

European Protected Species: Mitigation Licensing - How to get a licence

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Purpose of this Guidance

This guide explains the requirements for licensing activities that affect European Protected Species, focusing particularly on **mitigation licences** issued under Regulation 53(2) (e). These activities include:

- those required to preserve public health or public safety;
- plans or projects such as building, engineering, mining or other operations, on, over, or under land;
- the material change in use of any buildings or other land; and
- the demolition of buildings, rebuilding, structural alterations of, or additions to, buildings and maintenance and repairs to structures.

The purpose of this guide is to help applicants understand the process and the requirements that must be met to get a licence. Ecological consultants and other professionals such as planning consultants, surveyors or architects who provide support during the application process may also find the guide a useful summary.

For details of other types of licensing, such as conservation, possession of individual specimens, photography, or science and research, visit our website:

<http://www.naturalengland.org.uk/ourwork/regulation/wildlife/default.aspx>

Summary

This guide brings together a range of information in a single document to help you understand the process of obtaining a licence for activities affecting European Protected Species.

Sections 1 to 5 introduce the topic, summarise the law and Natural England's role as both the licensing authority and adviser.

Sections 6 to 9 explain more fully the types of licences that can be issued and the criteria/tests that must be met before Natural England can issue a licence. These sections also cover when it is appropriate to apply for a licence and who submits the application.

Section 10 explains how the licensing system interacts with other Consent Regimes (e.g. Planning Permission).

Sections 11 to 15 describe how to apply for a licence.

Sections 16 to 20 explain how we assess licence applications. We also explain what you should do if your initial application is unsuccessful or if you subsequently need to make changes to the licence you have been issued. This part of the document also explains how you can challenge a licensing decision.

Sections 21 to 23 cover how Natural England approaches compliance checking and enforcement.

Sections 24 to 27 explain how to get further information.

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1. Introduction

This guide 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 guide aims to inform people involved in activities on land **in England**, where European Protected Species are likely to be present, about the legal protection afforded to these plants and animals. Finding European Protected Species on a site at a late stage of a project could result in delays whilst a licence is sought or in offences being committed. An understanding of the legislation, the licensing process and ideal procedures at the initial stages of a proposal will help ensure that you avoid delays and that the nature conservation considerations are fully addressed.

2. Species

The animal and plant species listed below are referred to as European Protected Species (**EPS**) and are listed on Schedule 2 and 4 of the Conservation of Habitats and Species Regulations 2010.

Animals

Bats, Horseshoe (all species)
Bats, Typical (all species)
Common Otter
Dolphins, porpoises and whales (all species)
Dormouse
Fisher's Estuarine Moth (*from 1 October 2008*)
Great Crested Newt (or warty)
Large Blue Butterfly
Lesser Whirlpool Ram's Horn Snail (*from 1 October 2008*)
Marine Turtles
Natterjack Toad
Pool Frog (*from 1 October 2008*)
Sand Lizard
Smooth Snake
Sturgeon
Wild Cat

Plants

Creeping Marshwort
Early Gentian
Fen Orchid
Floating-leaved water Plantain
Killarney Fern
Lady's Slipper
Shore Dock
Slender Naiad
Yellow Marsh Saxifrage

3. Law - Protection of European Protected Species (EPS)

The species listed at Section 2 are protected under the Conservation of Habitats and Species Regulations 2010 which implements the EC Directive 92/43/EEC in the United Kingdom. It is an offence, with certain exceptions, to:

- deliberately capture or kill any **wild animal of a EPS**;
- deliberately disturb any such animal;
- deliberately take or destroy eggs of any such wild animal;
- damage or destroy a breeding site or resting place of such a wild animal;
- deliberately pick, collect, cut, uproot or destroy **a wild plant of a EPS**;

- keep (possess), transport, sell or exchange, or offer for sale or exchange, any live or dead wild animal or plant of a EPS, or any part of, or anything derived from such a wild animal or plant.

A person found guilty of an offence is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 (currently £5,000 per offence) on the standard scale, or to both.

4. Code of Conduct – Natural England Staff and Stakeholders

In the course of assessing mitigation licence applications Natural England staff will have direct contact, either by telephone or in writing, with stakeholders. The section below explains the standard of conduct that all parties can expect of each other.

The term ‘stakeholder’ is inclusive and covers developers, ecological consultants, planning consultants, Local Planning Authorities, Government departments, other non-Government organisations, as well as members of the public and others.

Natural England’s Commitment to Stakeholders

There are certain basic standards of conduct that you can expect from Natural England staff. Staff will, at all times, conduct themselves in a professional and civil manner when communicating with stakeholders.

Natural England staff are expected to carry out their role with dedication and a commitment to Natural England’s objectives and expected behaviours:

- Integrity - putting their obligations to Natural England above their own personal interests;
- Honesty - being truthful and open;
- Objectivity - basing their advice and decisions on rigorous analysis of the evidence; and
- Impartiality - acting solely according to the merits of the case.

Stakeholder Obligations to Natural England Staff

Natural England expects stakeholders to conduct themselves in a civil and, where appropriate, professional manner.

Natural England will not tolerate threatening (bullying) or abusive behaviour towards its staff, whether it is verbally, physically or in writing. Natural England will take whatever action is necessary, including legal action, against any person who instigates such threats or abuse.

Natural England’s Commitment to Ecological Consultants

In addition to the above commitment, Natural England recognises and encourages ecological consultants to use their professional judgement in formulating proportionate mitigation strategies and advising their clients.

Natural England will consider deviations from published guidance in mitigation strategies where it is supported by thorough, ecologically relevant justification in the application, and will judge each submission on an individual basis. If we are unable to agree with your proposals we will provide a detailed summary of our assessment and highlight areas that need to be addressed to meet the tests and achieve a licence.

Ecological Consultant obligations to Natural England's Wildlife Licensing Team (within Regulation)

In addition to the above obligation, ecological consultants are expected to be appropriately experienced and have the necessary technical expertise regarding the ecology of the species concerned, to be fully conversant with European Protected Species legislation and related published guidance as it pertains to the sites/species they are dealing with. Consultants should ensure they are fully aware of the latest guidance relating to the submission of licence applications (available on the Natural England website), and that the guidance within the method statement templates is followed.

Ecological consultants are expected to provide appropriate unbiased advice to their clients when presented with projects that would impact on European Protected Species, based on their expert knowledge of the species concerned.

Ecological consultants should provide a reasoned, ecologically sound justification where they consider a mitigation strategy (or survey methodology) that deviates from published guidance is more appropriate to the particular site or situation. Consultants should accept Natural England's professional assessment of an application.

Communicating with Wildlife Licensing Staff by Telephone or Writing

When the Wildlife Licensing team, within Regulation, is contacted with enquiries, concerns, requests or challenges, we ask that those requests be expressed clearly. It greatly assists us in providing a faster detailed response if we are given concise details of the issue, details of the specific case or site involved and a clear explanation of why those views are being given.

The Wildlife Licensing team is able to provide advice and answer queries relating to licence applications and licensed cases. For queries relating non-licensed works, and projects at the pre-application or planning application stage, Natural England advises that the local Natural England team is contacted for advice. The Wildlife Licensing team, and Wildlife Advisers are unable (due to a lack of resources) to approve or review mitigation strategies for European Protected Species unless these are submitted as part of a complete licence application.

If, in your experience, one of the licensing team has not honoured these commitments you should notify our Delivery Team Manager by sending an e-mail to eps.mitigation@naturalengland.org.uk with the title 'Delivery Team Manager: Commitment Failure' and detail the incident and your concerns.

Key Message: Advice and Costs - Natural England provides general species advice and guidance to a broad range of customers and operates a free and impartial licensing service for EPS. However, the applicant may incur costs in the preparation of a licence application pack where there is a need to employ the services of professional consultant advisers to provide the evidence needed to meet both species and planning requirements.

Natural England does not set, or regulate, the costs of surveys, mitigation or compensation requirements.

5. Natural England – What We Do

Natural England has several roles to play in the protection of EPS:

We provide advice and guidance to local planning authorities considering planning applications partly through standing advice

<http://www.naturalengland.org.uk/ourwork/planningtransportlocalgov/spatialplanning/standingadvice/default.aspx> and partly through individual responses. For EPS individual responses will usually be provided for proposed developments that are likely to require mitigation. The most straightforward cases are dealt with by our **central casework hub**. For more complex cases, our **Land Use** team will provide advice. They also assist planning authorities by working proactively to ensure that EPS are considered when producing development/framework plans. However, the local Land Use team will not assess the planning application in relation to the licensing tests.

Natural England also publishes species advice and guidance such as Mitigation Guidelines and informative leaflets which are available from our website -

www.naturalengland.org.uk/conservation/wildlife-management-licensing.

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Our **Landscape and Biodiversity Team** also undertakes and commissions specific research to improve our understanding of EPS mitigation and further develop our guidance.

Our **wildlife management and licensing role** is carried out by our national **Regulation Delivery team's** EPS Advisers based in Bristol plus regionally located Wildlife Advisers. The team assesses all licence applications for England for a range of species, including EPS, under various pieces of wildlife legislation. Wildlife Advisers also conduct compliance visits in relation to licences that we issue. Natural England enforces licence conditions including, where appropriate, legal action. Wildlife Licensing within our **Customer Services** team in Bristol receives and processes licence applications, and issues decisions made on applications.

5.1 Wildlife Licensing – What We Do Not Do

We do not:

- Provide advice or licences outside of England
- Complete application forms or prepare mitigation schemes on behalf of developers or their consultants
- Approve or 'sign off' Method Statements for non-licensable works
- Review or agree application documents prior to submission
- Carry out practical work required under any licence. This is the responsibility of the licensee and any staff or consultants that they employ.
- Tell developers or consultants when a licence would or would not be required.

6. Licensing - The Criteria

Licences derogating from the protection afforded to EPS can be granted for a number of specified reasons or **purposes** as set out in Regulation 53 of the above named legislation. These purposes are listed below - the main purpose subject to this guidance note is emboldened -

- (a) Scientific or education;
- (b) Ringing or marking, or examining any ring or mark on, wild animals;
- (c) Conserving wild animals or wild plants or introducing them to particular areas;
- (d) Protecting any zoological or botanical collection;
- (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, vegetables, fruit, growing timber or any other forms of property or to fisheries.

Licences can only be issued by Natural England where the proposed activity meets the criteria for one of the purposes above **and** the following two criteria (together commonly referred to as the 'three tests'):

That there is no satisfactory alternative; and

That the action authorised will not be detrimental to the maintenance of the species concerned at a favourable conservation status in their natural range.

Key Message: Evidence - Applications have to provide sufficient evidence to demonstrate that **all the tests are met** before a licence can be issued. Each application is determined on its own merits.

7. Licences – Types of Licence

7.1. 'Mitigation' licences

(Purpose (e) in Section 6 above)

This guide focuses on licensing activities that involve mitigation (and/or compensation) for the impacts of activities such as development. Mitigation licences, previously and more generally

referred to as development licences¹, are considered under the purpose for preserving public health or public safety or imperative reasons of overriding public interest (see above).

Such activities will range in scale and complexity.

- **Large scale** activities. Examples are the construction of new roads, schools, hospitals, business parks, housing estates, pipelines and mineral extraction.
- **Medium scale** activities. Examples are barn conversions, small local housing schemes, conversion of redundant buildings and local infrastructure such as drainage schemes.
- **Smaller scale** activities. Examples are loft extensions, repairs/maintenance to buildings including dwelling houses, boreholes, archaeological investigations and the felling of unsafe urban trees.

The above list is not exhaustive but merely aims to give an illustration of the most commonly licensed activities which fall within the scope of the above purpose. It should also be noted that 'large scale' activities do not necessarily equate to high impacts on EPS and vice versa.

7.2. Other types of EPS licences

It is helpful to be aware of a number of other types of EPS licences. These include survey licences, which your ecological consultant will need to allow them to carry out certain activities to gather the species information.

Surveys are necessary to establish if any species are present and if so, how they are using the habitats and in what numbers. Various levels of survey may be required depending on the survey aims and how the information will be used. For example, to inform a planning authority when considering a planning application; to demonstrate reasonable efforts to avoid an offence; to inform a design decision; or to support a 'mitigation' licence application.

Once a potential site is identified for development, we recommend that the site is surveyed, particularly if it is suspected that EPS are likely to be present. For example, disused barns may support many species of bat in addition to birds and other protected wildlife, or an urban brownfield site with piles of rubble or other building debris may support great crested newts. The timing of the survey for some species is vital. Please consult our published guidance for further help with this.

Useful information on distribution of species may also be held by Local Records Centres (LRCs, also known as Biological Record Centres). LRCs gather, store and distribute environmental data for their specific area. Data is received with the help and support of voluntary recording groups, individuals, Wildlife Trusts, local authorities and many others. Such data is routinely used to screen planning applications.

You will find more information on survey licences, what conservation licences are and what to do about emergency animal rescues in **Annex A** of this Guidance Note. For more detailed information, please consult our website

<http://www.naturalengland.org.uk/ourwork/regulation/wildlife/default.aspx>

¹ Mitigation licences can cover a very large range of activities, many of which would not traditionally be considered as development, thus leading to this change in emphasis to 'mitigation'.

8. When to apply for a Mitigation Licence.

Your consultant ecologist will advise you on the likelihood of the proposed activity resulting in a breach of the legislation and how to take avoidance measures. The ultimate decision on whether to apply for a licence or not will rest with you, as the person responsible for commissioning the proposed activity, by taking into account the advice of the consultant ecologist. Adequate surveys carried out at the right time of year are crucial in ensuring that the presence of EPS is detected – see Section 7.2 above and Annex A.

Natural England's view is that:

- a licence **is** needed if the consultant ecologist, on the basis of survey information and specialist knowledge of the species concerned, considers that on balance the proposed activity **is reasonably likely** to result in an offence under Regulation 41 (animals) or 45 (plants); or
- If the consultant ecologist, on the basis of survey information and specialist knowledge of the species concerned, considers that on balance the proposed activity is **reasonably unlikely** to result in an offence under Regulation 41 or 45 then no licence is required. However, in these circumstances Natural England would urge that reasonable precautions be taken to avoid affecting EPS during works, and that an audit trail is kept on the decision making process. If EPS are found then work should cease until you have assessed (in consultation with a consultant ecologist) whether you can proceed without committing an offence. A licence should be applied for if offences are unavoidable and the work should not be re-started until a licence is obtained.

Key Message: Avoidance - A licence is not always necessary. Natural England advocates the use of good practice and avoidance measures to minimise the impact of a proposed activity on wildlife and in particular EPS. Licensing should be seen as the last resort where all other alternative ways of avoiding impacts on the species have been discounted.

Ecological consultants are expected to advise their clients on whether works can proceed in the absence of a licence. It is not Natural England's role to do this.

9. Who Applies for the Licence?

Usually the landowner or occupier will submit the application, i.e. the person commissioning the proposed activity. You may appoint agents to produce the application pack and act on your behalf. A person with specific skills and knowledge of the species concerned, such as a consultant ecologist, must be appointed to assist in the preparation and the delivery of the mitigation proposals that ensure the species protection requirements (Favourable Conservation Status 'FCS' test) can be met (see Section 10.5 below). Depending on the nature of your proposal, you may choose to employ another professional such as a planning consultant, architect, surveyor or structural engineer to assist in preparing statements relating to the other licensing criteria (see Sections 10.1 to 10.4 below).

