

Guidance on managing woodlands with otter in England

1. Background and purpose of document

The Habitats Directive¹ aims to conserve various species of plant and animal which are rare across Europe, and it requires Member States to provide legal protection for these species. Many of the protected species which are found in the UK (European Protected Species, or EPS) are either associated with or can be found in woodland, for instance dormice, otters, all species of bat, great crested newts, smooth snakes and sand lizards. The EU Directive was transposed into UK law by the Habitats Regulations in 1994 and as the Conservation of Habitats and Species Regulations 2010. The Regulations have increased the protection afforded to EPS and does not include the 'incidental result' defence under which many forestry operations were carried out.

The Forestry Commission (FC) and Natural England (NE), with assistance from relevant conservation organisations, have produced this suite of guidance to help you understand the legislation and to use good practice to operate within the law avoid licensing and benefit EPS. Following the guidance will show that you have taken all reasonable steps to comply with the Regulations. This document is one of a series providing guidance for woodland managers and operators. It focuses on the European otter (*Lutra lutra*).

Guidance is given on routine and on-going forestry and woodland operations and activities. For more unusual operations, such as development, construction or land-use change (i.e. removal of forest) you should seek further advice from the FC. Similarly, whilst it covers low-key recreational usage, expert advice should be sought for more unusual or intensive activities in woodlands e.g. music concerts or motor rallying.

This guidance should be used in conjunction with wider guidance on forestry and woodland management, and should not be followed in isolation. If the guidance has been followed, but you nevertheless do inadvertently cause damage, disturbance or harm to this protected species, a prosecution is unlikely to be considered to be 'in the public interest'². However, you are reminded that it remains your responsibility to ensure all your actions do comply with the law.

Sources of more detailed information on conserving the species are given in the further reading section.

¹The formal title is: Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora.

²The public interest test is used by the regulators to decide whether it is appropriate to take a matter any further bearing in mind all the circumstances of the case.

2. Complying with the Habitats Regulations through good practice

Otters are protected under the Habitats Regulations. Conserving rare and protected species present in a wood requires a careful and well-planned approach to woodland management. Should you manage a woodland near to a watercourse, there is the potential for otters to be frequenting your woodland. If you manage your woodland according to this guidance you are unlikely to inadvertently commit an offence against otters.

The intended outcome of management in otter habitat should be to:

- protect existing holts, resting places and breeding sites,
- achieve a continuity of suitable habitats,
- limit levels of disturbance.

Therefore, some woodland management within regions used by otter, but away from known otter resting places and breeding sites, will most likely create the future understorey and scrub habitats that are favoured by this species.

Further information on how to manage your woodland for otters is available in further reading list.

2.1 What woodland habitats do otters use?

Woodlands, particularly small patches of wet woodlands, carr and thick scrub or woods that are close to rivers, canals, ponds, lakes, and marshes, may be used by otters. Small streams and ditches are used as foraging habitat and corridors if they are within the home ranges of individuals. Otters often have a home range centred on 10-40km long sections of waterway or coast, and animals can be found at distances of 200m or more from the main water course or water body edge. In landscapes where waterside vegetation and undisturbed wetlands are very restricted, woodlands often provide the best, and sometimes the only cover in which otters can rest and breed.

Breeding sites and resting places can either be subterranean dens (holts) e.g. occurring in a tree root system, hole in a bank under a heap of stones, or above-ground specially constructed flattened area of vegetation ('couches').

A number of natal holts or couches can occur within a larger area of dense vegetation cover which provides protection for the breeding otter. Individual natal holts/couches may not be used each year but otters tend to return year after year to these areas for breeding. Whilst the habitat remains favourable e.g. before woodland development leads to loss of the understorey or scrub layer, such areas can become traditional places for breeding. Breeding sites are more likely to occur in woodlands if they are:

- relatively undisturbed by humans,
- ungrazed by stock,
- close to water,
- rarely flooded or are just above the floodplain level,
- contain large patches of dense cover such as scrub thickets, weedy young plantations, timber stacks and log piles, groups of windblown trees, large bankside root systems, hollow trunks, and stands of tussocky tall fen vegetation.

Resting places (holts and couches) occur in similar habitats to breeding sites and tend to be close to water but are less restricted, and may be found in woodlands as small as 0.5ha or less provided they contain patches of dense (at ground level) scrub, thickets or features as listed above. The less disturbed a site, the higher the

possibility that otters may use sites. Otter holts may be used more often in winter and above ground resting places are used more in the summer when growth of vegetation provides cover. Breeding can occur throughout the year and therefore, like resting places, breeding sites can be used at any time of year. Further information on habitat requirements of otters is available from the reading list below.

