natural England is accurate and up-to-date. Submitting false or misleading information to Natural England could affect your application or licence. It is also an offence. Notify Natural England of any concerns about delays to the implementation of the licence at the earliest opportunity. **Do not wait until key licensing dates have been missed or conditions of the licence have already been breached.** Send an e-mail to the Wildlife Licensing Unit wildlife@naturalengland.org.uk quoting the case reference and giving **brief details of the concerns so that a record can be placed on file.**

Advice and Guidance

Annex A below illustrates possible approaches to a number of scenarios. These are intended as a simple guide in determining what course of action will need to be taken in relation to a mitigation licence and have been drawn from recurring themes. It is not an exhaustive list.

Overview

As the statutory authority for wildlife licensing, Natural England is required to ensure that the conservation status of the protected species subject to a licence is not jeopardised by actions taken in relation to such a licence. This legal obligation places constraints on the scope to amend existing licences, especially in respect to changes to the provision of mitigation measures or compensation for losses. The underlying principle that must be satisfied is that there is no net loss for a population of a protected species. As long as this principle can be satisfied (and we will be proportionate and reasonable in our expectations) then Natural England will do what it can to support licence holders through these difficult times.

Further Advice and Guidance

Natural England is experiencing a growing number of requests from ecologists seeking advice and solutions to situations where licensed activities are not being implemented as required by their licence conditions. We are also receiving a growing number of concerns from third parties about delays to developments and expressing their concerns about the impact on protected species and their habitat. Natural England is continuing its programme of licence compliance visits, and breaches of the licence, including not implementing the requirements of the Method Statement, will open the risk of prosecution.

Given the volume of requests that Natural England receives it is difficult for us to meet the demand for detailed advice. Whilst it is ultimately the responsibility of the ecologist to advise their client on an appropriate solution to the problem, we do recognise that in some cases further advice may be required and we will assess each request for assistance on its own merits.

In providing advice Natural England has to consider a number of factors including;

- the impact on the favourable conservation status of the species concerned, (the principle in issuing licences is that there is 'no net loss' on the species conservation status), and
- that circumstances may change on the development site during the period incurred by significant delays and further survey or site assessment may be required, and
- animal welfare, and

- licence compliance and enforcement action, and
- being proportionate and reasonable.

If you require further assistance you should first contact the Wildlife Licensing Unit (WLU) at wildlife@naturalengland.org.uk providing the case reference number with a brief outline of the circumstances. Depending on the precise circumstances the WLU may direct your e-mail to the Wildlife Adviser or Senior Licensing Officer who initially assessed your licence application. If this is not possible we will seek to identify someone else who can advise you.

Further useful guidance:

Please refer to our publication '*How to get a licence*' for further information on the licensing process including timescales and our enforcement policy. [http://www.naturalengland.org.uk/Images/WML-G12%20\(0309\)_tcm6-4116.pdf](http://www.naturalengland.org.uk/Images/WML-G12%20(0309)_tcm6-4116.pdf)

Annex A Scenarios and Actions.

Simple scenarios and suggested courses of action. It is stressed that those making the decision need to **be realistic and open** about the future prospects of the development or scheme when deciding what action should be taken.

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| Scenario A: | <i>Licence application currently in preparation.</i> |
| Suggested Action: | <p>Where a mitigation licence application is being prepared. Assess the future of the development and adopt the principles detailed above.</p> <p>Be clear on the timescales involved, particularly where a phased approach for the development is being considered. Natural England will expect this to be addressed as it is part of our consideration of the 'no satisfactory alternative' test. This is explained further in our publication, '<i>How to get a licence</i>' – see above at Further useful guidance for the website address</p> |

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| Scenario B: | <i>Licence application submitted but no licence issued.</i> |
| Suggested Action: | <p>Where a mitigation licence application has been submitted but no licence has been issued. Assess the future of the development and, if any delay is likely to have a material effect on the delivery of the development and the undertakings set out in the application, notify Natural England and seek a modification to the application by submitting a revised Method Statement including an updated timetable of works.</p> |