9.1 Land Ownership

Before an application for a licence can be submitted, any land subject to the proposed licensable activities, including any land used for mitigation or compensation as well as all receptor site(s), must be owned by the 'developer'. Alternatively, if the 'developer' does not own part or all of the land, they must be able to demonstrate that the current landowner's consent has been obtained for all licensable activities. In this case, as part of the application Natural England would need a complete explanation of the land ownership situation within the method statement and reasoned statement, as well as a separate document containing the signed approval of the current landowner confirming that the developer can carry out all the proposed works.

9.2 Commitments and Undertakings

Applicants should not give any commitments to undertake actions in relation to a licence application, such as mitigation, compensation, receptor sites and/or monitoring, that cannot be delivered. If applicants do not own the land or demonstrate that they have landowner's consent it is likely that the application will be refused.

Important Note: A mitigation licence does not give the licensee or their agents any right to enter onto land without prior consent of the landowner.

Key Message: Employing a Consultant Ecologist – There are a number of routes through which you can contact an ecological consultant. However, Natural England is unable to recommend specific individuals or companies. We suggest the best place to look is in the business telephone directories or one of the published directories of environmental consultants such as the ENDS Directory or the Institute of Ecology and Environmental Management (IEEM). Alternatively, you could search the internet, the telephone directory or contact the local Wildlife Trust.

Before employing the services of a consultant ecologist, you should first obtain estimates or quotations. The consultant ecologist should be able to provide you with a breakdown of the work required and the associated costs (i.e. surveys – number/duration & timing, preparing the application documents, etc.). You should ask for sight of references or their qualifications together with examples of work from previous similar activities undertaken and perhaps speak with their previous clients.

Each site varies in size and complexity and therefore costs will vary. Fees charged by consultants are not in the control of Natural England and market forces play a large part in their determination. Remember, Natural England does not charge to assess the licence application but charges will most likely be incurred where you employ persons to act on your behalf.

10. The 'Purpose' and the 'Tests'

As set out in the above sections, a mitigation licence can only be granted where the proposed activity meets a purpose and the two tests described in Section 6. For more information about

Natural England's consideration of the 'tests' see Section 18 about decision making. Natural England has published a guidance note, [WML-G24](#), explaining how it applies the three tests to licence applications.

10.1. The Purpose

Natural England requires objective evidence that the activity you propose fits the purpose set out in Regulation 53(2)(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".

The entirety of the wording is important as Natural England will consider whether a public health or public safety case can be made so as to constitute a reason of overriding public interest.

10.2. Preserving Public Health or Public Safety

The licensing purpose of preserving public health or public safety is narrowly interpreted by Natural England. To meet the licensing requirements for this purpose, you will need to demonstrate that action is required to alleviate a clear and imminent danger to members of the general public.

The demolition of a structure, identified as supporting EPS, in advance of securing planning consent for the future development of the site is not an acceptable basis for a licence application where there are no demonstrable risks posed by the structure to the general public. Please refer to the section above about the 'purpose' requirements and the 'no satisfactory alternative' test below.

10.2.1. Unstable Structures

Public health and safety risks might occur where structures (buildings, bridges, trees, railway embankments, telegraph poles, etc.) become unstable, either through neglect or outside influences such as severe weather events, seismic events or natural deterioration. In such circumstances we recognise that prompt action is required to alleviate the danger.

Anyone relying on the purpose of preserving public health or public safety in relation to unstable structures will be required to provide supporting evidence from an appropriately qualified person, such as a structural engineer, arboriculturist or tree surgeon, to justify the claim.

However, we recognise that there may be circumstances where urgent action is required to alleviate an immediate danger to public health or public safety and such is the imperative need for intervention that applying for a licence would be impracticable within the time available. If such circumstances apply you should refer to the guidance provided at **Annex D – Emergency Operations and Protected Species**.

10.2.2. Vandalism and/or Trespass

Vandalism and/or trespass may not in themselves be sufficient reasons to justify the destruction of a breeding site or resting place. It is our view that to meet the purpose the structure itself should pose a danger to the general public. Avoidance is the key in determining whether

action is required. Effective exclusion of the general public from potential sources of danger will reduce the need to take action affecting the species.

Where structures are subject to vandalism and/or trespass Natural England expects you to demonstrate that reasonable measures to exclude the general public from the site have been taken. Although not an exhaustive list, measures may include employing site security patrols, liaising with the local police, installing closed circuit television or other monitoring equipment, the erection of security fencing, and the securing or boarding of doors and windows.

Evidence may also be provided by the local Police and fire services in relation to the type and numbers of incidents dealt with. In addition, items of value should be removed from the property to reduce the appeal to members of the public to gain access by illegal means. Also, keeping the site clear of combustible materials may help lessen the chances of, or attempts at, arson. It is necessary to demonstrate, through evidence, that all reasonable steps have been taken to exclude the public to satisfy the licensing tests (in particular that there are no satisfactory alternatives – see 10.4, Avoidance and Delaying Demolition).

10.2.3. Trees

Trees can and will be assessed as being unsafe for various reasons. These may include rot and decay, damage caused by disease or the size of overhanging limbs and proximity to public thoroughfares. The number of such assessments has increased recently in view of safety and insurance cover due to concerns about public liability.

The action required to alleviate the assessed dangers will potentially range from removing overhanging limbs, pollarding to felling; potentially from one veteran tree to an entire avenue on a public highway. It may be possible to undertake many of these activities without the need for a licence but such a judgement can only be reached using information gained from an appropriate survey.

An appropriate survey will establish the presence of EPS and/or a breeding site or resting place, primarily bats, or the likelihood that EPS will be affected by any work proposed. Such survey information is a requirement of licence applications to allow an assessment of the impact on the species and whether the FCS test can be met.

Trees in a Woodland Setting or Works Requiring Forestry Commission Consent

For operations affecting EPS which involve woodland management or any work requiring Forestry Commission approval, such as grant schemes, Environmental Impact Assessment determination, or other woodland management work, Natural England and the Forestry Commission emphasise the importance of adopting best practice or avoidance strategies instead of applying for a licence. Where a licence is essential for woodland management works, the Forestry Commission carries out an initial screening of the application to assess whether the proposed activity meets the tests set out under the Regulations, before passing the application to Natural England as the licensing authority for a final decision. Applications should be submitted to the Forestry Commission. Guidance on the licensing process and requirements can be obtained from the Forestry Commission at <http://www.forestry.gov.uk/forestry/INFD-75TJU5>.

Trees in Non-woodland Settings

Activities that involve work to resolve a health and safety issue in relation to a tree in an urban environment (which includes domestic gardens, recreational parkland, and highway boundaries) and which will affect EPS can be licensed by Natural England.

10.3. Imperative Reasons of Overriding Public Interest

If neither public health nor public safety grounds can be met, then Natural England must consider whether other imperative reasons of overriding public interest can be demonstrated. The word “imperative” means that there must be a high degree of “need” for the action concerned.

The reason must also be of some significant substance or weight because it has to be judged to be of such public interest that it should override nature conservation interests. An example might be that the development of new housing (including an element of affordable properties) for an area has been identified as a need by the Local Planning Authority, the specific site having been selected through a consultation exercise or inquiry and evidenced in a published report.

10.4. The ‘No Satisfactory Alternative’ Test

The legislation requires Natural England to be satisfied that there is “no satisfactory alternative” to the activity proposed.

In assessing this test the following two principles are applied to every licence application:-

Meeting the Need

Natural England makes an assessment of whether ‘satisfactory’ alternatives exist judged against the scheme or activity proposed in the licence application. For an alternative to be “satisfactory” it has to be an alternative means of meeting the “need” (that the proposed activity/development is fulfilling) whilst causing less damage to the EPS.

In almost any licence case it would be possible to suggest that some other alternative might be feasible, especially in smaller developments. However, what is crucial is for Natural England to decide whether, on the basis of the evidence provided, it is satisfied that there is no ‘satisfactory’ alternative to the activity. This will rely on the applicant providing sufficient evidence (referencing any necessary plans and statements which support this) on the satisfactory nature of the chosen location and an exploration of alternatives identifying how these were shown to be inadequate.

“Doing Nothing” as an Alternative

The European Commission expects the “do nothing” option to be considered as an alternative to every application. In the licensing context, the question posed is whether the “do nothing” option is “satisfactory”? Natural England must be able to demonstrate in its decision making that other potential options have reasonably been considered and dismissed by the applicant before accepting that there really is no satisfactory alternative. It is not sufficient to just state

that ‘there is no alternative’ or that ‘doing nothing is not an alternative’; any statement must be supported by sufficient evidence.

Your application should cover why it is not possible to avoid the requirement for a licence by doing the work at another time or avoiding the area occupied by the EPS. This might include evidence that to delay the development will put in jeopardy the funding for a project which has a proven ‘need’, that costs or the logistics involved in avoiding the EPS will make the project unviable and therefore not meet the ‘need’.

Natural England will consider whether to delay a project would be a ‘satisfactory’ alternative. Examples where this may apply relate to proposed developments that have achieved planning consent but where the construction phases are not due to commence in the near future (often beyond a year from the proposed licensed activity). It may also be apparent that the purpose of the application is to clear the site of protected species to enhance its marketable value.

Evidence of the consideration of the above in terms of the design and timing of proposals to avoid the impact on the EPS should be provided. Although simplistic the following examples demonstrates the principles.

Avoidance and Delaying Demolition: A 1970s local authority day care facility has been declared surplus to requirements with the opening of a new facility. The building is structurally sound and the local authority plan to demolish the building then wait until it is economical to market the site for housing. No planning consent has been issued to develop the site. The structure has been surveyed for bats and a pipistrelle maternity roost confirmed. A licence application submitted for the purpose of ‘overriding public interest’ to demolish the building and remove the burden of site security costs. In relation to the ‘No Satisfactory Alternative’ test Natural England would issue a ‘further information request’ informing the applicant that it could not issue a licence on the grounds that there was no evidence that alternative uses of the existing building had been explored and that the demolition could be delayed until the future of the site had been determined and development consented by the issue of planning permission.

Timing and Design: An old but structurally sound building is to be demolished for a domestic dwelling on the same footprint where the ‘need’ has been clearly evidenced. The building is surveyed for bats prior to an application for planning permission which confirmed presence of a maternity bat roost in the roof space. The developers revised their plans to retain the building and restore it. However repairs to the roof to make it weather proof required a licence. The developers have avoided the destruction of the bat roost and with the evidence of avoidance measures, alternatives considered and appropriate timing and mitigation a licence is secured.

More guidance is provided within the structured application form dealing with this test (see Section 15) in the Reasoned Statement document.

The format of the Reasoned Statement provides you with the opportunity to address a number of specific questions and helps you to provide the appropriate evidence to demonstrate that you have given sufficient consideration to address the above two principles. Where evidence is missing, the granting of a licence may be delayed, whilst the applicant submits more supporting information – see Section 20 about the ‘Further Information Request’ procedures.

10.5. The 'Favourable Conservation Status' Test

Conservation status is defined as “the sum of the influences acting on the species concerned that may affect the long term distribution and abundance of its population within its territory”. It is assessed 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, or will probably continue to be, a sufficiently large habitat to maintain its populations on a long term basis.”

One of the key aims of the Habitats Directive is to encourage Member States to maintain at, or restore to, favourable conservation status those species of community interest (Article 2(2)).

In order to obtain a licence to allow for the capture of EPS, damage or destruction of breeding sites, etc, in advance of any otherwise legitimate activity which may impact on the favourable conservation status of the EPS concerned, you and your consultant ecologist must demonstrate that the damage will be adequately compensated for to satisfy Regulation 53(9)(b).

Current Natural England advice is that there should be no net loss in the local population status of the species concerned, taking into account factors such as population size, viability and connectivity. Hence, when it is unavoidable that an activity will affect an EPS population, the mitigation should aim to maintain a population of equivalent status on or near the original site.

Our website should be consulted for detailed guidance on preparing mitigation proposals - <http://www.naturalengland.org.uk/ourwork/regulation/wildlife/species/epslicensing.aspx>. You will also find other useful information including Frequently Asked Questions (FAQs), Handy Hints on getting a licence (both bats and newts), and a sample Method Statement for a simple bat application and guidance dispelling the myth that providing unnecessary 'over-mitigation/compensation' will help to secure a Natural England mitigation licence.

10.6. FCS and Post Development Mitigation Monitoring

When assessing licence applications, Natural England considers whether post-development monitoring proposals, in conjunction with the other mitigation measures, will be sufficient to ensure that the FCS test will be met. The need for monitoring, and the type of monitoring required, is related to the impact of the development and the status of the EPS population. In this way, monitoring requirements are proportionate to the risk of potential impacts on conservation status. For developments resulting in low impacts, monitoring will not normally be required. A fuller explanation of our **post-development monitoring requirements** and how it forms an integral part of our decision making is set out at Annex G.

11. Consent Requirements

The majority of proposed activities require some form of consent (other than a Natural England licence) before works can commence; in many cases, this will be some form of planning consent, but in other cases it may take the form of Secretary of State 'Orders', Permitted Development Rights, Environment Agency consents, etc.

The following paragraph outlines how planning authorities are required to take account of nature conservation issues in their decision making.

11.1. The Planning System, Nature Conservation and Licensing

Guidance on the consideration that local planning authorities should give to nature conservation interest is contained in Planning Policy Statement 9 circular 06/05; Biodiversity and Geological Conservation - Statutory obligations and their impact within the planning system (see link [Planning Policy Statement 9 \(PPS9\): Biodiversity and Geological Conservation](#) [England]); and Defra Circular 02/2002. Planning authorities have a statutory duty under regulation 9(5) to have regard to the requirements of the Habitats Directive in the exercise of their functions.

Planning authorities should give due weight to the presence of a European Protected Species on a site to reflect these requirements, in reaching planning decisions and this may justify a refusal of planning permission. Alternatively, the planning authority may attach conditions or reserved matters to their consent, which must be resolved before work can go ahead.

The planning and licensing systems make independent judgements of whether a proposal meets their separate requirements. (See the figure at the end of this section illustrating the process for our most common case types).

11.2. Planning/Consent Requirements for Licensing

Natural England does not set minimum consent requirements *per se* for acceptance of a licence application. However, the level of detail we require in order to be satisfied that the three licensing tests are met is high. Generally, we would expect the planning position to be fully resolved before a licence application is submitted. Having the planning issues resolved and provision of appropriate evidence will greatly facilitate the assessment and determination of an application. The application pack includes a structured form (the Reasoned Statement – See Section 15), which guides you through the information and evidence we need. If you encounter difficulty providing that information, you should consider delaying your application in order to avoid an unsuccessful application.

11.2.1. Activities Requiring Planning Consent

This category includes the majority of licence applications. **In most cases, you will need full planning permission (or outline with all relevant conditions/reserved matters discharged) in place in order to be able to provide the level of detail and certainty we require.** For example, we will not be able to process an application if the development location/boundaries, timescales, funding or land ownership are unclear.

Note - The use of the term 'relevant' in the above context is taken to mean any condition that would have an effect on wildlife and the species subject to the licence application. For example, we want to be assured that drainage and/or balancing pond requirements have been fully resolved since they would potentially affect great crested newts.

Key Message: Applications being made in advance of planning issues being resolved.

Unless submitting under 'Exceptional Circumstances (see section 11.2.2 below) please do not submit applications prior to the development in question securing the necessary planning consents or discharge of planning conditions/reserved matters relating to wildlife.