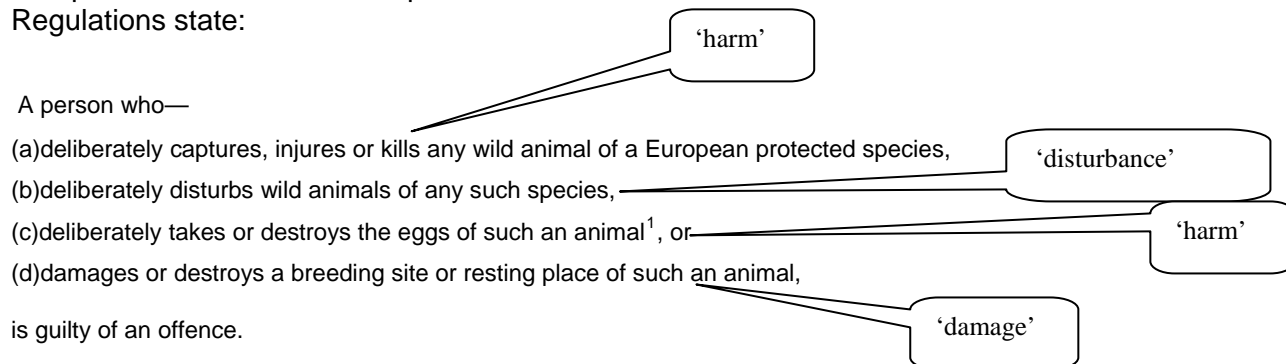
3. Forest operations and otters – avoiding committing an offence

Where otters are present, any woodland management close to watercourses or coastal areas requires careful thought. Operations such as timber harvesting, coppicing, scarifying, mowing and ground-works within potential otter habitat have a high risk of causing damage, disturbance or harm. Even when carrying out work to improve the riparian and wetland vegetation and habitat (e.g. pollarding old willows or coppicing alders) there may be a risk to otters. Changes in the way the woodland is used e.g. provision of access for recreational, should also be carefully considered.

A systematic approach can be used to minimise the risk of committing an offence when conducting necessary forest operations. This guidance is structured around the following five stages:

- Are otters **present** in the wood?
- Could proposed activities and operations potentially cause **damage, disturbance or harm** to otters?
- Are operations in habitats this species uses and when the species uses them?
- Are other parts of the woodland being managed using good practice for otters?
- When and how should I seek a **licence**?

The phrase ‘causing damage, disturbance or harm’ is actually a simplification, and it is important to understand the precise offences that can be committed. The Habitats Regulations state:



(2) For the purposes of paragraph (1)(b), disturbance of animals includes in particular any disturbance which is likely—

- (a) to impair their ability—
 - (i) to survive, to breed or reproduce, or to rear or nurture their young, or
 - (ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate; or
- (b) to affect significantly the local distribution or abundance of the species to which they belong.

Causing ‘damage’, even when the animal is not present, is an absolute offence but ‘disturbance’ or ‘harm’ is only considered an offence when caused deliberately. In the Directive, the term ‘deliberate’ is interpreted as being somewhat wider than just

¹ Not relevant to otters.

intentional and could be thought of as including an element of recklessness. A person would be acting recklessly if they could reasonably have been expected to foresee that an operation could cause disturbance or harm to a protected species but took no action to assess the risk and consider what to do about it.

Where an operation is carried out with sensible precautions then the risk of deliberate disturbance and harm can be greatly minimised. There is the potential for more than one protected species in your woodland, which for example may support dormice and bats, and you will need to follow the good practice guidance for each of the species present.

A series of tools have been developed to help support and advise woodland owners and managers on how to manage woodland where there are protected species present. This guidance is in compliance with sustainable forestry management practices and the Habitats Regulations.

A checklist - **European Protected Species and woodland operations v3** (PDF 104 kb) has been developed to guide woodland owners and managers through the decision-making process of seeking grant or felling permission approvals.

Immediately prior to woodland management operations taking place an **Operational Site Assessment Form** should be filled in. This has also been developed to help woodland owners and managers consider the potential impacts of operations on site features including EPS and identify the measures required to follow good practice.

For more information on EPS (including access to the above checklists) and the steps land managers should take to safeguard them please see our EPS web page. www.forestry.gov.uk/england-protectedspecies

It should be noted that the otter is also protected by some provisions of the Wildlife & Countryside Act 1981. This makes it an offence to intentionally or recklessly:

- disturb an otter while it is occupying a structure or place which it uses for shelter or protection; or
- obstruct access to such a place.