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| Scenario C: | <i>Licence issued but no works carried out on site.</i> |
| Suggested Action: | <p>Assess the future of the development and, if any delay is likely to be temporary, apply to Natural England for modification to the licence by submitting a revised Method Statement including an updated timetable of works in order to extend the licence.</p> <p>If the licence holder does not know when the development will go ahead or the land has to be sold it may be more appropriate for the licence to be surrendered to Natural England.</p> |

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| Scenario D: | <i>Licence issued with capture and exclusion measures completed on site but development delayed.</i> |
| Suggested Action: | <p>Assess the future of the development. Where there are delays of less than one breeding season then apply to Natural England for modification to the licence by submitting a revised fully updated Method Statement, including the timetable of works, in order to extend the licence.</p> <p>If significant delays are expected that would have an impact on the conservation status of the species or that pose animal welfare issues, then it may be appropriate to partially (or completely) remove the exclusion measures to allow animals free movement to the appropriate habitats. In such circumstances submit a revised Method Statement detailing the proposed course of action.</p> <p><i>Please note:</i> Mitigation measures are agreed as a condition of a licence and failure to deliver the mitigation would be a criminal offence. Penalties for non-compliance might be a level 5 fine and/or a 6 month prison sentence.</p> |

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| Scenario E: | <i>Licensed habitat destruction commenced but development significantly delayed or postponed.</i> |
| Suggested Action: | <p>Assess the future of the development.</p> <p>If the habitat (including roosts/breeding sites) of a European Protected Species have been destroyed under licence then you are required to either (i) complete the agreed mitigation/compensation work set out in the licence, or (ii) restore the habitat to its original state. In either case, you should apply to Natural England for a modification to the licence by submitting a revised fully updated Method Statement including the timetable of works in order to extend the licence. Also, provide details of what actions have already been carried out under licence.</p> <p><i>Please note:</i> Mitigation measures are agreed as a condition of a licence and failure to deliver the mitigation could be an offence. Maximum penalties for non-compliance are a level 5 fine and/or a 6 month prison sentence.</p> |

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| Scenario F: | <i>Licensed development well advanced. Mitigation measures not completed.</i> |
| Suggested Action: | <p>Assess the future of the development.</p> <p>If the habitat (including roosts/breeding sites) of a European Protected Species have been destroyed under licence then you are required to either (i) complete the agreed mitigation/compensation work set out in the licence, or (ii) restore the habitat to its original state. In either case, you should apply to Natural England for a modification to the licence by submitting a revised fully updated Method Statement including the timetable of works in order to extend the licence. Also, provide details of what actions have already been carried out under licence.</p> <p><i>Please note:</i> Mitigation measures are agreed as a condition of a licence and failure to deliver the mitigation could be an offence. Maximum penalties for non-compliance are a level 5 fine and/or a 6 month prison sentence.</p> |

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| Scenario G: | <i>Licensed development completed. No mitigation measures in place.</i> |
| Suggested Action: | <p>Assess the future of the development.</p> <p>If the habitat (including roosts/breeding sites) of a European Protected Species have been destroyed under licence then you are required to either (i) complete the agreed mitigation/compensation work set out in the licence, or (ii) restore the habitat to its original state. In either case, you should apply to Natural England for a modification to the licence by submitting a revised fully updated Method Statement including the timetable of works in order to extend the licence. Also, provide details of what actions have already been carried out under licence.</p> <p><i>Please note:</i> Mitigation measures are agreed as a condition of a licence and failure to deliver the mitigation could be an offence. Maximum penalties for non-compliance are a level 5 fine and/or a 6 month prison sentence.</p> |

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| Scenario H | <i>Licensed development complete. Monitoring of mitigation measures required.</i> |
| Suggested Action: | <p>Where the Method Statement (appended to the licence) includes an undertaking to monitor the mitigation measures and species, this <u>must</u> be undertaken. Notify Natural England immediately and clearly set out in writing why you believe that this undertaking cannot be met. Natural England will consider each case on its merits and determine what enforcement action is appropriate in the circumstances.</p> <p><i>Please note:</i> Failure to comply with the licence conditions could result in a criminal offence.</p> |