We do understand that there are often significant time pressures in implementing developments. However, the submission of these applications prematurely does not speed up the issue of a licence. In fact, these applications are likely to receive a 'Further Information Request' decision, and if the timetable slips through a delay at planning, further changes are likely to be necessary. The additional burden that these cases place on our limited resources can also result in unnecessary delays for those applicants who have submitted their application at the correct time.

11.2.2. Exceptional Circumstances

In certain exceptional circumstances, a proposal may be sufficiently detailed to allow us to assess a licence application in advance of securing the necessary consents, where appropriate. Such cases will be required to meet specific requirements and any licence granted will be subject to a condition restricting the use of the licence until the relevant consents have been secured. Examples of circumstances where this may apply are:

1. Complex and large phased developments with outline consent granted for the full area but with full planning permission pending for individual plots within the site and/or where these plots are subject to the discharge of specific conditions or reserved matters:
 - where the principle of development is accepted by the planning authority, and
 - where a Master Plan for the site has been finalised so timeframe and areas of hard development and green areas are known, and
 - the mitigation site/species interests have been safeguarded by a legal agreement, such as a Section 106 Agreement, and
 - where mitigation is not dependent on the new buildings, and
 - where to delay the timing until all consents are in place would adversely affect protected species and the development timetable, and
 - an Ecological Management and Maintenance Plan (or similar) has been agreed, and
 - the timescale for development can be provided with a commitment to commence and fund the works.
2. Situations where full planning permission has been secured but conditions cannot be discharged until the licence is issued (i.e. the planning permission includes a condition requiring a licence to be obtained).

3. Situations in which a final Secretary of State decision is pending and where a clear timescale can be provided with a commitment and funding to commence works. For example infrastructure projects such as new or improvements to highway schemes.
4. Schools or other public projects with outline and/or full planning permission pending,
 - with evidence that the funding is assured but full planning permission is dependent on completion of procurement programme to select building contractors or other specific reasons, perhaps with a Resolution to Grant secured from the LPA, and
 - where a Master Plan (if appropriate see Section 14 for further guidance) has been finalised so timeframe and areas of hard development and green areas are known, and
 - the mitigation site/species interests will be safeguarded by a legal agreement for example a Section 106 Agreement, and
 - where mitigation is not dependent on the new buildings, and
 - where to delay the timing until all consents are in place would adversely affect protected species and the development timetable, and
 - where a clear timescale for the development can be provided with a commitment to commence and fund the works.
5. To let pre-development enabling works start, e.g. demolition of buildings or decontamination of land where full planning permission is pending or not needed, but the principle of the associated development is accepted.
 - where a case for preserving public health or public safety cannot be made, and
 - with a Resolution to Grant secured from the LPA, and
 - where a Master Plan (if appropriate, see Section 14 for Master Plan guidance) has been finalised so timeframe and areas of hard development and green areas are known, and
 - the mitigation site/species interests will be safeguarded by a legal agreement for example a Section 106 Agreement.
6. Projects where planning permission is in place and works are underway, but as a result of changes to habitat on site, EPS are found which results in a need for a licence and possible planning re-negotiations. For example, piles of spoil or rubble as a result of the development work providing new suitable habitat for great crested newts.

If we decide to issue a licence in advance of full planning consent or outline planning consent with conditions or Reserved Matters being secured, we will attach a condition to the licence requiring all necessary permissions to be obtained before licensed activities can commence. A sample of licences will be checked for compliance and licences may be revoked if it is found that the licence is in breach.

It should be noted that the scenarios given above are only examples and there may be other situations broadly comparable to these which Natural England might accept; however, each application will be assessed on the evidence provided.

If an application is to be submitted on an exceptional basis you must make this clear in a covering letter. Clearly set out the circumstances that meet the requirements given in the examples above and provide the evidence in the Reasoned Statement.

Key Message: Exceptional Circumstances. It should be recognised that there is an increased risk of refusal when applying for a licence on an exceptional basis.

If a licence is issued before full planning consents are in place, we may condition the licence to ensure that **planning conditions, reserved matters and/or Section 106 Agreements** relevant to the wildlife elements of the planning consent which are intended to be and are capable of being discharged before development begins, must be resolved and consented before the licensed activities can commence.

This means that the licence will not be valid until the above matters have been discharged or completed. See Section 18 Licences and Licence Conditions. If you commence works without the necessary planning consents in place, you will be in breach of your licence and may be committing a criminal offence. In such cases Natural England will consider taking enforcement action.

11.2.3. Discharge of Planning Conditions

A licence will not generally be issued until planning conditions relating to wildlife, which are intended to be and are capable of being discharged before development begins, have been discharged. We will require evidence such as copies of relevant consents or written confirmation from the appropriate authority that the matters have been resolved to their satisfaction and the works may proceed.

11.2.4. Activities Not Requiring Planning Permission

Some proposals affecting EPS do not require planning permission. Another type of consenting regime may be relevant (e.g. Forestry Commission or Environment Agency consents, or works carried out under General Powers of the Highways Act 1980) or the proposal may be classed as Permitted Development. The licence will be determined on the basis of the information supplied in the Reasoned Statement.

In these circumstances, Natural England requests that you provide more detailed information about the proposed activity, the need it is addressing and the legal basis under which it is being undertaken (e.g. that it is deemed Permitted Development or will result from a statutory requirement under other legislation) or that the proposed activity is required for imperative reasons of preserving public health or public safety.

To assist the applicant in addressing these points, the Reasoned Statement document is structured to require the provision of statements and evidence in response to a series of specific questions.

11.2.5. Site Investigation Work

Certain works may be required in advance of the development work to either inform a planning decision or to discharge a planning condition. If after using avoidance measures, e.g., adjusting the location and timing of trial pits, etc. the risk of affecting EPS is high, these works will require licensing, and Natural England has to assess the proposal under the 'three tests' set out at Section 10 of this guide. Applications will need to comply with the document requirements explained in this guide.

Examples of such works are:

Archaeological Investigations or Assessments, e.g. excavation of a small number of trenches as a pre-cursor to development to either inform a local planning authority decision or as a requirement of a planning condition;

Any geological site investigation work, e.g. boreholes and test pits where there will be impacts on EPS. It is also expected that the impacts of associated elements such as site access and traversing the site should be included within the application.

Important Note: Once the licensed site investigation work has been completed any subsequent development work of the site may require licensing. In such circumstances Natural England will require a new application pack to be submitted since the purpose of the activity has changed. It is not acceptable to modify the site investigation licence.

Key Message: Consents - Before we start assessing an application, we will require information on the consent status for the proposed activity; this might be a statement that consent is not required, evidence of consent secured or an explanation of why a licence is being sought in advance of securing consent. We ask for this information in the Reasoned Statement (see Section 15).

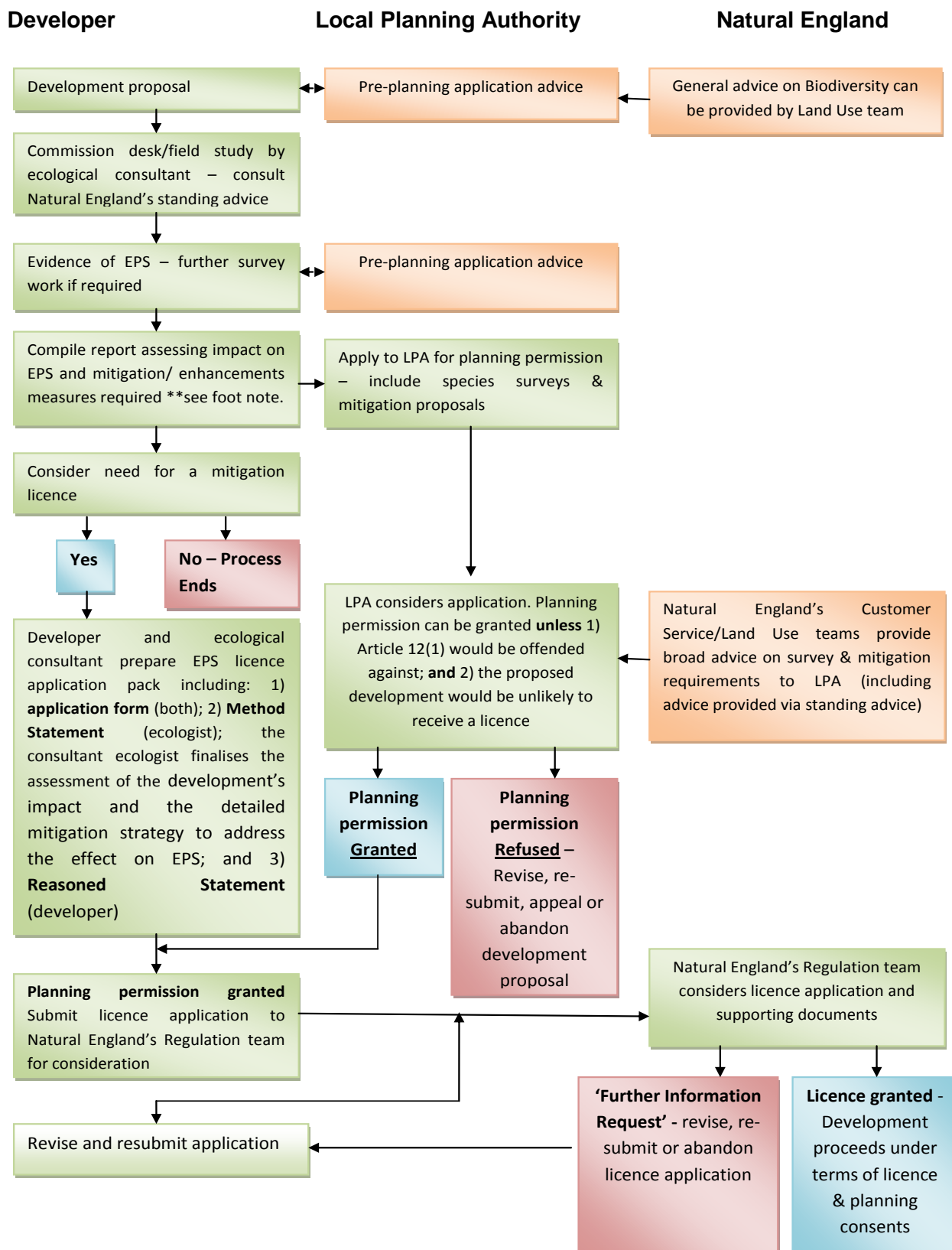
11.2.6 Nationally Significant Infrastructure Projects (NSIP) and EPS

For NSIPs which involve EPS, Natural England's Regulation team will provide NSIP developers with early advice and opinion on their protected species proposals in relation to **all 3 licensing tests without a planning consent needing to be in place**. This is done so that the Infrastructure Planning Commission (IPC) can have confidence that Natural England, as the relevant licensing authority, has considered the issues relating to protected species. Natural England have prepared a guidance note ([WML-G36 - NSIP and EPS Licensing](#)) to help NSIP developers and developers' consultant ecologists understand the process for engaging with Natural England's Regulation team about issues relating to EPS and licensing.

Early engagement with licensing issues, well in advance of submitting the NSIP application to the IPC for a Development Consent Order, is strongly advised. The guidance note sets out who to contact and when, and what information we will require from you to assist as best we can.

For further information on NSIPs, the IPC and working with public bodies can be found in the IPC's Guidance note 11: <http://infrastructure.independent.gov.uk/wp-content/uploads/2011/09/Advice-note-11-Working-with-public-bodies-version-2.pdf>.

EPS Mitigation Licensing – includes development and other activities (other than survey or conservation work) impacting on EPS*



*This process map covers our most common case types, i.e. where planning permission is needed and secured before applying. Consult the guidance for more details.

** Try to design scheme with no impacts on the species.

12. The Application Pack

The application pack consists of three documents: 1) the **application form**; 2) the **Method Statement**, and 3) the **Reasoned Statement**. Details of each document and its purpose are set out in the following sections.

Key Message: SMART documents - Try to imagine having no knowledge of the site and receiving your application. Is the content of the application pack easy to follow? To allow us to quickly assess the application pack it is essential that the Method Statement, Reasoned Statement and other supporting documents are prepared using the SMART principles.

Specific - Provide only information relevant to the application and the species. The provision of tables and photographs helps.

Measurable - Be clear where timescales apply. A table of works is essential.

Achievable - If you propose to undertake an activity you should ensure, as far as possible, that you can deliver it. If an element of mitigation needs planning permission (or any other form of consent), make sure that it has been granted, or that your timetable takes into account any delays that might be caused whilst you wait for that to be resolved. If you are proposing measures on land not in your client's ownership, make sure your client has secured written consent from the relevant landowner before submitting the application pack.

Realistic - Don't propose timescales that are highly unlikely to be achieved. This is especially important if you seek a licence in advance of all consent/reserved matters being resolved. You may not be able to take action until these are discharged, so it is vital that your timetable includes enough time for this stage.

Time limited - Don't leave timescales open ended.

Keep the documentation specific and only include extracts from reports where the species concerned is the main focus of the report, i.e. do not include detailed reports of the plants found on site where the application relates to great crested newts.

13. The Application Form

This document requests the applicant's details, the consultant ecologist's details (including skills and experience in relation to the species concerned), a brief summary of the proposed activity requiring a licence, details of the species, numbers and what methods are proposed to be employed.

The application form includes a declaration statement. Both the applicant and the consultant ecologist are required to sign and date the form. Failure to sign and date the form will result in a refusal of the application. It is an offence to make a statement or representation, or furnish a document or information which is false for the purpose of obtaining a licence.

14. Method Statement – The ‘Favourable Conservation Status’ Test

The Method Statement is used by Natural England Wildlife Advisers and/or Species Specialists to assess whether the Favourable Conservation Status ‘FCS’ test has been met; that is, that 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 as set out in Section 5.

Natural England’s Wildlife Advisers assess Method Statements using a combination of their species knowledge, the mitigation guidelines and advice and guidance from our Species Specialists.

The Method Statement is normally prepared by a consultant ecologist or a suitably qualified person since the content requires specific species-related knowledge to compile. It is split into two components:

- (a) the **background and supporting** statement, and
- (b) the **delivery** document.

The **background** document is structured to gather information about the proposed work and details of surveys undertaken at the site to gather data about the species, numbers and how they use the site. In addition, it requires an impact assessment and land ownership details of any site used for mitigation if it is not owned by the applicant.

Important Note: Surveys - If permission is refused for survey purposes on land outside the ‘developer’s’ ownership (prior to the submission of an application) we will require evidence that attempts have been made to gain consent and access to the land for survey purposes.

The **delivery** document contains details of the mitigation and compensation strategy. It needs to specify:

- the works that are to be undertaken by the consultant ecologist or a suitably qualified person in respect of the species; and
- the works to be undertaken on site by the person commissioning the work or those authorised to act on their behalf; for example, the site manager and/or workforce where the destruction of a breeding site is licensed and the creation of new ponds or roosts is planned.

It also includes commitments for the future management of the site, ensuring delivery of post-activity works and monitoring of the species. An essential element of the delivery document is the Timetable of Works. This needs to clearly set out the timing for the activities being licensed. This needs to be realistic in terms of our processing timescale, the securing of any form of consent for the proposed activity and avoiding sensitive periods of the year for the species concerned.