3.1 Are otters present in the woodland?

There are a number of ways of determining the likelihood of otters being present in a woodland: first and foremost, since otters are aquatic mammals, there needs to be a waterway or ditch within or alongside the woodland.

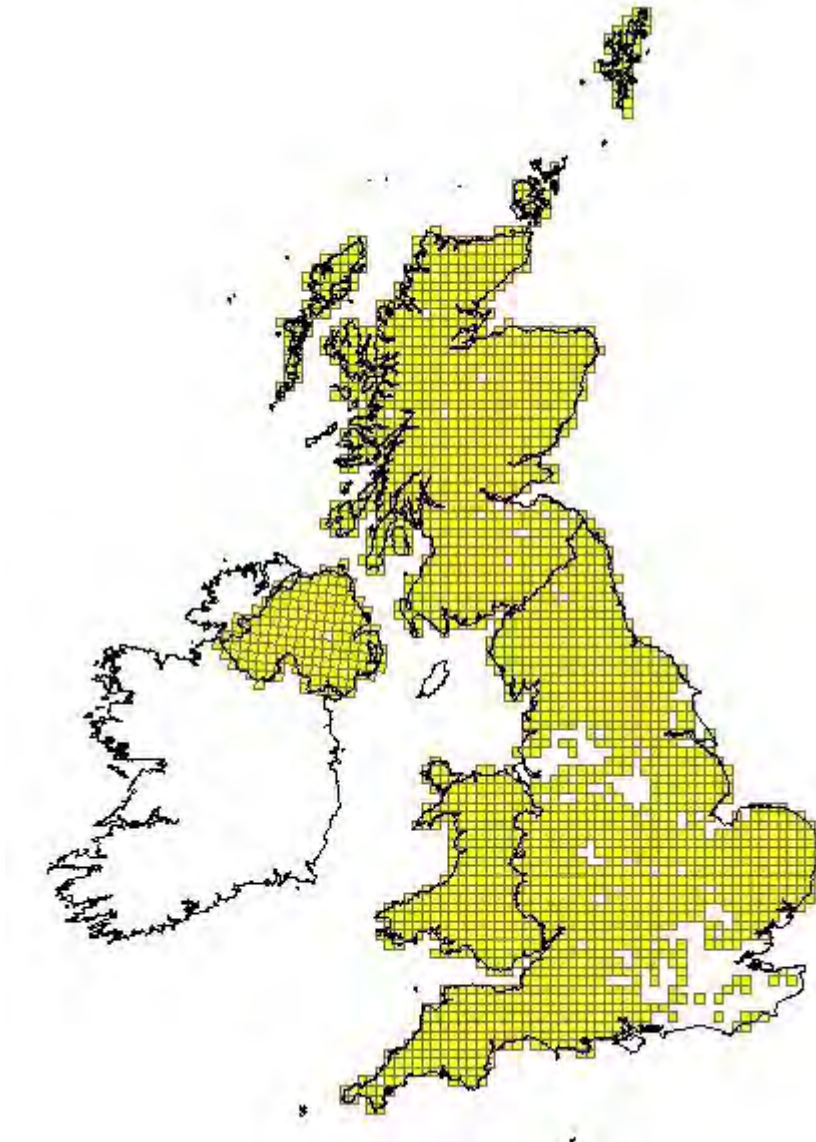
a. Is the woodland approximately within the current known range of the otter?

The map below shows the known distribution of the otter. You will see that this species is very well distributed across the UK. Please note that this species has been recolonising rivers across the UK over the last few decades and not all recent occurrences of otter may be mapped. Increasingly, otters are using coastal areas more and will seek resting sites within adjacent woodland.

Otter (*Lutra lutra*) distribution

Source: JNCC (2013) Article 17 Reporting

Image: Forestry Commission picture library



b. Are there records of otters in your woodland?

The National Biodiversity Network (NBN) is available on the web and can be checked for presence of otters near or in your woods. Add 'otter' as the search term in the interactive map tool <https://data.nbn.org.uk/imt/>, and zoom to your area of interest (please note that not all recent occurrences of otter may be shown on the map; a lack of records does not necessarily confirm otter absence). Your local Environment Agency (EA), Natural England or County Wildlife Trust representative is also likely to be able to give site specific information on likelihood of otter presence, as may the

Local Biological Records Centre (follow 'LRCs' link at: www.nfbr.org.uk), Natural History Societies and Mammal Societies (follow 'resources' and 'useful links' for list of wildlife societies at: www.wcl.org.uk)

c. Confirming the presence of otters by looking for signs or indicators

From the distribution maps you will see that for the majority of England it is likely that otters will have been recorded in your local area. Therefore, should you manage a woodland near to a watercourse or coastline, there is the potential for otters to be frequenting your woodland. However, what needs to be established is whether there are any holts, above ground resting places and breeding sites in the woodland you manage.

