

Appendix 2: Legislation and policy guidance

1.1 BATS

Bats are offered special protection under the following legislation:

- The Wildlife and Countryside Act 1981 (as amended) Schedule 5, Section 9. This Act transposes into UK law the Convention on the Conservation of European Wildlife and Natural Habitats (commonly referred to as the "Bern Convention". The WCA was recently amended by the Countryside and Rights of Way [CroW] Act 2000. This makes it an offence to:
 - o intentionally kill, injure or take any species of bat [Section 9(1)]
 - o possess or control any live or dead specimens or anything derived from a bat [Section 9(2)]
 - o intentionally or recklessly damage, destroy or obstruct access to any structure or place used for shelter or protection by a bat [Section 9(4)(a)]
 - o intentionally or recklessly disturb a bat while it is occupying a place or structure which it uses for that purpose [Section 9(4)(b)].
- "The Conservation of Habitats and Species Regulations 2010 (as amended)" (The Habitats Directive) transposes into UK law Council Directive 92/43/EEC of 21st May 1992 on the Conservation of Natural Habitats of Wild Fauna and Flora (2010 revised) (referred to as the Habitats [and Species] Directive). Bats are listed on Annex II and Annex IV of the Directive. Inclusion in Annex II serves to underline their (the bats') conservation significance; inclusion in Annex IV (European Protected Species) means that member states are required to put into place a system of strict protection as outlined in Article 12. This is done through inclusion in Schedule 2 (Annex IV) of the Regulations. Regulation 41 makes it an offence to:
 - o deliberately capture or kill a bat [Regulation 41 (1)(a)]
 - o deliberately disturb a bat [Regulation 41(1)(b)]
 - o deliberately damage or destroy a breeding site or resting place of a bat [Regulation 41(1)(d)].

1.2 GREAT CRESTED NEWTS

Great crested newts, *Triturus cristatus*, are offered special protection under the following legislation:

- The Wildlife and Countryside Act 1981 (as amended) Schedule 5, Section 9. This Act transposes into UK law the Convention on the Conservation of European Wildlife and Natural Habitats (commonly referred to as the "Bern Convention". The WCA was recently amended by the Countryside and Rights of Way [CroW] Act 2000. This makes it an offence to:
 - o intentionally kill, injure or take a great-crested newt [Section 9(1)]
 - o possess or control any live or dead specimens or anything derived from a great-crested newt [Section 9(2)]
 - o intentionally or recklessly damage, destroy or obstruct access to any structure or place used for shelter or protection by a great-crested newt [Section 9(4)(a)]
 - o intentionally or recklessly disturb a great-crested newt while it is occupying a place or structure which it uses for that purpose [Section 9(4)(b)].
- "The Conservation of Habitats and Species Regulations 2010 (as amended)" (The Habitats Directive) transposes into UK law Council Directive 92/43/EEC of 21st May 1992 on the Conservation of Natural Habitats of Wild Fauna and Flora (referred to as the Habitats [and Species] Directive). The great-crested newt is listed on Annex II and Annex IV of the Directive. Inclusion in Annex II serves to underline the animal's conservation significance; inclusion in Annex IV (European Protected Species) means that member states are required to put into

place a system of strict protection as outlined in Article 12. This is done through inclusion in Schedule 2 of the Regulations. Regulation 41 makes it an offence to:

- o deliberately capture or kill a great crested newt [Regulation 41 (1)(a)]
- o deliberately disturb a great crested newt [Regulation 41(1)(b)]
- o deliberately take or destroy the eggs of a great crested newt [Regulation 41(1)(c)]
- o deliberately damage or destroy a breeding site or resting place of a great crested newt [Regulation 41(1)(d)].

This legislation applies to all life stages of great crested newts.

1.3 EXCEPTIONS FOR LICENSING

There are several exceptions to the provisions listed above under Regulation 44(2)(e). The Wildlife Licensing Unit of Natural England issues licences for a number of purposes, including “*preserving public health or 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*”. Licences permit unlawful activities under and in accordance with the terms of a licence granted by the appropriate authority.

Regulations 41 does not apply to anything done (under appropriate licence) for any of the following purposes

- o scientific or educational purposes;
- o ringing or marking, or examining any ring or mark on, wild animals;
- o conserving wild animals or wild plants or introducing them to particular areas;
- o protecting any zoological or botanical collection;
- o 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;
- o preventing the spread of disease; or
- o preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries.

The appropriate authority shall not grant a licence under this regulation unless they are satisfied-

- (a) that there is no satisfactory alternative, and
- (b) that 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.

1.4 OTHER PROTECTED SPECIES (NOT EPS) AND RELEVANT LEGISLATION

Nesting birds

Wildlife legislation through the *Wildlife & Countryside Act 1981* states it is an offence to

- Intentionally kill, injure or take any wild bird
- Intentionally take, damage or destroy the nest of any wild bird while that nest is in use or being built
- Intentionally take or destroy an egg of any wild bird

The *Wildlife & Countryside Act 1981* has several subsequent amendments the most important being the *Countryside and Rights of Way Act 2000* (CROW) which under Schedule 12 of the Act strengthens the legal protection for threatened species. It also makes certain offences 'arrestable' and importantly and significantly creates a new offence of reckless disturbance. It also confers greater powers to police and wildlife inspectors for entering premises and obtaining wildlife tissue samples for DNA analysis, and also enables heavier penalties on conviction of wildlife offences.

Schedule 12 amendment state: '...In section 1(5) of the 1981 Act (offence of intentional disturbance of wild birds) after "intentionally" there is inserted "or recklessly".

Badgers

Badgers are protected under the Badger Acts 1973 (protection from unlawful killing) and 1991 (setts). These were consolidated in UK law in the Protection of Badgers Act 1992 which makes it illegal to:

- kill, injure or take a badger
- cruelly ill-treat any badger
- interfere with a badger sett