The **delivery** document will be attached to any licence issued.

Key Message: Delivery of Mitigation – The Method Statement ‘Delivery’ document forms part of any licence issued and it is therefore a legally enforceable document. This is the section that

must be updated and resubmitted for assessment should any aspect that would materially affect the delivery of the mitigation proposals within the Method Statement be changed. See Section 21 – Modifications to Licences.

Do Not Submit 'Dual' Method Statements

Natural England will not accept or assess licence applications which include more than one version of a Method Statement. It is not acceptable for applicants to submit two or more versions of a mitigation scheme for the same application (e.g. Section E proposing reduced trapping effort) in the hope that if the first is not acceptable the alternative might be. Such an approach will not save time for Natural England in assessing applications or yourselves in preparing various versions of the scheme. The clear consequence of such an approach would be the significant increase in handling, transmission and assessment of Method Statement documents.

It is likely to lead to confusion in several ways, including:

- which version should be assessed first;
- when different versions are sent separately, the cases might be allocated to different officers thus resulting in duplication of effort and potentially the issue of two licences, or two 'further information request' responses, for the same site; and
- sections other than (E) of a Method Statement may require revision and thus neither of the submitted versions would be acceptable.

Natural England expects the consultant ecologist to use their knowledge and experience of producing mitigation schemes that applies the principles of the mitigation guidelines. **Where a deviation from the guidelines is proposed the consultant must provide a full and reasoned justification in order to allow Natural England to fully understand what is being proposed.**

Key Message: Method Statement - It is the applicant's responsibility to produce mitigation proposals within the Method Statement, normally through a suitably qualified ecological consultant. It is not Natural England's role to produce mitigation proposals on their behalf. We have produced specific mitigation guidance for both bats and great crested newts which are available free from the Natural England enquiry service (Telephone: 0845 600 3078, email enquiries@naturalengland.org.uk) or from the web site at <http://www.naturalengland.org.uk/ourwork/regulation/wildlife/species/europeanprotectedspecies.aspx#13>

14.1 Master Plans

For phased development a master plan is required to help assess the overall impacts of the proposed development on the EPS population present and the proposed mitigation across the whole project. This will help to ensure that all in-combination effects across the entire site have been considered and that mitigation measures are sufficient and coherent. The master plan can be prepared at a less detailed level than would be required for applications for individual phases/plots.

The method statement for each new application for a separate phase/plot should include all relevant information to make it a 'stand alone' document, and we advise applicants to ensure that each application (includes and) refers to the agreed masterplan and any existing licences.

It is the developer's responsibility to finance this work, regardless of ownership. Natural England advises developers working on a large phased or multi-plot site to work co-operatively in providing a master plan. Mitigation for each licence application will normally be separate, but the overall plan will take the impacts of the entire scheme into consideration.

The following link provides further guidance on [Master plans](#).

Important Note: The master plan guidance above has been drafted with a bias towards great crested newt projects but the principles apply equally to other EPS. It is intended to produce further guidance in due course.

Key Message: Master Plans - A master plan *must* be provided with the first application for a phased/multi-plot development site. This could include applications for the preparation of sites before the first phase/plot is started. Failure to include a master plan will result in Natural England issuing a 'Further Information Request' for your licence application. The agreed master plan should then accompany each application for a new phase of the development. Changes to an agreed master plan must be agreed with Natural England.

15. Reasoned Statement - 'Purpose' & 'No Satisfactory Alternative' Tests

This document is used by our EPS Advisers to assess whether the above two tests have been met. It requires you to set out your views and provide evidence to demonstrate that the proposed activity meets one of the prescribed purposes. In addition, evidence is required to demonstrate that there is no satisfactory alternative to undertaking the activity as proposed in the licence application.

Natural England does not set minimum consent requirements *per se* for acceptance of a licence application. However, the level of detail we require in order to be satisfied that the three licensing tests are met is high. Generally, we would expect the planning position to be fully resolved before a licence application is submitted. Having the planning issues resolved and provision of appropriate evidence will greatly facilitate the swift assessment and determination of an application. (See Section 11 Consents). It is very unlikely in the absence of the planning position being resolved that you will have the detailed information we need in this form to be able to satisfy all the licensing tests.

We recommend that you read the guidance at the top of the Reasoned Statement form and the questions, and if you have any difficulty providing the required information, we suggest that you delay submitting an application until you have everything you need. For example, we will be unable to assess an application if the development location, timescales, funding or land ownership is unclear.

15.1 Statements and Evidence – Presentation

Natural England uses two distinct elements of the Reasoned Statement that Natural England uses to assess a licence application and determine whether it meets the licensing criteria of Regulation 53(2)(e) – Preserving public health or public safety or imperative reasons of overriding public interest. Those two elements are the statements and evidence provided by the applicant to demonstrate the ‘need’ and how it meets the licensing criteria.

To assist you with the preparation and presentation of the statements and evidence, some simple examples are given at Annex C that deal with the tests for preserving public health and public safety, overriding public interest and no satisfactory alternative. The examples have been compiled purely to demonstrate how statements and evidence should be presented to Natural England. The examples are fictional and not based on any previous or current licence application. Presenting information in this manner will allow the Senior Licensing Officer to more quickly assess your application and enable them to determine if a licence can be issued.

The format at Annex C is based on the April 2009 version of the Reasoned Statement. This form may be subject to further revision in the future and some of the wording may be altered. However, as mentioned above, these examples are only intended to demonstrate how information should be presented. These examples should not be construed as guidance on what constitutes ‘preserving public health or public safety’, ‘imperative reasons of overriding public interest’ or ‘no satisfactory alternatives’.

You may be confident in your ability to complete the Reasoned Statement, however if you have concerns, we suggest you consider employing the services of a planning consultant or other suitably qualified person (e.g. a surveyor, architect or similar) to assist you in its completion in view of the potentially complex issues that need to be addressed.

15.2 Structure of the Reasoned Statement

The document is structured using the following headings

Part A – Site Details. Simply requires details of the site name and address, and brief (one line) summary of the nature of the proposal.

Part B – Consent Status. Seeks information about the planning permission status (or other appropriate consent), if applicable.

Part C – Details of Consent. Where applicable, this section seeks information about the planning (or other consent) status, any outstanding issues, and the consenting authority contact details.

Part D – Consideration of Regulations. Requires the applicant to provide statements and evidence in response to a set of questions. Applicants need to complete either ‘a’ or ‘b’ below (dependent upon the ‘purpose’ of the application (as described at Section 10)) and Section c.

a. Preserving Public Health or Public Safety, or

b. Imperative Reasons of Overriding Public Interest; and

c. No Satisfactory Alternative.

Part E – Declarations. Confirms that the individual who prepared the information accepts responsibility for its accuracy and that it is correct to the best of their knowledge and belief.

Part F – Essential Document Checklist. Requires submission of Planning Permissions and other consents.

Part G – Document Annex Format. Sets out the required presentational format for the submission of documents or extracts from documentation and reports as evidence.

15.3 Release of Information to Third Parties

The public have a general right of access to the information held by Natural England and other public authorities. In relation to licensing this extends to all information submitted for the purpose of securing a licence, although people's names and addresses and financial information is generally excluded unless it is already in the public domain, such as through the consideration of planning applications.

This right of access comes from:

- The Data Protection Act 1998 (DPA);
- The Environmental Information Regulations 2004 (EIRs); and
- The Freedom of Information Act 2000 (FOIA).

Full details of Natural England's information policy are set out on our website and can be found at the following link: http://www.naturalengland.org.uk/freedom_of_information/default.aspx

It is important to be aware that the Access to Information legislation gives any person of any nationality the right to request information held by Natural England, or other public bodies. The information can be requested for any purpose. The legislation is fully retrospective. All Natural England's information is covered by the legislation, in every format: requests apply to emails, personal notebooks, miscellaneous collections of papers, as well as our registered paper and electronic files.

Your information will be stored and processed in accordance with the Data Protection Act 1998. This Act gives you, as an individual, the right to know what data we hold on you, how we use it, with whom we share it and for it to be accurate.

The information will be used by Natural England to undertake licensing functions. To do this we may have to discuss applications, licensing decisions, reports and returns with third parties.

Natural England recognises there is significant public interest in wildlife licensing and in those who benefit from receiving a wildlife licence. Therefore, we may make information publicly available. Information released may include, but is not limited to, your name or business name, application and licence details as well as reports and returns. Natural England, however, realises that some licensed activities can be sensitive and we **will not** release information that

could harm people, species or habitats. For example, by not releasing the names and addresses of individuals or the location of the licensed activity.

Natural England or its appointed agents may use the name, address and other details to contact you in connection with occasional customer research aimed at improving the services that Natural England provides to you.

We will respect personal privacy, whilst complying with access to information requests to the extent necessary to enable Natural England to comply with its statutory obligations under the Environmental Information Regulations 2004, and the Freedom of Information Act 2000.

15.4 Commercial Confidentiality

Subject to certain exceptions, detailed in the Access to Information legislation, all information submitted to Natural England supporting a licence application may be released on request.

Natural England licences are conditioned requiring certain information, such as end of licence reports, monitoring data and survey data, to be submitted to Natural England. Withholding conditioned information may lead to a licence breach (which under regulation 58 of the Conservation of Habitats and Species Regulations 2010 is an offence).

To help avoid such difficulties, it is recommended that contractual terms and conditions make it clear that submitting records to Natural England and other bodies specified in licences is a legal requirement.

16. Submission of Application Packs

Once you (and/or your agents) have completed all the necessary forms and you have all the supporting information, you should submit them to Customer Services Wildlife Licensing using the following means and adhering the specific requirements as detailed in the following sections. From 15th February 2011 we removed the requirement to submit a paper copy of the application documents, although we have retained the option for people to submit paper applications, if desired.

16.1. Postal submission

**Natural England
Customer Services Wildlife Licensing
European Protected Species
First Floor
Temple Quay House
The Square
Bristol
BS1 6EB**

16.1.1. Paper

If you are submitting a paper application you are required to provide;

2 paper copies of the Application form,

3 paper copies of the Method Statement and

1 paper copy of the Reasoned Statement.

16.1.2. Electronic Applications

Electronic applications help us (and you) reduce the carbon footprint associated with licensing. We encourage you to submit your application either on CD or by email (maximum size limit for emailed documents is 5Mb). For large scale proposals/developments and/or large size documents, please use a CD instead of email.

CD submission

A single copy of your application can be sent on CD to Customer Services Wildlife Licensing by post (see address above). Please take care in setting up the folder structure as detailed below and in our [Compression Guidance](#).

Email submission

We are working to continuing to develop our capacity to accept **all** applications by e-mail however at present we can only accept e-mails where they are no more than 5MB. Please do not send DVDs as we cannot read them. Our compression guidance will help you reduce the size of your application pack. The preferred folder structure to use is detailed below and is in our [Compression Guidance](#).

Send your application to 'eps.mitigation@naturalengland.org.uk' mailbox.

For large scale proposals/developments and/or large size documents, please submit your application on CD rather than by email.

We may also request a single paper copy of particularly large scale, phased or multi-plot developments or complex cases, which usually result in an increased volume of documentation, to aid assessment. Customer Services Wildlife Licensing will formally request such copies of an application, unless it is clear to you that your case fits the above criteria and you decide that a paper copy should also be submitted.

Key Message:

Presentation. To help us efficiently manage the electronic data and speedily process your licence application we ask that you take note of the following when preparing and submitting your licence application documents.

Naming Files. Please ensure file names are no longer than 20 characters (including spaces) long. We have experienced problems copying and moving files to our shared computer servers where file names exceed 20 characters

Protecting Files. Please ensure that you do not place protections on your application files. We have experienced problems where protected documents have prevented us copying documents to our shared computer servers.

Use of Folders. Please place your documents into distinct folders, as detailed below. This will greatly assist Customer Services Wildlife Licensing to speedily place the data on to our shared computer servers and assist our advisers to locate specific documents they need to make their assessments.

Folder 1. 'AppForm' - The Application form and associated documents, including your covering letter.

Folder 2. 'MS' - The Method Statement (including any maps, plans or photographs that you wish to be considered in the FCS assessment). If the method statement has been divided into 'Document 1' and 'Document 2' then please place all the documentation relating to Document 1 in a folder entitled 'MS1' and all the information relating to Document 2 in a folder entitled 'MS2'

Folder 3. 'RS'- The Reasoned Statement (including planning permissions or other consents, agreements and evidence to supporting statements).

Folder 4. 'MS Append' - Appendices (to the Method Statement such as survey reports, management plans, etc).

Key Message: Please ensure that all the documents can be fully viewed and are legible. If the assessor cannot read the text on a document, or a plan cannot easily be viewed, we will need to come back to you to revise and represent the documents.

17. Processing Applications

17.1. Timescales

Customer Services Wildlife Licensing aims to acknowledge receipt of licence applications within 5 working days of receipt. We will acknowledge receipt to both the applicant and the consultant ecologist. We aim to determine and issue decisions within 30 working days of receipt of the fully completed documents of an application pack – application form, Reasoned Statement, Method Statement and supporting documents (where applicable). We will notify both the applicant and the consultant ecologist of our decision. The 30 working days starts from the date of receipt at Customer Services Wildlife Licensing in Bristol.