Sightings: otters are large animals that are easily distinguished from the smaller mink because the former are approximately 1m long, have spiky fur when wet, a broad, flat muzzle and long, tapering tail which is thick at the base. Their coat is mainly brown, with a lighter brown bib. They have small ears and eyes on a flattish head. Otter run with a lolling gait on land, and hold their long thick tapering tail off the ground. They swim very flat on the water surface and when they dive their long tail flips over and can be seen clearly. Otters have a high pitched squeak when calling to other otters and a whickering, loud angry chatter when threatening. Otters give a general impression of being dog-sized, whereas mink are at most cat-sized.

One of the best signs of otter presence are their spraints (droppings) which are usually seen within a metre of the water's edge at regular signing sites such as at the foot of bridges, the saddle of overhanging bankside trees or large bankside and in-channel rocks. Other signs that may be identified include feeding remains and footprints; large and small footprints occurring together can indicate the location is being used for breeding. Finding proven resting sites and holts and breeding sites is usually very difficult and requires experience.

If otters have been recorded in your locality, and your woodland adjoins a river or coast, then it may be best to assume they are, or soon will be, using your woodland. Alternatively you may wish to consider engaging local specialists to carry out a site visit in your woodlands and assist in identifying likely breeding sites and resting places.

Record the location of potential and confirmed breeding sites and resting places on your Forest Design Plans (FDP) or Woodland Management Plans (WMP) and proposed felling maps so that they can be protected.

If by self-assessment (following the guidance above) and/or specialist survey you are confident that otters are not present then no further action is necessary and the operation may proceed. It would be sensible to keep a record of your decision and the information used to reach it. If evidence of otters is subsequently discovered during operations (especially active breeding sites or resting places), you should stop work, consult the EA and NE and review your plans as required. It is therefore important for operators to remain vigilant for otters while undertaking work.

3.2. Could proposed activities and operations potentially cause damage, disturbance or harm to otters?

Carrying out any operations that 'exceed' the thresholds or do not comply with the good practice guidance described here could constitute an offence or carry a significant risk of committing an offence. Some possible examples are:

- Any mechanised operation (including tree surgery) within 30m of a known holt or resting place or within 100 - 200m of a breeding site.

- Felling, thinning, or coppicing a high proportion of the woodland habitat close to a watercourse or in potential otter habitat in one year.
- Clearing areas of dense scrub or tall vegetation close to a watercourse or within areas potentially used by otters.
- Any significant change either to levels of livestock or human disturbance within 30m of a known holt or resting place or within 100 - 200m of a breeding area.
- Felling trees to comply with plant health notices.

Activities that fall outwith the guidance, but could cause such damage or disturbance to otters breeding sites or their resting places, would also necessitate an application for a licence. The level of risk of damage or disturbance will depend on several factors:

- **Location of operation:** within potential otter habitat, the risk of harm and disturbance of otters, and of damage to undiscovered resting places and breeding sites is high, whereas in habitat less suitable for otter, the risk of harm, disturbance and damage is lower.
- **Type of operation:** in the short-term clearfelling effectively removes the habitat valued by otters resulting in damage to breeding sites and resting places, and disturbance and possibly harm to otters present, whereas thinning and coppicing activities, particularly 100-200m away from breeding sites and 30m away from resting places are likely to have less impact.
- **The nature of the habitat:** a relatively bare forest floor below a mature conifer canopy will contain few potential resting places or breeding sites compared to semi-natural woodland with a dense shrub layer and abundant deadwood. However, otters may use burrows dug by other species such as by badgers or foxes if close to the water regardless of cover.
- **Indirect impacts:** in wetter areas of the woodland sediment run-off arising from woodland operations can damage the stream habitat for otters.
- **Intensity of use:** a significant increase in the number of people visiting the woodland (or using the river) could be disturbing and make the habitat unusable for breeding/resting, as could increases in livestock stocking densities.

3.3. Are operations in habitats that otters use when otters use them?

Particular conditions make woodlands more suitable for use as resting /breeding habitat by otters. These include areas containing dense cover, close to water but which rarely flood and which are relatively undisturbed by humans or are ungrazed by stock. Use of such sites by otters can occur all year round. Work at such sites at anytime of year could have an impact.

