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Grants and support for creating
and improving woodlands

Approach to Appropriate Assessments and European Protected Species

Introduction

The Welsh forest industry has legal obligations imposed by 'The Conservation (Natural Habitats, &c.) Regulations 1994 (Habitat Regulations). These Regulations transpose the European Habitats Directive into English and Welsh law. The industry's responsibilities can broadly be categorised as obligations relating to **sites** protected by European law (European Sites) and obligations relating to **species** protected by European law (European Protected Species or EPS). The responsibilities are entwined and there may be obligations both to European sites and EPS on any site, including sites which are not European sites.

This document explains how the Welsh forest industry will interact with the Habitat Regulations within the Better Woodlands for Wales (BWW) scheme and Felling Licence process.

Definitions

European site: A site protected by European law. Those relevant to forestry are Special Area of Conservation (SAC), candidate Special Area of Conservation (cSAC) and Special Protection Area (SPA).

European Protected Species (EPS): A plant or animal species protected by European law. Those most relevant to forestry include all species of Bat, Otter, Dormouse, sand lizard and great crested newt. The natterjack toad and some plant species may rarely occur in woodlands and be affected by forest operations.

Appropriate Assessment: A statutory undertaking completed by any competent authority (which includes Forestry Commission Wales (FCW)) before giving permission for any plan or project which may affect a European site. Appropriate Assessments are done by FCW Woodland Officers.

Plan or Project: 'Plan or project' is a specific term used in the Habitat Regulations and encompasses BWW Management Plans and Felling Licences.



BWW Approach to Appropriate Assessments and European Protect Species

Appropriate Assessments: Section 48 (1) of the Habitat Regulations require that:

'A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which-

- a) is likely to have a significant effect on a European site in Great Britain (either alone or in combination with other plans or projects), and*
 - b) is not directly connected with or necessary to the management of the site,*
- shall make an appropriate assessment of the implications for the site in view of that site's conservation objectives.'*

This means that Forestry Commission Wales as a competent authority must:

- a) first assess whether any BWW Plan or Felling Licence (either alone or in combination with other plans or projects) is likely to have implications for any European site, then
- b) secondly, whether the implications are likely to be significant.

In practice an Appropriate Assessment (AA) will have to be done for any BWW Plan or Felling Licence on a European site or outside a European site but where there may be implications for a European site. The latter will normally only be relevant to forestry operations taking place upstream of a riverine European site.

The responsibility for undertaking an AA lies with a competent authority and not the landowner or manager. It is the responsibility of FCW to undertake an AA for any work it approves under a Felling Licence or BWW Plan which will affect a European site. However, the relevant Local Authority is the competent authority responsible for undertaking an AA relating to any roading work that requires a General Development Order (GDO) or planning consent. In practice, FCW will assess the implications of the entire BWW Plan including roading because it may be difficult to separate the individual impacts of this from other forestry operations such as felling. The relevant Local Authority will still have a responsibility to undertake an AA before granting permission for a road or track.

In most cases the AA process will not be visible to Applicants and should not cause any delay in processing licences or cases. In some circumstances FCW may require more information before the AA can be completed. This may involve seeking advice from Countryside Council for Wales (CCW) or engaging a specialist to look at and consider the implications of work. Where this occurs FCW will pay for any additional information gathering and this may lead to a delay in processing a case or licence. Where this happens FCW will inform the Applicant or Planner.

It may be necessary in some instances to impose additional conditions to either a licence or contract. These conditions will be aimed at ensuring the implications of any work are not 'significant' for a European site. Where conditions are imposed the landowner is responsible for ensuring they are complied with. Failure to comply with conditions which results in 'significant' implications for a European site may lead to the landowner being prosecuted.

EPS: The Habitat Regulations were amended in August 2007 to strengthen the protection given to EPS. In summary it is now an offence to:

- a) *deliberately capture, injure or kill any wild animal of a European protected species;*
- b) *deliberately disturb animals of any such species in such a way as to be likely significantly to affect:*

- i) *the ability of any significant group of animals of that species to survive, breed, or rear or nurture their young, or*
- ii) *the local distribution or abundance of that species;*
- c) *deliberately take or destroy the eggs of such an animal; or*
- d) *damage or destroy a breeding site or resting place of such an animal.*

In a), b) and c) the meaning of 'deliberately' has a broad meaning and encompasses recklessness so, for example, injuring an EPS as a result of failing to assess the risk to that species properly, could be deemed 'deliberate'.

The fourth offence (d) is a strict liability offence to which there is no defence should a prosecution be taken forward. So it is an offence to damage or destroy a breeding site or resting place regardless of whether it was accidental or not. However, any prosecution would need to pass a 'public interest' test and it is unlikely that it would be deemed to be in the 'public's interest' to prosecute anyone who had properly assessed risk as part of an approved BWW Plan or felling licence. In some circumstances where there is a high risk of causing an offence a licence can be issued. However, there are certain tests which must be satisfied before a licence can be issued and it is unlikely that most forestry operations will be eligible for licensing. More information on EPS and licences can be found at <http://www.forestry.gov.uk/forestry/INFD-769ERV> or by contacting FCW on 0845 604 0845.

Where FCW agrees that a licence is the best option they will support the licence application. However, the process of making the application is the responsibility of the Applicant or their Agent or Management Planner.