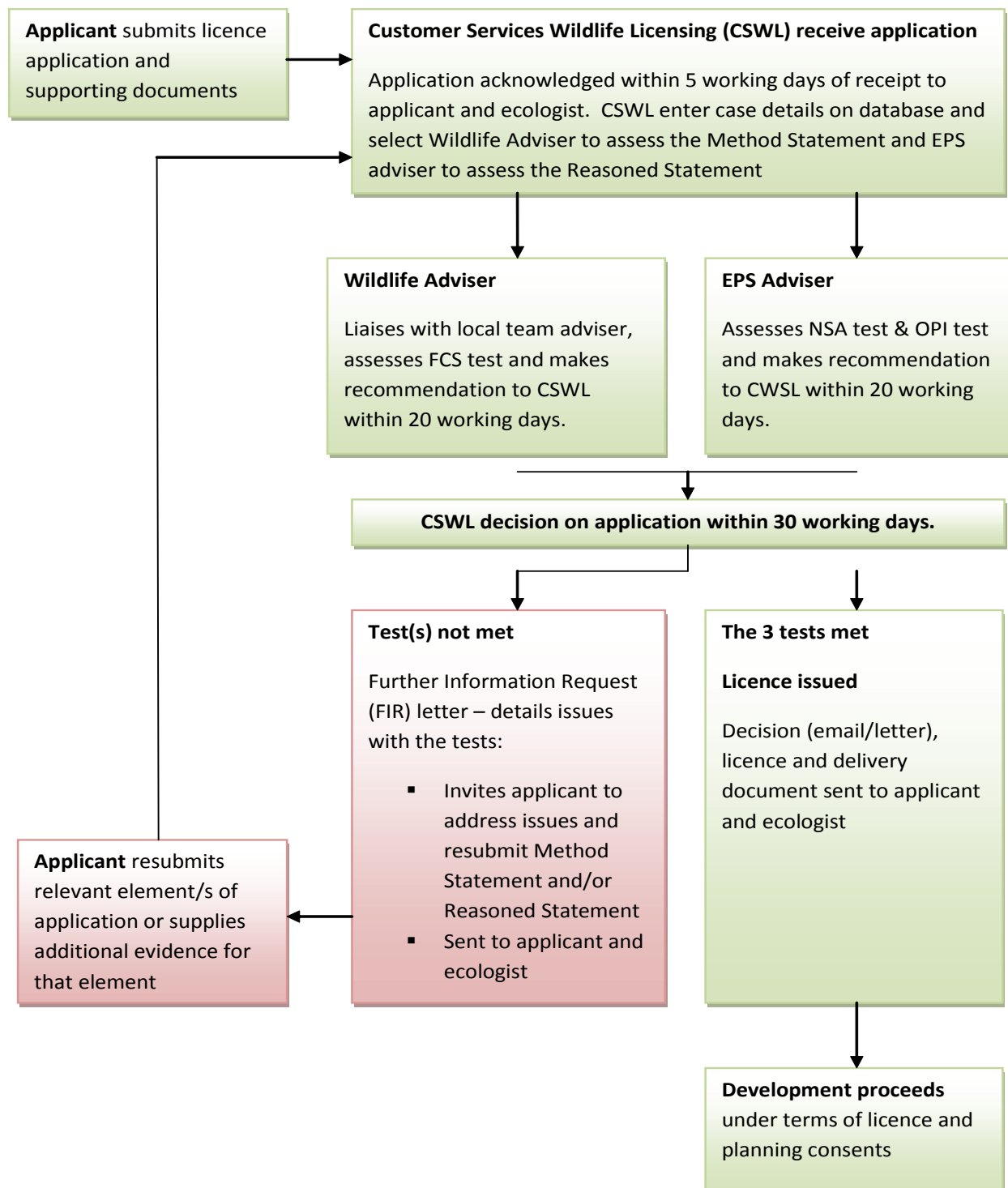
These timescales also apply to re-submissions and modifications, and we aim to make our licensing decisions well within the 30 working day target. To put this into context, in 2010-11 decisions made on re-submissions took on average 14 working days and 16 working days for modifications. The complexity of the case and the types of changes to be made can affect the time taken for re-assessment. The scale of changes between original and re-submitted applications can vary considerably. The volume of licence applications submitted to Natural England also varies during the year, with some periods being significantly busier than others. Please be aware, therefore, that, although we will endeavour to complete the reassessment as quickly as possible, **it may take up to 30 working-days to issue a licensing decision.**

We also publish our licensing statistics (see <http://www.naturalengland.org.uk/ourwork/regulation/wildlife/licences/statistics.aspx>) so applicants can see how we meet our targets.

17.2. Process

All EPS mitigation licence applications are processed as per the following diagram.

EPS application procedure flowchart (updated December 2011)



17.3. Is there a Fast Track to obtaining a licence?

We understand that applicants want their licence application processed as speedily as possible and that in many cases there are significant economic and social pressures being applied to get a licence in the shortest possible time. However, there is no 'fast track' route for licence applications. We aim to ensure that every application is processed in a fair and consistent manner.

In general the best way to achieve a prompt assessment of an application is to ensure that we are provided with all of the necessary documentation in a completed application pack. Also, ensure that it is of sufficient quality (by adhering to our published guidance) and that it follows SMART principles.

The only exception we make to the general rule above is for cases where there is a clearly demonstrated health or safety risk to the general public and where action is required as a matter of urgency to alleviate the danger. In such cases we will prioritise these cases and do our utmost to process the application as quickly as possible.

17.4. Site Meetings

Natural England Regulation Delivery team members (Wildlife Advisers, EPS Advisers) and Senior Specialists who deal with EPS licensing will not normally attend site meetings to discuss the proposed activity or mitigation measures in advance of a licence application. It is more appropriate for our Land Use team colleagues to be involved at an early stage of a proposal and they are also likely to be involved in providing views to local planning authorities at the pre-licensing stage. Additionally, Wildlife Advisers will not generally attend site meetings to discuss their assessment of an application or any subsequent modifications to the agreed mitigation proposals.

Occasionally, there may be exceptional circumstances where a site visit or meeting would be justified but these are infrequent.

18. Decision Making

In Natural England, all decisions are taken in accordance with our internal governance procedures and the organisation has delegated various decision-making powers to its officers in accordance with the powers vested in it under the Natural Environment and Rural Communities Act 2006. The decision-making powers are delegated to the officer level that is deemed appropriate for the specific issue. If the issue is complex, novel or requires more scrutiny the decision can always be taken at a higher level within the organisation.

Natural England will assess licence applications on a case by case basis and will apply the principle of proportionality as endorsed in the guidance published by the European Commission – '[Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC \(final version February 2007\)](#)'.

Extract from Section III.I.2 – Article 16.

“Applying proportionality does not overrule or marginalise any of the conditions applying to the derogation scheme but can adapt their application in the light of the overall objective of the Directive. As a general rule, the severity of any of the conditions or “tests” will increase with the severity of the impact of a derogation on a species/population”.

In determining licence applications Natural England staff assess the evidence presented in the application to determine if the ‘three tests’ under the Regulations have been met. They make use of a combination of their knowledge and experience, published guidance and also consult colleagues with specialist skills when required (e.g. in planning, species protection and environmental law). A written record of each decision is made. The process is subject to regular review, and there is a programme of continual development and training for staff, which includes case discussions and workshops with legal advisers and specialists.

Natural England aims to judge each application in a fair, proportionate and unbiased manner in line with our published guidance. To put this into some context Natural England is working towards the delivery of four Strategic Outcomes (details can be found at the following link - <http://www.naturalengland.org.uk/about/default.htm>). The third Strategic Outcome is for the **sustainable** use of the natural environment and includes an objective to ensure that land is used for social and economic development in a way that recognises, protects and enhances the value of the natural environment.

Natural England determines licence applications with regard to the requirements of the legislation. In doing so it will determine whether the proposed activity addresses a specific need and whether species protection can be ensured through the mitigation or compensation proposed in the licence application. Licence applications should only come to Natural England when the proposal is sufficiently advanced and there is enough detail about the proposal for us to properly consider an application and determine whether the ‘three tests’ are met. Natural England has published a guidance note, [WML-G24](#), to explain how it assesses licence applications against the three tests.

All ‘three tests’ will be assessed in parallel. A decision will be made and notified to the applicant (copied to the consultant ecologist) by Customer Services Wildlife Licensing. This may either be in the form of a licence or a ‘Further Information Request’ (FIR) letter.

19. Licences and Licence Conditions

Where the application pack fully meets the licensing requirements we will issue a licence.

Mitigation licences are issued by Natural England in the name of the applicant (who is thereafter referred to as the licensee). It will also name the ecological consultant working on behalf of the licensee. All mitigation licences will name the relevant species, the permitted actions and where appropriate the maximum numbers to be affected.

A licence will also contain a standard set of conditions, including a condition (from December 2011) explaining that ‘All persons authorised to act under this licence are by virtue of that grant of authority *the holder of a licence* for the purposes of the offence in regulation 58(1) of the 2010 Regulations’ and a condition explaining that post development monitoring data must be sent to

the Local Records Centre within a certain time period. In most cases the licence will comprise a 3 page document and the Delivery section of the Method Statement (including maps where applicable).

Key Message: Licence Compliance - On the 21 November 2007 a new offence was introduced for non-compliance with any EPS licence issued after that date. Failure to adhere to the terms of the licence (which includes the undertakings given in the Method Statement) will result in Natural England taking enforcement action against the licensee. A person found guilty of an offence is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.

19.1 Roles and Responsibilities

With several parties involved in the licence application process and in the carrying out of work under licence, it is important that the different roles and their associated responsibilities are understood. Good communication between all parties is essential to ensure that activities are carried out in accordance with the licence and Method Statement and to avoid committing criminal offences. Many failures to comply with the licence stem from poor communication between the licensee, the consultant ecologist (including accredited agents), site managers and the workforce. Below is a list of the most commonly recognised roles.

Key Message: Liability under a licence – All persons authorised to act under the licence are by virtue of that grant of authority the holder of a licence for the purposes of the offence in regulation 58(1) of the 2010 Regulations. It is therefore important that all persons authorised to act under a licence reads and understands the terms and conditions of the licence and the associated Method Statement and are aware that 58(1) of the 2010 Regulations states that 'it is an offence for the holder of a licence to contravene or fail to comply with any condition attached to the licence'.

This licence condition makes it clear that everyone authorised to act under a licence is responsible for complying with the conditions of that licence and they are liable to prosecution if they fail to do so. This was the legal situation following the introduction of enforceable licence conditions in 2007, but during the consolidation of the regulations in 2010 the wording was inadvertently amended so that the offence applied only to the licensee.

This change brings mitigation licences in line with other licences issued by Natural England under the Conservation of Habitats and Species Regulations 2010, which (where appropriate) already include this condition. A person is not guilty of an offence if they took all reasonable precautions and exercised all due diligence to avoid commission of the offence; or the commission of the offence was otherwise due to matters beyond that person's control (see 58(3) for exact wording).

19.1.1 Licensee

The licensee (most commonly the developer) named on the licence will be responsible for ensuring that all activities carried out on site in relation to the licence comply with the terms and conditions of the licence. It is therefore important that the licensee reads and understands the terms and conditions and the associated Method Statement. However, all persons authorised to act under the licence are by virtue of that grant of authority *the holder of a licence* for the purposes of the offence in regulation 58(1) of the 2010 Regulations. This means that those persons authorised by the licensee also have a responsibility for ensuring that the licence is understood and complied with.

We advise that the licensee, with the assistance of their consultant ecologist, puts in place a system of site workforce briefings to ensure that as far as possible all site staff and contractors have a basic understanding of the species, the law and licensed works. This would include explanations, as in the case of great crested newts, as to why lengths of amphibian fencing have been installed around the site and associated ponds, why it is important ensure that any fencing remains intact, identifying any receptor areas, and what to do if great crested newts are found sheltering in other areas of the site.

It should be noted that the licence does not authorise the licensee or their workforce to undertake any capture or handling of the species concerned. Such activities can only be undertaken by the consultant ecologist and/or their accredited agents (with the exception of some great crested newt work – for more information see section on ‘Assistants and great crested newts below’).

The licensee must provide a letter of authorisation to all persons they employ to carry out work under the licence directly in relation to the species concerned. Such persons would include any accredited agents or assistants – see below for more information.

19.1.2 Consultant Ecologist

The consultant ecologist named on the licence (or ‘named’ ecologist), having satisfied Natural England that they have the relevant skills, knowledge and experience of the species concerned, will be responsible for undertaking and/or overseeing the work done in respect of the licensed species. This will be detailed in the Method Statement and specifically includes the handling of species, as well as the reporting and monitoring of licensed activities in relation to the species concerned. The ‘named’ ecologist also has a responsibility for ensuring that the licence is complied with (see above section). In addition, the ‘named’ ecologist will be responsible for advising the licensee on the suitability and competence of any accredited agent or assistant employed on the site to undertake the required duties and may include direct supervision of agents, where appropriate – see below for more information.

19.1.3 Accredited Agents

Often, due to their involvement in a number of licensed sites, a ‘named’ ecological consultant will use the services of one or more accredited agents. Any accredited agent must be appointed by the licensee and hold a letter confirming their appointment. It is a condition of the licence that the accredited agent will make the letter available, on demand, to any Police Officer or officer of Natural England.

Where it is proposed that the accredited agent(s) undertake activities on behalf of the ecological consultant, such as the handling of the licensed species, the accredited agent must personally hold a licence issued by Natural England that allows them to undertake those actions. Such licences will be issued for ‘scientific or educational’ purposes – See Annex A for more information. It is recognised that accredited agents that have demonstrated their competence

in relation to the licensed species may work without the supervision of the named ecological consultant. Accredited agents will not be named on the licence.

19.2.4 Assistants

Larger development sites may require employing additional people to assist the ecological consultant and/or accredited agent in day to day licensed work on site. Generally, such works will not involve activities that might constitute offences under the legislation and thus the individual will not require their own personal licence. The assistant role recognises that many tasks can be carried out without a high degree of specialist knowledge but where the consultant ecologist has satisfied themselves that the individuals are competent. In all cases Natural England expects that assistants will be supervised on site by either the ecological consultant or an appointed accredited agent. Please see section 19.2.5 for exceptions to this.

19.2.5 Assistants and great crested newts

Natural England recognises that it is not always commercially sustainable for consultancies to employ licensed staff to inspect pitfall traps on a daily basis and relocate any animals captured. It is our view that provided the assistants, be they the developer's own 'site staff' or the consultancy's 'field workers', receive appropriate species training which includes handling and welfare issues, the risk of harm to any great crested newts is likely to be very low and therefore they may undertake this task unsupervised.

Therefore, Natural England has placed a set of standard conditions on mitigation licences that will **only** apply to great crested newt licences and will authorise the ecologist named on the licence to appoint persons, in writing, to specifically undertake the limited task of inspecting pitfall traps and/or artificial refuges (e.g. carpet tiles) and remove and relocate any captured animals either to the other side of the exclusion fencing or to the designated receptor site(s) as agreed in the Method Statement. It is recommended that the authorised assistants carry their letter of authorisation at all times whilst undertaking the task of inspecting pitfall traps.

This policy will apply **only** to great crested newts and not other EPS, in particular bats. The reason for this is that the risk of harm from capturing, handling and releasing bats is significantly higher due to the 'fragility' of bat species. We are also mindful of the potential risk of disease transmission from bat to human.

For further details on roles, please also refer to: [Experience in great crested newt mitigation: guidance for ecologists](#) or [Experience in bat mitigation: guidance for ecologists](#).

It is essential that the licensee (and those persons authorised to act on their behalf) reads and understands the licence and its conditions.

Key Message: Validity of Licence and Conditions – Before any licensee, or those persons authorised by them, act on the licence they must ensure that **all** the consents relevant to wildlife (including conditions, reserved matters and Agreements) intended to be and capable of being discharged before the development begins have been discharged (where appropriate) by the relevant authority. **This is a licence condition.** The confirmation of discharge must be in writing from the relevant authority and must be made available to a member of Natural England staff if required to do so.

If the relevant consents have not been obtained prior to the commencement of licensed works then the licensee may be committing an offence by failing to comply with the licence conditions and therefore may be liable to prosecution.

Where a licence condition has been breached, Natural England will determine the appropriate enforcement action – see section 24.

Key Message: Handling of EPS – Where licences are issued for the capture and/or handling of EPS, please remember that only persons with specific species knowledge and skills may handle the specimens (except in circumstances covered by Section 19.2.5, Assistants and great crested newts). Those persons must be able to demonstrate that they hold a valid licence that authorises them to handle EPS. See Annex A for information on survey licences.

Key Message: Good Communication - This applies equally to all parties involved in the formation of the plans for the proposed activity, the completion of the application pack, those named on the licence and those acting on behalf of the licensee. All parties should be aware of the commitments being given in the licence and their own responsibilities to keep each other informed of their actions.

20. 'Further Information Request' Process

This is not a final decision, or a 'rejection', but informs the applicant that we have concerns with their application and that we are unable to issue a licence until we receive further information. The licensing team will endeavour to clarify minor issues either by telephone or e-mail however where there are a number of minor issues and/or those issues require the revision of documents a 'Further Information Request' will be issued. The letter will provide you with the outcome of the assessment of the application against the three licensing tests. We will provide a written explanation and state what further information you need to provide for us to allow us to issue the licence. Ordinarily, if you are able to address our concerns with a re-submission then a licence will be issued. Failure to provide the requested information or address our concerns within six months will result in the case being closed. If this happens, a new application pack will need to be prepared and submitted for assessment.