3.4. Good practice guidance for woodlands with otters

This good practice guidance for routine woodland operations should maintain or improve the habitat for otters and minimises the risk of harming and disturbing animals or damaging their breeding sites or resting places. If you follow this good practice, and carry out the operations as described here, we would not expect you to require a protected species licence.

Forest design and operation planning:

Include known locations of otter holts, breeding sites and resting areas on Forest Design Plans (FDPs) and Woodland Management Plans (WMPs) and then integrating into work plans it will be possible to see where operations are likely to have impacts on otters. It will also be possible to plan ahead to avoid impacts. Note that otters may breed year round and the same locations used regularly until a change in habitat conditions makes them unsuitable.

- **Land close to water** – consider the risk of damage to otter breeding sites or resting places, and harm or disturbance of otters when planning any woodland management activities close to a watercourse or within potential otter habitat.

Stand management operations

- **Holts/couches and breeding areas** – close to a watercourse or within potential otter habitat identify and protect likely holts and sites of couches e.g. old trees, patches of scrub, fallen trunks, deadwood and the surrounding breeding area.
- **Any mechanised operation** - avoid any such activities within 30m of a known holt or resting place and within 100 to 200m of a breeding site. Error! Bookmark not defined.
- **Felling** – limit the extent of felling close to watercourses to ensure the majority of woodland/scrub cover is maintained.
- **Thinning/coppicing** - phase thinning or coppicing of woodland close to watercourses over several years.
- **Rhododendron clearance** – dense stands of Rhododendron adjacent to water may be used by otters. Where holts are present the clearance may need to be done under licence (see below) and replacement cover provided.
- **Extraction** – where possible extract material away from watercourses. Select routes that avoid disturbing any scrub areas, fallen trees and deadwood.
- **Timber stacking** - stack timber away from watercourses. Where not possible remove promptly (1-2 months), or else leave stacks of timber undisturbed as potential resting places or breeding sites for otters.
- **Fencing** – when considering fencing out rabbits/ deer/ livestock from an area close to watercourses ensure free movement by otters is maintained along rivers, streams and ditches (through fence design or shape of the fenced area). Do not fence in a holt or resting place or subdivide a breeding area, unless otter access under/through fence is provided. Fencing in sections watercourses may be beneficial if grazing levels are high.
- **Brash treatment** – needs to be treated soon (1-2 months) after felling if close to a watercourse, after which should be left as may be used by otters.
- **Sediment run-off** – careful choice of time of year, machine and routes, plus the use of temporary culverts, to avoid sediment entering the watercourse (follow Forests and Water guidelines).
- **Changes in recreational usage** – locate any new paths or recreational infrastructure at least 100m from potential resting place or breeding site.

3.5. When and how should I seek a licence?

Activities that fall outwith the guidance, but could cause harm, damage or disturbance, would also necessitate an application for a licence. These might include:

- Removing the riparian woodland to restore open habitats.
- Changes to the management of the watercourse itself (for example bank structure, water levels and flow).

You can apply for a licence to carry out operations that will risk committing an offence, but your application will have to be able to demonstrate the operation is necessary to either:

- Preserve 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, for instance by delivering Government's woodland strategy and provide public benefits;
- Prevent the spread of disease; and

- Prevent serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other forms of property or to fisheries.

And you must be able to show:

- 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.

Together these criteria make up the 'three tests' and will be considered by Natural England, licenses will only be issued in the three tests can be satisfied. More information is available at:
<http://www.naturalengland.org.uk/ourwork/regulation/wildlife/species/europeanprotectedspecies.aspx#licences>.

Two versions of the application form are available: an electronic version and a manual version. We encourage electronic applications wherever possible. Electronic forms can be obtained from www.forestry.gov.uk/england-protectedspecies

A manual application form can be obtained from your local FC office. This will guide you through the process and the information you need to provide. To meet the third 'test' you will need to undertake works in such a way as to minimise harm to the otters and you may be required to carry out additional work to improve the habitat or 'compensate' for any adverse impacts. The FC will carry out initial checks but NE will make the ultimate decision and grant the licence.

If the package of work you are proposing does not meet these 'tests' then it will not be possible to grant a licence. You are strongly advised not to proceed with operations that involve a high risk of committing an offence without a licence.

Sources of further information and references

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Produced by Forest Research, Forestry Commission (England, and Corporate and Forestry Support Division) and Natural England. We gratefully acknowledge comments from relevant species experts.