

FOREST OPERATIONS AND EUROPEAN PROTECTED SPECIES IN WELSH FORESTS - IMPLICATIONS OF LEGAL CHANGES FROM 21st AUGUST 2007

SUMMARY

This note gives initial guidance on the implications for forestry of changes to be made under the Conservation (Natural Habitats, &c.) Amendment Regulations 2007. These regulations transpose the EU Habitats and Species Directive into UK Law. The changes will affect forestry activities in the presence of European protected species (EPS), in Wales these are bats, otters, dormouse and great crested newts. The Regulations will come into force on August 21st 2007.

This advice is intended to alert woodland managers to the implications and guide them on where to seek further advice or apply for licences where necessary.

1. INTRODUCTION

The EU Habitats and Species Directive 1992 was first incorporated into UK law via the Conservation (Natural Habitats &c.) Regulations, 1994. They established protective regimes both for European sites (SACs and SPAs) and for European protected species of animals and plants which were scheduled in the Directive (see Annex 1 for species particularly relevant to Welsh woodlands). It was made an offence to deliberately kill, destroy, disturb, or take EPS wherever they are found, or to damage their breeding sites or resting places, whether deliberately or not. However an important exception was allowed for land managers because an offence was not committed if the person who carried out these acts could show they were the incidental result of a lawful operation that could not reasonably have been avoided.

The 2007 revisions to the Regulations are being made in response to a ruling of the European Court who found that the UK had not sufficiently transposed the Directive in some respects. *The key change for forestry is the removal of the exceptions clauses in the earlier versions, so that forest operations which would result in an offence being committed will only be able to proceed under licence. Disturbance offences have also been expanded and clarified.*

This note gives summary guidance on the implications for forestry practice in Wales. FC Wales will follow this guidance in our management of the national forest estate, and will expect this guidance to be followed as a condition for approval of felling licences and grant aid and forest plans for private forests. We will also promote its use in forestry-related Environmental Impact Assessments, and in Appropriate Assessments for judging impacts of forestry proposals on sites designated as SPAs and SACs under EU Directives.

2. REVISED PROTECTION FOR EUROPEAN PROTECTED SPECIES (EPS) FROM 21st August 2007.

Box 1 summarises the potential offences forest managers need to consider.

Offences against EPS animals.

A person commits an offence if – he or she

- (a) deliberately captures, injures or kills any wild animal of a European protected species;
- (b) deliberately disturbs 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 takes or destroys the eggs of such an animal; or
- (d) damages or destroys a breeding site or resting place of such an animal.

Or if they possess, control, transport, sell, exchange or offer for sale/exchange any EPS or derivative.

Offences against EPS plants.

A person commits an offence if they -

- (a) Deliberately pick, collect, cut, uproot or destroy a wild plant of a European Protected species.

Or if they possess, control, transport, sell, exchange or offer for sale or exchange any live or dead plant or derivative of an EPS plant.

Note : other offences for EPS and other species can be committed under the Wildlife & Countryside Act 1981 as amended.

3. HOW CAN FOREST MANAGERS MEET REQUIREMENTS FOR SPECIES PROTECTION?

The main European protected species which are likely to be affected by forestry in Wales are bats (all species), dormouse, great crested newt and otter (See Annex 1 for a list of relevant species). Natterjack toad and some of the plant species, such as Shore dock may occur in a small number of woodlands and be affected by forest operations – specific advice from CCW should be sought in these instances.

In general the risk of problems occurring should be minimised by following good practice as outlined in existing guidance. The key steps are:

Find out which EPS protected species might be present, to help target survey work

- Obtain advice from CCW and specialist bodies; Consult Local Record Centres
- Download 10km square distribution data from National Biodiversity Network (NBN) (The NBN gives data on distribution of many species via the website at: www.searchnbn.net),

- Note that many sites will not have been surveyed, so a lack of evidence is not conclusive of the absence of a species.

Carry out surveys within target areas/habitats to locate protected species and in particular their breeding sites or resting places.

Plan operations to avoid damage to breeding sites/resting places of European protected species and minimise the effects of any disturbance. Seek advice from CCW where in doubt.

If you judge that damage or significant disturbance is still likely despite these steps:

- consider whether there is any satisfactory alternative course of action, methods or timing to avoid it;
- if you still wish to proceed, seek advice from the appropriate licensing authority (WAG or CCW) on the need for a licence;
- identify possible habitat improvements, or mitigation, to offset any anticipated damage to the population of the protected species.

Look out for protected species during operations, have a contingency plan and take appropriate action.

- Stop operations and seek advice on the need for a licence if damage to breeding sites/resting places or significant disturbance is likely or occurs.

Keep a record of the procedure followed where protected species are encountered;

- this could be valuable in establishing that you took a reasonable approach in case of prosecution.

It is hard to be sure at this early stage, but it is likely that offences against EPS, and the need to apply for licences, should be avoidable in most cases by following these steps, in particular focussing on:

- identifying operations that may have an impact
- safeguarding breeding sites and resting places and their immediate surroundings
- avoiding significant impact on habitats that would be sufficient to reduce survival and breeding success of individuals, (e.g. by taking great care in areas round breeding ponds for great crested newts and following general good practice under the UK Forestry Standard for felling and restocking of woodlands which should avoid major impacts on bat foraging areas).