Key Message: 'Further Information Request' – You will have six months from the date of the letter to submit the information requested and/or address our concerns (see Annex F on how to re-submit).

20.1. Method Statement – Favourable Conservation Status Test Not Met

The Method Statement Delivery document forms part of a legally binding document; the information in it needs to be clear and unambiguous, so minor errors and inconsistencies often need to be corrected, before it is acceptable. We will not accept single or multiple pages for insertion into documents.

If, after assessing the Method Statement, the Wildlife Adviser has concerns about one or more significant elements or a number of minor elements, they will report to Customer Services Wildlife Licensing that the document does not meet the licensing criteria for the FCS test. In some cases, the Wildlife Adviser will contact the consultant ecologist to clarify minor issues. However, if any element of the Method Statement materially affects the delivery of the proposals and enforceability, then we will refuse to issue a licence until the failing is addressed.

Where the Method Statement does not meet our requirements we will write to the applicant with a 'Further Information Request' letter, providing guidance on the action needed to address our concerns. We will provide a copy of our Wildlife Adviser's assessment report for information. We will invite you to make a '**re-submission**' of a revised Method Statement which will be re-assessed, in most cases, by the same Wildlife Adviser. Please refer to Annex F for our re-submission requirements.

Key Message: Re-submission - When re-submitting the revised Method Statement you should supply the document on CD or can send by email to Customer Services Wildlife Licensing if less than 5MB (see section 16). The 'Further Information Request' letter detail which documents you are expected to re-submit.

Key message: Draft Re-submissions - Wildlife Advisers will not assess or peer review a draft re-submission or parts of documents to be re-submitted. Before re-submitting, consultant ecologists are advised to ensure that each point raised in the 'Further Information Request' letter and FCS Assessment report is addressed. Additionally, any deviation from the mitigation guidelines must be fully justified and explained.

20.1.1. Contacting Wildlife Advisers

Following receipt of a 'not satisfied' FCS report or a 'Further Information Request' letter and the FCS report you may wish to clarify some issues with the Wildlife Adviser. The covering e-mail or letter will provide you with the contact details including a telephone number and e-mail address. You should be aware that in the course of their day to day work Wildlife Advisers deal with a wide range of licensing enquiries, some of which may require field based assessments. Often, the adviser you wish to contact will not be in the office and they may not be able to return calls quickly without reference to case notes. We therefore advise that your initial enquiry be made via e-mail to allow the adviser time to consult their notes and call you back.

If Wildlife Advisers are away from the office for a period of time (days rather than hours) they will set up an 'out of office' notification and indicate when they will next be available. If you need to urgently speak with an adviser you should contact Customer Services Wildlife Licensing and explain the urgency. Customer Services Wildlife Licensing will do their best to assist you to resolve the situation but there may be instances where you will need to wait until the original adviser returns to the office.

We recognise that it is frustrating when you are unable to immediately speak with the person who assessed your application, which is why we request that you put your enquiry in an e-mail. The EPS Advisers will take your calls in relation to the Overriding Public Interest (OPI) and No Satisfactory Alternative (NSA) elements of the licence application but do not have the specialist knowledge to answer specific species or mitigation enquiries to do with the FCS response.

20.2. Reasoned Statement – Purpose & No Satisfactory Alternative Tests Not Met

If, after assessing the Reasoned Statement, the EPS Adviser has concerns about one or more significant elements or a number of minor elements, they will report that the document does not meet the licensing criteria.

As explained in Section 19.1 above, this will result in a 'Further Information Request' letter, explaining the decision and what action is needed to address our concerns. Again, we invite you to 're-submit' (within six months) a revised Reasoned Statement which will be re-assessed, in most cases, by the same EPS Adviser.

Key Message: Re-submission - When re-submitting a revised Reasoned Statement you should supply the document on CD or by email to Customer Services Wildlife Licensing (see section 16).

20.3. Appealing Against Decisions

There is no formal Natural England appeal process. Each application is assessed in the light of the information supplied. The issue of a 'Further Information Request' letter is not an outright refusal. In it Natural England invites the applicant to submit further information to allow the application to be progressed. It is worth noting that the majority of applicants receiving a 'Further Information Request' letter do receive a licence where our concerns are directly addressed through the re-submission of revised documents or new evidence.

20.4. Challenging Decisions

An applicant or third party may seek to challenge licensing decisions. Challenges may take several forms. Full details of Natural England's complaints procedure is set out on our website

at <http://www.naturalengland.org.uk/contact/complaints.htm>. However, the main elements are provided below.

20.4.1. Complaints Procedure

Where an applicant or a third party wishes to complain about the way the licence application has been handled or the decision reached, they are requested to submit their concerns in writing (by letter or e-mail) or via our online feedback form at:

<http://www.naturalengland.org.uk/feedback/>.

- **Step 1.** Contact Customer Services Wildlife Licensing who provided the service.
- **Step 2.** If you are not satisfied with the response, contact the Team Manager, whose contact details will be given to you at Step 1.
- **Step 3.** If you are still not satisfied with the outcome, contact the appropriate Director, whose details will be given to you at Step 2.

We will aim to acknowledge receipt of the complaint within five working days and provide a full response within 20 working days.

20.4.2. Members of Parliament

If you still feel that Natural England has not resolved the issue satisfactorily, you can ask a Member of Parliament to refer complaints about administrative actions by Natural England to the Parliamentary Ombudsman (also known as the Parliamentary Commissioner for Administration).

20.4.3. Judicial Review

Species licensing decisions can be subject to legal challenge in the Courts. The Court is generally concerned with the legality of the decision-taking. The Court cannot substitute its own decision on a specific issue for that of the decision-taker. Judicial Review is an investigation of the process followed in making a decision, not whether the decision is correct.

There are essentially 3 grounds for Judicial Review; that the decision is –

- Illegal – the law has not been applied properly
- Irrational – it is not reasonable to draw the conclusion from the information provided, and
- Procedural impropriety – a failure to undertake statutory obligations.

The court will investigate the decision making process and may decide to:

- Quash the decision
- Prohibit the activity
- Require something
- Award damages

21. Modifications to Licences

A 'modification' is a change to an existing licence, usually instigated by the licensee, to reflect a material change in circumstances on site resulting in a need to change the details of the Method Statement Delivery document and ensure that it reflects the agreed proposals with Natural England. Please refer to Annex F for our modification requirements. Also see section 17.1 and 21.2 for Timescales.

In certain circumstances there may be material changes to the legal basis of the application i.e. a modification to the consents issued. Such changes will need to be reflected in a modified Reasoned Statement and provision of the new documentation. Modified copies of the Reasoned Statement (either 1 paper or 1 on CD or by e-mail) must be submitted to Customer Services Wildlife Licensing, together with a covering letter explaining what is being sought.

Common reasons for modifications are outlined below.

21.1. Changes in Circumstances: Advice and Suggested Actions

This section aims to provide developers, project managers and ecologists with some high level generic advice and suggested actions that may be required where changes in circumstances, such as financial pressures, have impacts on projects that are subject to EPS mitigation licences. These pressures may have forced developers and/or project managers to re-think the timings for the projects or may have forced them to postpone or abandon the development project entirely. The primary focus of this section 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 delivery of developments and projects are influenced by many factors. Where projects are delayed or changed this may have a consequential impact on meeting the terms and conditions of any related EPS mitigation licence. The implications of re-scheduling 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 Customer Services Wildlife Licensing eps.mitigation@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 E 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.

21.2. Timescales for Processing Modifications

Thirty working days should be allowed for the processing of a modification request. Wildlife Advisers assess any proposed changes and this is likely to include a full assessment of the modified Method Statement to ensure consistency throughout the document. Modifications will usually be assessed well within 30 working days. **When submitting a modification please provide a licence update via a cover letter and updating the relevant sections of the method statement (e.g. the work schedule).** It is advisable to include details such as capture effort, what actions have been undertaken and what is left to be completed.

21.3. Timetable of Works

The most common reason for modifications is a change to the timetable of works as a result of delays to a project. We will require an explanation of what stage the works are at (including an update to the Method Statement and Timetable – see above) and why the extension of the timescale is necessary. A Wildlife Adviser will need to judge whether the FCS test can still be met with the new timetable. Based on their report, Customer Services Wildlife Licensing will decide whether a modified licence can be issued or a 'Further Information Request' letter is required. A cover letter explaining the reason for a modification and updating the timetable of works will greatly assist the adviser's assessment.

21.4. Change of Licensee

The **existing licensee** should write to Customer Services Wildlife Licensing quoting the licence reference number and explain what is proposed. The letter should provide details of the new licensee. The proposed **new licensee** should also write to Customer Services Wildlife Licensing quoting the licence reference number and provide a completed declaration page of the relevant application form. This is required as a formal undertaking that the new licensee accepts the agreed mitigation proposals.

Where the existing licensee is named in the Method Statement delivery document it will need to be updated and sent to Customer Services Wildlife Licensing. A modified licence will then be issued in the name of the new licensee.

21.5. Change of Consultant Ecologist

Where either the licensee or consultant ecologist terminates their contract of employment with the other, the licensee will need to secure the services of an alternative consultant ecologist and ensure they are named on the licence.

The **existing consultant ecologist** or the licensee should write to Customer Services Wildlife Licensing, quoting the licence reference and explaining what is proposed, providing details of the new consultant ecologist.

The **proposed new consultant ecologist** must write to Customer Services Wildlife Licensing quoting the licence reference and request the transfer. The letter must provide:

- full written details of previous 'mitigation' licence experience;
- details of survey or conservation licences;
- references if required (refer to the Application form for guidance); and
- a completed declaration page of the relevant application form - this is required as a formal undertaking that the new consultant ecologist accepts the agreed mitigation proposals.

Where the existing consultant ecologist is named in the Method Statement delivery document it will need to be updated. (Follow the guidance in section 20 above). A modified licence will then be issued to the licensee with the name of the new consultant ecologist added to the licence.

21.6. Disputes between Licensees and Consultant Ecologists

Where a dispute arises between the licensee and their consultant ecologist because one has terminated their contract of employment with the other, Natural England considers this to be a private matter and the licensing process cannot be used as a mechanism to resolve the dispute to the advantage of one party or another.

Where the licensee wishes to employ a different consultant ecologist to oversee the activities detailed in the approved method statement, it is our view that the licensee has the right to change who they employ in relation to the development which they are undertaking. However, it is the responsibility of the licensee to ensure that the previous consultant ecologist has been informed of their intentions before the modification request is submitted to Natural England. Provided the proposed new consultant ecologist has the appropriate level of skills, knowledge and experience to supervise the works in question, as well as holding the relevant survey licences, Natural England will approve the modification request and we are not obliged to seek confirmation from the previous consultant ecologist that they are content for this change to take place before issuing the modified licence. If the previous ecologist wishes to challenge the developer's decision to employ a new ecologist and their right to use survey data/method statement documentation previously complied by themselves then that is between them and their previous employer and Natural England will not become involved in any such negotiations. If the challenge is found to be justified then it is the responsibility of the licensee to withdraw the current modification request/modified licence and to resubmit when the dispute has been resolved to both parties' satisfaction, with a revised timetable of works where necessary.

21.7 Extension to Licensed Period

Where delays are experienced in any aspect of the licensed work, we recommend that the licensee or the consultant ecologist inform Natural England at their earliest opportunity. If an extension to the licensed period is required, it may be necessary for the Method Statement Delivery document to be modified to reflect any changes in the timetable of works. If so, it will

be necessary for the document to be re-assessed and approved by a Wildlife Adviser before a revised licence can be issued.

Where changes are required to the timetable of works we will require a covering letter explaining what stage the works are at and why the extension is necessary in addition to the modified Method Statement Delivery document. It is important to update the timetable of works to reflect what has been completed and what is still to be undertaken alongside modified timeframes, ensuring that all amendments are clear as this will assist with the Wildlife Adviser's assessment, e.g. text is bold, highlighted, or underlined. A modified licence will then be issued to the licensee for the agreed new licence period.

Key Message: Licence Extensions – We advise that you submit your licence extension request in good time and provide at least 30 working days before the licence is due to expire.

21.8 Extensions to Expired Licences

Once a licensed period has expired it is not possible to re-issue the licence. It is the responsibility of the licensee to ensure that the activity is completed within the timescales set out in the timetable or, if necessary, seek a licence extension in advance of the expiry date. If the licensed period has expired and licensable activities are still required then a new application pack will be required.

If the licensed period has expired and the licensed activities have been undertaken but the mitigation is still outstanding (not completed within the agreed timescale) then this would constitute a breach of licence under Regulation 58 and enforcement action will be instigated.

As part of the enforcement action, a post-licence commitment may be given to Natural England by the developer that the mitigation work will be completed as originally agreed (apart from the original timescale) and the work is unlikely to be a licensable activity, i.e., the implementation would not result in an offence under Regulation 41. Therefore a further licence will not be granted but the mitigation will be implemented as required by the original licensing obligation.

22. Site Visits and Licence Compliance Checks

Natural England monitors compliance with licences issued. Therefore, licensees may receive a site visit by one of Natural England's Wildlife Advisers to assess site conditions against the details given in the Method Statement Delivery document attached to the licence. It is therefore essential that the Method Statement Delivery document is updated to reflect any changes.

Rarely, Natural England may undertake a site visit prior to the issue of a licence to confirm that the details of the site are accurately stated in the application.

The majority of site visits will be arranged several days in advance and will be conducted in the presence of the licensee (or applicant) and their consultant ecologist. However, there may be occasions when a site visit will be made at short notice or where no notice is given; Natural England Wildlife Advisers have power of entry on to land in connection with licences and

suspected offences. Wildlife Advisers may be accompanied by other persons during visits such as members of Natural England's Landscape and Biodiversity team or the Police.

23. Enforcement

Natural England may become aware of suspected licence breaches by way of site visits or receiving reports from interested parties (including local authorities, wildlife organisations, the general public or others). Natural England normally enforces compliance with the licence conditions that it issues. However, there may be occasions where it is agreed that the Police will take the lead in dealing with a particular case (such as when other non-licensed offences have also taken place or the suspect(s) have been dealt with by the Police for similar matters previously). Where the Police take the lead we would normally work with them on the case.

Any action we take will be consistent with Natural England's [Enforcement Policy Statement](#). Natural England considers itself to be a firm but fair regulator which regulates to secure environmental outcomes using a proportionate approach. In assessing the level of enforcement action required we will place weight on the likely impact of breaches on the species concerned.

Enforcement action may take different forms depending on the seriousness of the breach. There will be a unique set of aggravating and mitigating circumstances for each incident that will need to be taken into account. Four broad levels of concern are outlined below.

Technical Concerns - may result in on-the-spot verbal or written recommendations from a Wildlife Adviser perhaps to modify the working practices on site but which may not require a modification to the Method Statement Delivery document. The Wildlife Adviser will record any recommendations in the site visit report which will be placed on file and communicated to the licensee/ecologist as appropriate in writing. Such concerns may also result in an Advisory letter being written by Customer Services Wildlife Licensing.

Minor Concerns – may result in on-the-spot verbal or written recommendations from a Wildlife Adviser perhaps to modify the working practices on site and may require a modification to the Method Statement Delivery document. The Wildlife Adviser will record any recommendations in the site visit report which will be placed on file and communicated to the licensee/ecologist as appropriate in writing. Such concerns may also result in a Warning letter being written by Customer Services Wildlife Licensing.