Planning Process

Appropriate Assessments: The FCW Woodland Officer (WO) will undertake an AA where necessary as part of a BWW case or Felling Licence application. Screens will be produced within G&L Online to allow this to happen. The process will not normally be visible to Applicants or Planners and will not usually lead to any delay in processing. The AA can be done at any time prior to the case or licence being approved but the WO will need to understand the operational detail. Within BWW the Planner and WO should discuss the need for an AA at the Foundation Plan stage and assess the likelihood of one being required. At this stage the Planner should provide the WO with as much detail as possible so that the WO can consider the need for any additional information required to complete the AA. With Felling Licences the WO will discuss the need for an AA with the Applicant or their Agent once an application has been made. The WO will also need to know the 'features' for which a European site has been designated. These will be provided by CCW as part of the Information from External Sources (IfES) process. After these discussions or at any time during the planning or licence process, the WO may decide that more information is required to complete an AA. They may decide to seek advice from CCW or bring in a specialist (ecologist) to provide information and advice. FCW will pay for any additional information required. Within BWW this will normally mean that the Planner engages an ecologist who then produces an Ecological Assessment. With Felling Licence applications the WO will select an ecologist from the list of BWW approved Woodland Ecologist Specialists and engage them to undertake an Ecological Assessment. The BWW rates and formats will be used for both licences and BWW cases.

An AA will not be required where work has no implications for a European site. Where a Plan or Felling Licence covers a European site or has implications for a European site the WO will need to undertake an AA. The assessment is a staged approach with an option to end the process at any stage if the conditions are met.

Stage 1: Confirm that there are implications for a European site and that they will be significant.

Stage 2: Assess the implications and look to reduce or remove so that they will not be significant.

Stage 3: Approve, with or without conditions, or decline.

The solutions sought in stage 2 may be very simple and standard, for example reducing the implications by using best practice. The actions must be recorded and where necessary conditions specified.

Where stage 2 indicates that the implications cannot be reduced, FCW will not be able to approve the Plan or issue the Felling Licence unless the operations posing the risk can be removed or amended. FCW is not in a position to consider mitigation although the Regulations do allow for this.

EPS: During the BWW Foundation Plan preparation stage FCW provides Management Planners with Information from External Sources (IfES). This includes information on EPS from Local Record Centres and Countryside Council for Wales. It is likely that in future the IfES process will also be used for Felling Licence applications. The Planner (BWW) or Applicant (Felling Licence) must use this information together with the FCW guidance on EPS (<http://www.forestry.gov.uk/forestry/INFD-769ERV>) to determine the need for a EPS licence. The guidance and external information allows the Planner or Applicant to assess the risk of committing an offence. The outcome of this risk assessment must be recorded in the issues section of the BWW Foundation Plan or on the Felling Licence application form. Failure to record this information will lead to delays in processing licences and cases.

The onus to assess the risk of committing an offence rests firmly with the Applicant or their Planner or Agent. However, the Woodland Officer will provide advice and support and will check that the Applicant or Planner has interpreted the guidance correctly and correctly assessed the risk. Where they feel this is not the case they may ask for more evidence. WO will not approve Plans or licences where they feel there is a high risk of an offence being committed.

Where the risk assessment indicates low risk there will not normally be any need to take any further action once this has been recorded. Within BWW where a high risk is identified or where more information is needed to assess the risk properly, the Planner should request an Ecological Assessment. This will be paid for by FCW as part of the BWW planning process. Outside BWW FCW will not pay for ecological assessments. Where a high risk is identified as part of a Felling Licence application, the Applicant must cover the cost of any additional information required.

FCW will approve BWW cases or Felling Licences where they feel an EPS licence is also required but it will then be the Applicant's responsibility to get an EPS licence before commencing work. EPS licences are issued either by the Assembly or CCW. FCW will provide guidance on how to make an application for a licence and to whom, but the responsibility is the Applicant's or their Agent or Planner. An EPS licence application will only be considered if there is evidence that the EPS or its breeding site or resting place is present and an offence is likely to be committed.

Planners and Applicants must familiarise themselves with the FCW guidance on EPS and should consider the potential of committing an offence in all woodlands. They should not assume that the absence of information on EPS means that there is a low risk of committing an offence. There may be situations where the character of woodland indicates that it is good habitat for a EPS despite no records of the species. In these situations the absence of information may prevent an informed decision being made. FCW will support requests for ecological assessments within BWW to determine the presence and extent of EPS but will not do so within the Felling Licence process.

It is hoped that most BWW cases and Felling Licences will either be categorised as low risk after an initial assessment or will fall into this category after additional advice from an ecologist. Where this is not the case and the risk is high the Applicant has the option to apply for an EPS licence and continue with the Plan or licence or decide not to undertake any operations that are high risk.

Where the guidance indicates high risk or the need for further information the Applicant or Planner should allow time to make an EPS licence application.

The flow chart in Appendix 1 shows the risk assessment process for EPS. Input from a specialist would normally be required at stage 7. This is also the point at which a BWW Ecological Assessment could be required.

BWW Grants

There will not be any grant aid for undertaking assessments relating to EPS but FCW will pay for an ecological assessment where one is required.

Appropriate Assessments is a statutory process and so FCW will undertake the assessments and cover the cost of this.

Further Information

General guidance documents on the changes to the Regulations can be downloaded from the Forestry Commission Wales website <http://www.forestry.gov.uk/forestry/INFD-769ERV>, along with specific guidance by species on how to find out if EPS are present in your wood and how to operate if they are.

APPENDIX 1

European Protected Species and woodland operations in Wales
Decision tree to aid planning of woodland operations and protecting EPS

The diagram below illustrates the questions that woodland managers and operators should consider when deciding whether they need to apply for an EPS licence. It should be noted that the diagram presents a simplified overview of the decision-making process.