The main difficulty for foresters may be to avoid damage to breeding sites or resting places of EPS in cases where they are very hard to detect, for example possible bat roosts in small bark crevices high in trees. Unless a species is known to be present a licence cannot be applied for. However if reasonable

survey efforts have been made to locate roosts etc then prosecutions for accidental damage in these cases are unlikely to be judged to be in the public interest.

4. LICENSING OF FOREST OPERATIONS AFFECTING EUROPEAN PROTECTED SPECIES

The Regulations allow licences for potentially damaging activities to proceed under specific circumstances:

- there is a specific purpose which is the primary reason for the proposed activity (see box 2 for further details).
- there is no satisfactory alternative to undertaking the activity in that place, at that time and using the defined methods.
- the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

Licences will not be issued on a precautionary basis. The licensing authority will need case-specific evidence to show that a protected species is present and that these legal tests are satisfied.

Box 2: The purposes for which licences can be issued.

Those purposes for which Countryside Council for Wales issues licences:

- a) scientific or educational purposes;
- 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;

Those purposes for which the Welsh Assembly Government issues licences:

- 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; or
- g) preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries.
- h) taking or the possession or control of EPS under strictly supervised conditions, on a selective basis and to a limited extent and in limited numbers.

Note: Applicants should apply under one purpose, which should be the primary purpose for which the activity is being undertaken. Licences are assessed, and if approved, issued by the relevant authority for that purpose as indicated above and are subject to specific conditions.

Note: For example if you are applying for a licence as part of an operation to thin a woodland to improve timber quality and produce saleable timber then this is supporting the outcomes of the Wales Woodland Strategy and is therefore of public interest. In this case you will apply for a licence from the Welsh Assembly Government under primary purpose (e).

5. HOW TO APPLY FOR A LICENCE

Applications for licences in Wales can be made through the FC if the operation/s are included within a felling licence or Better Woods for Wales (BWW) application. An application form will be provided by FCW.

<http://www.forestry.gov.uk/forestry/infd-5z8jcr>

If the operation is not covered within these processes then the **Welsh Assembly Government** considers and determines licences for the following purposes:

- 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;
- preventing the spread of disease;
- preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries.

Address:

Nature Conservation and Biodiversity Branch
Environment Conservation and Management Division
Welsh Assembly Government
Unit 9 Cefnllan Science Park
ABERYSTWYTH
Ceredigion
SY23 3AH
Tel: 01970 610216

The **Countryside Council for Wales (CCW)** considers and determines licences for following purposes:

- scientific or educational purposes;
- ringing or marking, examining any ring or mark on wild animals;
- conserving wild animals or wild plants or introducing them to particular areas;
- protecting any zoological or botanical collection.

Address:

Species Protection Team
Countryside Council for Wales
Maes Y Ffynnon
Penrhosgarnedd
Bangor
Gwynedd
LL57 2DW
Tel: 01248 385653
E-mail: speciesprotection@ccw.gov.uk
<http://www.ccw.gov.uk>

6. EXAMPLES OF FURTHER SOURCES OF ADVICE

Woodland Management for Bats. Available from Forestry Commission publications service via the FC website. [http://www.forestry.gov.uk/Bat Surveys - Good Practice Guidelines](http://www.forestry.gov.uk/Bat%20Surveys%20-%20Good%20Practice%20Guidelines) available to download from http://www.bats.org.uk/news_events/BatSurveys.asp
The Bat Conservation Trust website at <http://www.bats.org.uk> is also a useful source of advice on bats.

The dormouse conservation handbook
available from the publications section of the Natural England website
<http://naturalengland.twoten.com/NaturalEnglandShop/default.aspx>

Rhododendron Clearance: Recommendations for reducing the impact on the otter (Lutra lutra). Report by The Otter Consultancy available from CCW, Bangor.
enquiries@ccw.gov.uk

ANNEX 1

EUROPEAN PROTECTED SPECIES OF MOST RELEVANCE TO WELSH WOODLANDS

EUROPEAN PROTECTED SPECIES OF ANIMALS

Common name Scientific name

Bats, Horseshoe (all species) Rhinolophidae

Bats, Typical (all species) Vespertilionidae

Dormouse Muscardinus avellanarius

Lizard, Sand Lacerta agilis

Newt, Great Crested (or Warty) Triturus cristatus

Otter, Common Lutra lutra

Toad, Natterjack Bufo calamita

EUROPEAN PROTECTED SPECIES OF PLANTS

Common name Scientific name

Dock, Shore Rumex rupestris

Fern, Killarney Trichomanes speciosum

Gentian, Early Gentianella anglica

Marshwort, Creeping Apium repens

Naiad, slender Najas flexilis

Orchid, Fen Liparis loeselii

Plantain, Floating—leaved water Luronium natans

Note: there are other species of plants and animals found within Welsh woodlands which may be protected under other legislation.