

Amendments to the Habitats Regulations 1994: changes to species protection in England and Wales

The Habitats Directive (1992) requires member States to establish a strict species protection regime for certain animal and plant species, listed in Annex IV, which occur in Great Britain and across Europe. The Habitats Regulations (1994) transpose this requirement in England and Wales. Changes are being made to the Habitats Regulations to improve this regime and thereby increase the protection afforded to these species in response to two European Court judgements. A judgement in 2005 ruled that existing species protection provisions in the Habitats Regulations were not fully compatible with the strict species protection regime required by the Habitats Directive. A separate, related judgement ruled that trade in all species listed on Annex IV of the Habitats Directive should be prohibited rather than trade in just those species found in Great Britain.

The principal offences for protecting animals under the Habitats Regulations address the deliberate capturing or killing; deliberate taking or destroying of eggs; deliberate disturbance; and damaging or destroying a breeding site or resting place of Annex IV species resident in the wild in Great Britain i.e. European Protected Species (EPS). For plants there is an offence covering deliberately picking, collecting, cutting, uprooting or destroying a wild plant of an EPS. The Habitats Regulations provide certain defences to these offences that may operate in clearly specified circumstances. There is also an offence covering the possession, transport, sale or exchange of wild animals and plants on Annex IV.

As a result of the 2005 judgement, the majority of the defences originally put into the Regulations will be removed. This includes the “incidental result defence” which applies to acts which could constitute an offence but were the incidental result of an otherwise lawful activity and could not reasonably have been avoided. In the absence of such a defence, the offence prohibiting disturbance of EPS will be amended to better reflect the terms of the Directive and to allow trivial acts of disturbance to continue without constituting an offence and therefore requiring a licence.

Depending on the activities or operations being carried out, these changes to the Regulations will affect individuals and organisations in different ways. Those carrying out activities that may affect EPS will now have to give even more careful consideration to their presence and also their breeding sites and resting places. With this knowledge operators may choose to conduct their operations in a way that avoids affecting the EPS, if that is possible, or apply for a licence to carry out an activity that would otherwise now be unlawful.

Naturally, licences will not be granted unless the grounds of the application meet the conditions laid down in the Regulations in order to help ensure that the species are adequately protected.

The amendments are at an advanced stage and are likely to come into force during August 2007.

Forestry Impacts

The new regulations will impact on areas where EPS are present, and may require changes to the management of woodlands and forestry operations in those areas. The EPS found in the UK and that can occur in woodland are:

- all 17 species of bat
- dormouse
- great crested newt
- otter
- sand lizard
- smooth snake
- wildcat

(Natterjack toad and some of the plant species, such as yellow marsh saxifrage may rarely occur in woodlands or be affected by forest operations.)

The Forestry Commission is committed to increasing the sustainable management of England's woodlands, not least for the biodiversity protected by the Habitats Regulations. It is working to ensure that the forestry sector is in a position to both conserve these key European Protected Species and to carry on with business.

Over the last year the Forestry Commission has been working closely with Defra to understand the full implications for the forestry industry and to both negotiate changes to the legislation to minimise the implications for forestry, and develop guidance for woodland owners to comply with the legislation effectively.

The Forestry Commission has put considerable emphasis on four aspects:

- Ensuring that well intentioned woodland managers and operators, who are acting in a responsible manner, are not subject to the risk of prosecution
- Ensuring timber harvesting activities are not unnecessarily affected, additional costs are minimised and wood flows are sustained.
- Minimising any further administrative burden and risk that might demotivate those managing, or contemplating managing, their woodland
- Making sure that woodland management operations, such as coppicing or ride management, which will benefit these and other species are not hampered

The guidance describes how to detect EPS in your woodland, ways to operate should your woodland contain EPS, and describes operations that if carried out where EPS are present, could be illegal, because they destroy or disturb a resting or breeding place. Alternatives to these forestry operations are suggested. The alternatives should reduce the level of impact to a low, therefore, lawful level, but also highlight when licences will be required. Following this guidance should help to reduce the risk of prosecution, but, given the structure of the amended legislation, it is impossible to remove all

risk of prosecution. The guidance has been developed through consultation with Defra, the Welsh Assembly Government, Natural England, the Countryside Commission for Wales, with representatives of the forestry sector, and species experts.

The Forestry Commission will also be setting up a series of workshops and seminars for woodland managers to advise on the legislation, and on management and operations which are compliant in areas where EPS are present.

Further details about these events, the guidance and the licence mechanism will be available on the FC website at www.forestry.gov.uk/forestry/INFD-6Z2LE4

Or call the Forestry Commission on 0845 FORESTS (0845 3673787)

More detailed information and guidance on these changes can be obtained from: <http://www.defra.gov.uk/wildlife-countryside/ewd/index.htm>

Further advice may be obtained from:

Natural England: <http://www.naturalengland.org.uk/conservation/wildlife-management/licensing/default.htm>

Countryside Council for Wales: <http://www.ccw.gov.uk>