Medium Concerns - may result in the case being passed to our Wildlife Enforcement Specialist for action. If the breach is considered serious enough, the case will be referred on to a Natural England Investigation Officer for formal investigation. If there is sufficient evidence of an offence and it is judged in the public interest to pursue the case, consideration will be given to cautioning or prosecuting any offenders. Warning letters as an alternative to cautioning or prosecuting may also be considered for Medium cases. Consideration will also be given to revoking any licence. A modification to the Method Statement Delivery document is likely if the licence is not revoked and we are likely to increase licence compliance activity on this and future applications.

Significant Concerns – will result in the case being passed to our Wildlife Enforcement Specialist for action. If the breach is considered serious enough, the case will be referred on to

a Natural England Investigation Officer for formal investigation. If there is sufficient evidence of an offence and it is judged in the public interest to pursue the case, consideration will be given to cautioning or prosecuting any offenders. Consideration will also be given to revoking any licence. A modification to the Method Statement Delivery document is likely if the licence is not revoked and we will increase licence compliance activity on this and future applications.

Key Message: Licence Compliance - On the 21 November 2007 a new offence was introduced for non-compliance with any EPS licence issued after that date. Failure to adhere to the terms of the licence (which includes the undertakings given in the Method Statement) will result in Natural England (or occasionally the Police) taking enforcement action against the licensee. A person found guilty of an offence is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 (currently £5,000 per offence) on the standard scale, or to both.

24. Frequently Asked Questions (FAQs) – Various species

FAQs, covering bats and great crested newts as well as many other species questions, have been developed to provide additional guidance to consultant ecologists and others in relation to the most commonly raised issues.

http://www.naturalengland.org.uk/Images/wlmsfaqs_tcm6-3859.pdf

25. Handy Hints – Preparing documents

Separate 'handy hints' documents for bats, great crested newts and dormice have been developed to provide additional guidance to consultant ecologists in relation to the 10 most commonly raised species and licensing issues and 10 reasons why a 'further information request' might be issued.

[Great crested newt EPS Licensing Handy Hints](#)

[Bat EPS Licensing Handy Hints](#)

[Dormice EPS Licensing Handy Hints](#)

26. Production Notes

The first publication of this document dated 5 March 2009 was written by Kevin Rye and produced with assistance from Dr Edel McGurk. It, and the associated revised Reasoned Statement, was subject to a limited consultation with stakeholder focus groups. Written

representations were also received from those invited but unable to attend. One workshop was held in November 2008 (a focus group of Ecological Consultants) and two in January 2009 (one for Natural England regional staff and the other with representatives of the Association of Local Government Ecologists, the Royal Institute of Chartered Surveyors, the Royal Town Planning Institute, the Bat Conservation Trust, local government and others). Comments arising from the workshops have resulted in positive changes to both this document and the Reasoned Statement.

Revisions:

June 2009 - introduced enhancements to existing processes.

September 2010 - introduced a number of changes resulting from stakeholder focus groups held in February 2010, a summary of the changes and the focus group sessions are published on our website.

December 2010 - reflects changes to the licensing team location and submission requirements.

March 2011 - reflects the new office address, removing the requirement for a paper copy of a licence application, details of the document submission requirements and the publication of guidance on the wildlife licensing team's application of the three tests to licence applications.

December 2011 – reflects changes to Natural England organisational re-structure in April 2010 and new team names; guidance on Nationally Significant Infrastructure Projects (NSIPs) and EPS; revised flow charts on the licensing process and also team structure; explanation of responsibilities of those named or authorised to use the licence; dormouse handy hint link; updated data privacy section; key message additions such as a survey licence should not be used to facilitate construction/development, section on disputes between licensee and named ecologist.

Jan 2012 – added specific reference to standing advice in the process flowchart.

We welcome further feedback which can be submitted to –

eps.mitigation@naturalengland.org.uk

It would greatly assist us if, when submitting comments, you use the section numbers and header to clearly identify the subject.

Revisions and Updates to this Document

We are constantly reviewing our work areas with a view to improve and streamline processes. There is a formal process in place to review this document every six months, however it is likely that on occasion revisions will be made within this timescale and new versions issued. The version is signified by the date given in the footer of the document.

27. Further Information

Where to seek further information:

**Natural England
Customer Services Wildlife Licensing
EPS Mitigation Licensing
First Floor
Temple Quay House
The Square
Bristol
BS1 6EB**

Office hours for telephone calls are:

Monday-Thursday 08:30 – 17:00

Friday 08:30 – 16:30

Tel: 0845 601 4523 Fax: 0845 601 3438

Email eps.mitigation@naturalengland.org.uk

For other enquiries use the Enquiry Service:

Telephone 0845 600 3078

Email: enquiries@naturalengland.org.uk

Web: www.naturalengland.org.uk/contact/

Application forms are available at:

<http://www.naturalengland.org.uk/ourwork/regulation/wildlife/licences/applicationforms.aspx>

See:

WML-A14.1-A14.3: Great crested newts

WML-A12.1-A12.3: European Protected Species (other than Bats, great crested newts and dormice)

WML-A13.1-A13.3: Bats

WML-A35.1-A35.3: Dormice

Annex A: Other Types of Licences (Surveys and Conservation) and Animal Rescues

'Survey' licences

(Purpose (a) in Section 5 above)

Survey licences are issued for the purposes of Science or Education to people who are able to demonstrate that they have a suitable amount of expertise in survey techniques relevant to the case. Click here for more information on how to get a survey licence:

http://www.naturalengland.org.uk/Images/wmlg03_tcm6-4065.pdf.

There are a growing number of training courses specifically aimed at people with a keen interest in wildlife who wish to develop it further. Such courses can be found on the internet and may be provided by or in association with the Wildlife Trusts, the Bat Conservation Trust, the Herpetological Conservation Trust, professional ecological consultancies, local voluntary wildlife groups and others. It is important to be clear on the scope and aim of the training being offered and its limitations. Is it to give a basic understanding of the species ecology or does it provide opportunities to get experience of practical surveys techniques under the supervision of a fully licensed surveyor?

Survey licences, when issued, will allow people to undertake surveys for the specific species named that could involve techniques that would otherwise be unlawful, i.e., capturing and handling EPS such as great crested newts. However, licences may not be required for all survey techniques such as the use of bat detectors and recording equipment. Please refer to the relevant species survey guidance available through <http://www.naturalengland.org.uk/ourwork/regulation/wildlife/species/europeanprotectedspecies.aspx>

After a survey has taken place, professional advice should be sought to assess the implications of any development proposal upon the EPS. The results of a survey will help you and your consultant decide whether you need to proceed with a licence application. Note a licence is not always necessary. See Section 7 for more information.

Please note that Class Survey Licences have replaced the need for personal survey licences for some EPS removing the need for them to be re-issued each year (for more information on registering to use a Class Survey Licence please see <http://www.naturalengland.org.uk/ourwork/regulation/wildlife/licences/classlicences.aspx>).

Key Message: Survey licences are **not** appropriate for the removal of EPS from sites where the express purpose is to undertake an activity that would materially change the habitat. For example, the demolition of a structure or clearance of land prior to development.

'Conservation' licences

(Purpose (c) in Section 5 above)

Licences for the purpose of conservation can be issued by Natural England to protect a population which is under threat because of natural habitat degradation. Licences will be

considered for projects aimed at improving the conservation status of an EPS or improving the conservation status of habitat where there is an incidental impact on EPS.

Key Message: Conservation licences are **not** appropriate for the removal of EPS from sites where the express purpose is to undertake an activity that would materially change the habitat, for example the demolition of a structure or clearance of land prior to development.

Animal Rescues

Natural England recognises that in certain circumstances action affecting a protected species needs to be taken urgently to avoid animal mortality and that it would be impracticable to go through the formal licensing process within the time available. Such actions may be justified in situations where, for example, pollutants have entered a small water body which hosts a range of animals including EPS and it is known that the pollutants are toxic to wildlife. In such circumstances if the animals were not 'rescued' i.e., captured and removed from the immediate source of danger, they would die from the effects of the pollutant.

Natural England advises anyone contemplating such a rescue to:

- inform the police of the proposed operation(s) at the earliest opportunity and keep a record of the date, the decision, names of persons involved, any advice received and details of actions. We would also recommend that photographic evidence is kept.
- inform Natural England if the site is covered by a mitigation licence since it is highly likely the licence and Method Statement will need to be modified.

The unlicensed 'rescue' of such animals should only be done by, or under direct supervision of, suitably experienced (and licensed if necessary) persons. Any animal that has been captured must be released to the nearest place of safety & suitable habitat and not be taken into captivity unless the animals were disabled by the effects of the pollution. Such animals must be tended and released when no longer disabled as required by Regulation 42. If the animals are unable to be released, then you should seek advice from Natural England's Customer Services Wildlife Licensing team.

You should expect to have to justify your actions, and if you are unable to do so to the satisfaction of the Police, you may face prosecution. You may wish to seek your own legal advice before proceeding.

Annex B: The Licensing Team Structure

The following section is provided to give you a brief overview of the licensing team structure and the relevant roles therein.

Delivery Team Manager for the Regulation team

Oversees resource management, delivery of all aspects of wildlife licensing and compliance with Government and European business standards for the National Regulation team.

Principal Specialist

Provides specialist technical support to the National Regulation team (including the Delivery team) for all aspects of wildlife licensing, innovation and research, liaison with Government, Agencies and Non-Governmental Organisations.

Principle Adviser

Oversees improvements to be made to the licensing system (including EPS).

Senior Specialist – EPS Mitigation Licensing

Provides specialist technical and process support to the EPS Licensing team (Wildlife Advisers, EPS Advisers and Customer Services Wildlife Licensing), particularly with regard to complex or tricky cases, and development and implementation of improvements to the licensing process and new ways of working. Is responsible for quality assurance of this area of work. Provides a link between EPS Licensing and other Senior Specialists involved with EPS in Land Use and Landscape and Biodiversity.

Team Leaders

Oversee the day to day function of their regional team of Wildlife Advisers or the Customer Services Wildlife Licensing. Team Leaders are responsible for staff management and deployment of resources within their team.

Wildlife Advisers

Wildlife Advisers are a team of specialist staff located on a regional basis. Their role is to assess licence applications in relation to the impact on the species. Most Wildlife Advisers will assess applications in relation to a wide range of species and various pieces of legislation such as the Protection of Badgers Act 1992, the Wildlife and Countryside Act 1981 (as amended) amongst others. In relation to mitigation licensing there are, at present, two specialist groups of advisers who assess applications for bats and great crested newts respectively.

A Wildlife Adviser within a specialist group will assess the Method Statement element of the application pack to determine the impact of a proposal on the Favourable Conservation Status of the species concerned. In reaching a decision they make use of a combination of their knowledge and experience and published guidance.

Each species group (bats and great crested newts) has a Topic lead who helps co-ordinate the work of the group and ensures a consistent approach to assessments by way of regular

telephone or face to face meetings and training events and liaison with the EPS Senior Specialist. They also consult colleagues with specialist species knowledge within our Land Use and Landscape and Biodiversity teams when considered necessary.

The Wildlife Adviser will report their decision to Customer Services Wildlife Licensing and where appropriate will make the recommendations for the licensable activities.

EPS Lead Advisers - EPS Mitigation Licensing

Oversee the day to day assessment of licence applications at the Bristol office. It is their role to ensure that the licensing process requirements are adhered to and to advise staff on resolving complex or difficult case work with regards to the Purpose and No Satisfactory Alternative tests. They provide a link between the Wildlife Adviser groups and the EPS Adviser team and work closely with the EPS Senior Specialist. They also provide case briefings and draft replies to high level correspondence, respond to third party correspondence, complaints and enforcement issues liaising with colleagues as appropriate.

EPS Advisers

EPS Advisers are responsible for making an assessment of the Reasoned Statement and supporting information (evidence) in relation to the Purpose and No Satisfactory Alternative tests. In addition, the EPS Adviser takes into account the Wildlife Adviser's report when determining licence applications. EPS Advisers assess the evidence presented to determine if the tests under the Regulation have been met. They make use of a combination of their specialist knowledge and experience and also consult colleagues with specialist skills when required (e.g. in planning, species protection and environmental law). A written record of each decision is made. The process and its execution are subject to regular review and there is a programme of continual development and training for staff, which includes case reviews and workshops with legal advisers and specialists.

Customer Services Wildlife Licensing

Customer Services Wildlife Licensing handle the application from receipt to issuing the final licensing decision. They make an initial assessment of the application pack to ensure that the required documents are present and then register the application onto the licensing database and allocate the case to a Wildlife and EPS Adviser for assessment of the three tests. All correspondence sent to the EPS Mitigation mailbox is dealt with by Customer Services Wildlife Licensing.

Customer Services Wildlife Licensing deal with all related aspects of the licensing process such as responding to applicant enquiries, third party correspondence, complaints and enforcement issues, liaising with colleagues in the Regulation Function as appropriate. Customer Services Wildlife Licensing also process requests for the release of information under the Environmental Information Regulations and Freedom of Information Act with assistance from colleagues in the Regulation Function. Staff and Functional Management in the Customer Services Wildlife Licensing Team is provided by the Group Coordinator rather than the Team Leader.

Annex C: Statements and Evidence.

The following examples do not relate to any specific species. However, example 1 for ‘preserving public health or public safety’ would likely relate to bats. Examples 2 & 3, the fictional development for ‘overriding public interest’ and ‘no satisfactory alternative’, may apply more generally to the habitat of a species such as the great crested newt.

Example 1. An example of an unsafe structure posing an imminent risk to the public.

D2 **“Preserving public health or public safety”** at the site level. *Risks may relate to unstable or deteriorating structures for example old buildings or mines, infrastructure such as roads, power installations or sewage systems, or other dangers such as contamination of land or unstable trees.*

Provide brief statements to demonstrate how in your view the proposed activity meets the purpose, and detail the evidence that supports the statements. We encourage the use of photographs, appropriately referenced, as evidence to support your statements. *The more detail you provide, the easier it is for Natural England to make a licensing decision quickly. Depending on the nature of your proposal and the circumstances, some of the questions below may not be relevant; please insert N/A (meaning Not Applicable) where appropriate.*

D2.1	What risk is posed to public health or public safety and how?	
	Statement	A derelict building known as ‘Tottering Towers’ has become unstable and there is a high probability that parts of the structure will fall and endanger members of the public. One of the ‘towers’ which houses a bat roost is in imminent danger of collapse. This tower is in close proximity to a public footpath and a highway. Urgent action is required to resolve this situation.
	Evidence	A small section of the tower’s brick work is loose and large pieces of debris have fallen onto the public footpath. This was reported to the owners by a concerned member of the public on 19 th March 2009. Photographs of the building and the tower, taken from various viewpoints, are attached at Doc 2.1.
D2.2	Has a structural or similar survey been undertaken by a suitably qualified person and does the report recommend remedial action? Please attach copies of reports. If no survey has been undertaken please state why this was not considered necessary.	
	Statement	A structural survey was undertaken by ‘In the Balance Ltd’ which identified significant subsidence to the foundations of the building and particularly to the ‘tower’ identified at D2.1 . Without immediate action to demolish the structure there is an unacceptable risk to human life.
	Evidence	The structural engineer’s report dated 21 st March 2009 prepared by ‘In The Balance Ltd’ is at Doc 2.2. The report details the findings, photographs and includes a recommended course of action to demolish the structure and considers whether there are any reasonable alternatives to demolition. The relevant paragraphs are highlighted for ease of reference.
D2.3	Have measures been put in place to exclude or deter unauthorised entry; if so give details? (For example, fencing, site security, removal of items of value, etc.)	
	Statement	The building has been secured and all items of value have been removed. Doors and windows have been secured by metal sheeting and the perimeter of the site has been secured by metal fencing. The footpath and highway traffic have been diverted with the co-operation of the local highway authority.
	Evidence	Photographs demonstrating the above precautions are at Doc 2.3.

D2.4	If measures have been put in place, give details of the timescales and whether it has been in response to escalating problems?	
	Statement	The site security measures were put in place on 20 th March 2009 after receiving the call from a member of public.
	Evidence	A copy of the instructions to fencing contractors is at Doc 2.4.
D2.5	If the exclusion measures have not been effective, state why & explain why further measures cannot reasonably be undertaken. Please include any representations from the police or fire service to support your statement.	
	Statement	The measures have not been fully effective in excluding members of the public despite large notices explaining the dangers. The police have been called to the site on three occasions to deal with trespass.
	Evidence	The site exclusion is by way of temporary fencing erected at short notice but there are no other realistic methods of excluding the public for long periods. A letter from the local police supporting this view and calling for swift resolution is attached at Doc 2.5.
D2.6	If there have been instances of vandalism, arson or other anti-social behaviour, give details. Please include any representations from the police or fire service to support your statement.	
	Statement	Several small fires have been set adjacent to the building requiring the call out of the fire service.
	Evidence	A record of the fire service report is attached at Doc 2.6.
D2.7	What has been the cost in monetary terms? <i>This helps us to gauge the seriousness of the issue and whether alternatives have been adequately explored. This may include your costs but also those of the police or fire service in responding to incidents at the site.</i>	
	Statement	The cost of the fence hire and building exclusion measures is £XX per week. In addition the insurance company 'Wing and A Prayer Direct' requires swift resolution to the risks posed by the building to the public as detailed in their letter of 24 th March 2009. The highway authority have also incurred expenses with diverting traffic.
	Evidence	A copy of the relevant invoice is attached at Doc 2.7.
D2.8	Is the structure or land subject to this application in public or private ownership?	
	Statement	Private ownership.
	Evidence	An extract from Land Registry and Title Deeds is at Doc 2.8.
D2.9	If applicable, are there plans to develop the land following demolition of the structure?	
	Statement	N/A.
	Evidence	

Example 2. An example of a proposed affordable housing development: IROPI test.

D3	<i>“Imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment.”</i> Provide brief statements to demonstrate how in your view the proposed activity meets the purpose, and detail the evidence that supports the statements. Such weight needs to be given to the proposed activity as to outweigh the nature conservation interest.	
D3.1	What need is the proposed activity designed to meet?	
	Statement	The construction of 50 affordable houses in the village of Fewhouses will address the need to provide local people on low incomes with the opportunity to purchase affordable houses or flats within the village.
	Evidence	There are a growing number of local people on the local authority housing list and two properties were recently sold for in excess of £1,000,000. See highlighted extracts from Land Registry records and Plan of the village at Annex D3.1.
D3.2	How was the need identified? For example, is there a legislative requirement for the activity at a European, national or regional level? Or if the need was identified by the Local Authority, your evidence may include relevant extracts or quotes from the Regional Spatial Strategy or Local Development Framework.	
	Statement	A Local Authority report dated 20 th April 2007 identified the need to provide opportunities for local people to buy properties within Fewhouses to ensure that the village continues to retain a diverse population and thriving community. A significant number of properties in the village are now second homes or holiday homes and are unused for substantial periods of time.
	Evidence	The report dated 20 th April 2007 is attached at Annex D3.2. I would draw your attention to Page 6 that contains a summary of the key findings. The specific recommendations have been highlighted for ease of reference.
D3.3	Through what process of scrutiny has the proposal been subject, if any? (For example, Public Inquiry, public meetings, consultations or similar?) Was the presence of European Protected Species considered at the planning stage? Your evidence may include copies of minutes.	
	Statement	The planning application was presented to a planning committee and there was public scrutiny of the proposals. In addition, a local meeting was organised by the Local Authority to discuss the lack of affordable housing for the local community prior to the submission of the planning application.
	Evidence	Copies of the relevant planning committee minutes dated 21 st January 2008 and a report from the public meeting of 31 st October 2007 are attached at Annex D3.3.
D3.4	How does the proposed activity meet the identified need?	
	Statement	The local population of Fewhouses is growing and there is a lack of housing stock available. The construction of 50 affordable houses will go a significant way towards meeting this need.
	Evidence	The sale of the proposed development of affordable houses will be targeted directly at local residents. A restriction is being placed on the sale of all properties to those who can demonstrate that they were born in the village of Fewhouses or within a 10 mile radius. A copy of the sale contract is provided at Annex D3.4. The specific wording is highlighted for ease of reference.

Example 3. An example of a proposed affordable housing development: NSA test.

Consideration of Regulation 53(9)(a): The ‘No Satisfactory Alternative’ test.	
D4	Regulation 53(9)(a) “that there is no satisfactory alternative”. Provide brief statements and evidence to demonstrate how in your view there is “no satisfactory alternative” to the proposed activity. For an alternative to be “satisfactory” it has to be an alternative means of meeting the need whilst causing less damage to the European protected species. We encourage the use of Environmental Statements, photographs and location plans, appropriately referenced, as evidence to support your statement.
D4.1	In respect of the answers given at D3, give details of the consideration of any alternatives to the proposed activity, including the use of alternative sites at the local level (provide details). Also consider the alternative of doing nothing. What would be the consequence(s) of doing nothing? Evidence from the Local Development Framework may be relevant.
	Statement A total of 3 different locations were identified as possible sites for the proposed housing development in the village of Fewhouses. The need for the provision of affordable local housing has been demonstrated through the Local Authority report of dated 20 th April 2007. This report strongly indicates that if the development were not to proceed then young families in particular would be forced for financial reasons to relocate outside of the village of Fewhouses. The majority would probably relocate to the nearest city of Concrete Jungle 27 miles away.
	Evidence A report dated 26 th August 2007 summarising the consideration of the 3 sites is at Annex D4.1. This report was submitted to the planning authority in support of the planning application. The summary is at Page 5 and the justification for the recommendation for the site is highlighted for ease of reference.
D4.2	Why was the preferred option chosen? What criteria was used in the selection process? What were the limiting factors?
	Statement The site was chosen because it was the only one of the 3 potential sites within the village that was not at high risk of flooding and that would not result in the destruction of any newt breeding ponds. The brownfield site was previously occupied by an engineering works, a garage and storage yards, it is well served by existing infrastructure and the proposed development would make use of existing access roads.
	Evidence The site selection criteria is set out in the report dated 26 th August 2007 see Annex D4.1.
D4.3	Could the proposed activity be achieved in a way (such as design, layout, positioning, etc..) that would mean no, or reduced, implications for European protected species? Why is this not possible? If it is, why was it rejected?
	Statement Various alternative designs and layouts were considered that would lessen the impact on wildlife, including badgers and ground-nesting birds. Although no newt breeding ponds are to be lost, some high quality habitat will be retained through modifications to the site layout.
	Evidence The Design and Access Statement dated 2 nd September 2007 is at Annex D4.2. Also attached at Annex D4.2 are extracts from alternative layouts considered and rejected.

Annex D: Emergency Operations and Protected Species

It is recognised that there will be situations where urgent action may be required to alleviate an immediate danger to public health or public safety that may have an unavoidable affect on protected species and such is the imperative need for intervention that applying for a licence would be impracticable within the time available. It is our view that 'immediate danger' should reasonably be interpreted to mean that the structure or tree will fail or collapse, and is at risk of harming the public, within a short timescale (e.g. hours or days rather than weeks) and thus gives little scope for obtaining a licence.

In such circumstances Natural England advises the following:

- that the Police are informed of the proposed operation(s) and a written record is kept of the date, the decision, names of persons involved and times and details of the actions. We would also recommend that photographic evidence is kept.
- keep supporting written evidence from an appropriately qualified person, such as a structural engineer, arboriculturist or tree surgeon.
- that a licensed/suitably qualified person is present to deal with any protected species affected by the operation. Animals found during works to the structure should be safely removed and released to a suitable location as near to the original structure as possible. Provision should also be made to deal with any injured, hibernating or nesting animals and the eggs.
- You should mention the incident to Natural England if the site is subject to a subsequent licence application.

Acting without a licence is likely to be justifiable only where there is a serious and immediate threat to public health and/or safety and where all other legally available options (such as fencing and warning signs) cannot resolve the problem satisfactorily. You should expect to have to justify your actions and if you are unable to do so to the satisfaction of the Police, you may face prosecution. You may wish to seek your own legal advice before proceeding.

Saving Human Life

Emergency activities that are necessary to save human life would be expected to take precedence over the provisions of the Habitats Regulations, since Article 2 of the European Convention on Human Rights obliges the state to take appropriate steps to protect everyone's right to life. Therefore, in such an event, it would almost certainly not be in the public interest to entertain a prosecution for any harm unavoidably caused to a protected species.

Annex E: Changes in Circumstances - Scenarios and Actions.

The following are a number of 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 project when deciding what action should be taken.

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 or project and adopt the principles detailed in the related Section.</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.</p>

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 or project 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>

Scenario C:	<i>Licence issued but no works carried out on site.</i>
Suggested Action:	<p>Assess the future of the development or project 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 or project 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>

Scenario D:	<i>Licence issued with capture and exclusion measures completed on site but development or project delayed.</i>
Suggested Action:	<p>Assess the future of the development or project. 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>

Scenario E:	<i>Licensed habitat destruction commenced but development or project significantly delayed or postponed.</i>
Scenario F:	<i>Licensed development well advanced. Mitigation measures not completed.</i>
Scenario G:	<i>Licensed development completed. No mitigation measures in place.</i>
Suggested Action:	<p>Assess the future of the development or project.</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>

Scenario H	<i>Licensed development complete. Monitoring of mitigation measures required.</i>
Suggested Action:	Where the Method Statement (appended to the licence) includes an undertaking to monitor the mitigation measures and species, this <u>must</u> be

	<p>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>
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Please note: Failure to comply with the licence conditions could result in a criminal offence.

Annex F: Modifications and Re-submissions

If changes are required to the Method Statement they will need to be agreed by us to meet the 'favourable conservation status' test before a licence can be issued.

To help us, you will need to supply us with one CD with the revised Method Statement* (see the note at the foot of this Annex for specific requirements). This must be sent to the Customer Services Wildlife Licensing, **not** a Wildlife Adviser or EPS Adviser.

The scale of changes between original and re-submitted applications can vary considerably. The volume of licence applications submitted to Natural England also varies during the year, with some periods being significantly busier than others. Please be aware, therefore, that although we will endeavour to complete the assessment as quickly as possible **it may take up to 30 working-days to issue a licensing decision.**

Covering letter

A modification or re-submission should include a **covering letter** outlining the changes required and, where necessary, providing justification for the alterations. Please ensure the case reference number is included in the covering letter to ensure the modification or re-submission is processed as quickly as possible.

Covering letter - modifications only

In addition, the following information must be provided either in the covering letter or, in the case of great crested newt applications, on the cover sheet of the Method Statement itself:

- a summary of progress with the licensed development/operation;
- a summary of the animals captured/disturbed during the licensed works so far;
- a summary of the changes to the licensed Method Statement and other documents;
- describe any implications for the 'favourable conservation status' of the species licensed as a result of the changes proposed.

Changes to the Method Statement

Changes must be identified using one or more of the following methods: -

- underline new text/strikeout deleted text;
- use different font colour;
- block-coloured text, or all the above.

Changes to the Method Statement – modifications only, must include:

- An updated timetable which shows any changes to the programme and allows sufficient time for the assessment of the modified Method Statement by Natural England.
- Updated maps, diagrams and figures, as appropriate.
- Any further documents needed to support the application, including any discussed with the Wildlife Adviser or EPS Adviser assessing the application.

***Please note: Method Statement requirements below.**

Method Statements for Bats, Dormouse and other EPS (excluding great crested newt).

For bat, dormouse and EPS (excluding great crested newt) licence modifications (or resubmissions following a 'Further Information Request'), please submit Document 2 (Delivery Information), together with any photos, maps and plans relevant to the Delivery Information. You only need submit Document 1 (Background Information) if you have altered anything in this document (for example, licensable activities, further survey information, etc.).

Method Statements for great crested newt.

For great crested newt licence modifications (or resubmissions following a 'Further Information Request'), please submit the Method Statement in its entirety, together with all maps, plans, photos and appendices.

Annex G: FCS and Post Development Mitigation Monitoring

Licences can only be issued where Natural England is confident there will be no detriment to maintaining the conservation status of the population of European Protected Species (EPS) concerned at a favourable level, and in some cases a package of monitoring and remedial action will be required to provide that confidence.

All mitigation schemes carry a risk of failure. If mitigation measures fail, then the resulting impact on the conservation status of the EPS may mean that the “Favourable Conservation Status test” (FCS test) will not have been met. This risk is greatest for activities that are judged to have a medium or high impact on the species. Post-development monitoring has a role in providing confidence in any judgement that there will be no detriment to favourable conservation status by detecting problems that may lead to such a detrimental effect and enabling appropriate remedial action to be taken to avoid it.

Post-development monitoring will be expected for most medium and high impact cases. Monitoring and remedial action will form an important component of the mitigation package in these cases and will be a key prerequisite to an application for a mitigation licence passing the FCS test. The success of mitigation/compensation commonly depends on measures undertaken following any necessary capture operations and the main phases of development. Deficiencies in newly created habitats are a common problem and both aquatic and terrestrial habitat features (depending on the species they have been created for) may require several years of management to achieve a high value for that particular species. Monitoring is necessary to inform that management. Monitoring numbers and breeding success can also be used to identify the need for action.

When assessing applications, Natural England considers whether post-development monitoring proposals, in conjunction with the other mitigation measures, will be sufficient to ensure that the FCS test will be met. The need for monitoring, and the type of monitoring required, is related to the impact of the development and the status of the EPS population. In this way, monitoring requirements are proportionate to the risk of potential impacts on conservation status. For developments resulting in low impacts, monitoring will not normally be required. Developers reducing the impact of their projects will therefore benefit from having lower costs following construction. For further details on post development monitoring requirements, depending on the species, refer to the *Great crested newt mitigation guidelines*, the *Bat Mitigation Guidelines* and the *Dormouse Conservation Handbook* (links below).

In addition to being necessary in some cases to support a conclusion of no detriment to maintenance of favourable conservation status, data produced in accordance with monitoring conditions helps Natural England and others to assess the effectiveness of mitigation measures. This in turn can feed back into good practice, so that future mitigation can be made more effective (these improvements can also help with cost effectiveness). The UK government has a duty to report to the European Commission on derogations, and for this we rely on data collected under mitigation licences.

References

Great crested newt mitigation guidelines, 2001
<http://naturalengland.etraderstores.com/NaturalEnglandShop/newt1>

Bat mitigation guidelines, 2004
<http://naturalengland.etraderstores.com/NaturalEnglandShop/IN136>

Dormouse Conservation Handbook, 2006
<http://naturalengland.etraderstores.com/NaturalEnglandShop/IN29>