

# EPS Mitigation Licensing: Latest developments

NATURAL  
ENGLAND

**December 2015**

Dear Stakeholder

Welcome to our final European Protected Species (EPS) Mitigation Licensing Newsletter of 2015 which includes a number of important items; new information, reminders, advanced notice, recent updates and other useful information which will help with submission of an EPS Licence application and keeping abreast of this evolving work area.

As always, to ensure this newsletter reaches as many people who are involved with EPS licensing as possible, we encourage you to share it with colleagues and anyone else who you feel may be interested. Previously published EPS Newsletters can be found [here](#). We aim to provide as much notice as we reasonably can prior to any changes being implemented and we also provide these updates via e-mail.

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#### 1. Update: Pre-submission Screening Service for Wildlife Licensing

The Pre-submission Screening Service (PSS) for Wildlife Licences was first launched by Natural England in 2012, along with the Discretionary Advice Service (DAS) for planning proposals. These services enable you to receive advice at an early stage on planning or development proposals which might affect European or, from early December, two nationally protected species.

Through PSS you can find out early on whether plans are likely to meet licensing requirements (and if not, what changes could be made), thus potentially saving time and money. Both chargeable services have grown very successfully - we delivered our 500<sup>th</sup> DAS case earlier this year - although we have at times struggled to meet demand for PSS during periods when we have had to prioritise our statutory licensing casework.

We are now expanding the scope and availability of DAS and PSS in order to better meet the demand from customers:

- We have increased our capacity to meet customer requests for early advice on planning & licensing; most area teams in Natural England are now taking PSS requests.
- PSS is applicable once the details of a licence application are well developed – so we are now also offering the option to access advice on licensing casework at an early stage of proposal development under the scope of DAS.
- We recognise that there are many instances where a potential applicant would like a view on compensation proposals ahead of submitting a licence. Our chargeable services are designed to do just that – enabling the applicant to find out at an earlier stage whether their plans are likely to meet licensing requirements, reducing uncertainty and potentially saving time at the formal licence application stage.
- As well as the European Protected Species, water vole and badger draft licences have now been added to the PSS offer.
- The PSS application process has been simplified with the creation of a single request form that is similar to the DAS request form.

To find out more about PSS, please follow this link where you will find costs, the request form, and other information:

<https://www.gov.uk/guidance/pre-submission-screening-service-advice-on-planning-proposals-affecting-protected-species>

## **2. Important Information: Clarification on Natural England's recent approach for applications which do not require a Reasoned Statement and implications for Local Planning Authorities**

We have received a number of queries about our approach for not requiring a Reasoned Statement for certain mitigation licence applications (see [here](#)) and whether, as a consequence of our new approach, it is no longer necessary for Local Planning Authorities (LPAs) to consider the three licensing tests under their

duties. It has also been suggested that Natural England only considers whether planning permission has been given to satisfy the first two EPS tests under Article 16 of the Habitats Directive. We wish to clarify that we do consider each of those tests and record that thinking in our generic assessments. We also consider other available published information and additionally check the application to make sure that the application's proposal meets with one of the identified scenarios which do not require a Reasoned Statement. If it doesn't (see ITEM 4) we request a Reasoned Statement is submitted before the application is considered further.

Whilst Natural England has a role in considering the need for and alternatives associated with activities in its consideration of the EPS licensing tests, it is noted that LPAs also must consider independently the 'need' and alternatives in a broader planning sense and consider whether a development is found acceptable when judged on its planning merits. LPAs will do this as part of the exercise of their normal planning discretion,

Natural England will draw on their broader planning reasoning when considering the licensing tests and if there is a problem at the planning stage, when a licence application is made, we will not grant an EPS licence. We would expect LPAs not to fetter their own judgments and rely on the fact that we are applying this approach to licence certain activities to obviate the need to consider themselves the planning merits associated with particular activities.

Furthermore, Natural England hopes that LPAs do not only rely on our 'in principle licensing advice' that we provide through our chargeable services, such as Pre-submission Screening Service, when considering its planning functions.

### **3. Update: Link to the recent publication of two new situations which avoid the need for a Reasoned Statement**

Two new scenarios which avoid the need for a Reasoned Statement have been added to .GOV.UK [here](#). Please be sure to carefully read the information provided setting out when a Reasoned Statement is not required and be sure that it applies to your proposal. We are still finding that we are receiving a number of applications without a Reasoned Statement when one is required, which results in delays in determining the application. Please note that the

scenarios where a Reasoned Statement is no longer required only applies in relation to certain types of structures and certain types of development. For example, you do not need to submit a Reasoned Statement where repair/maintenance works are being undertaken to a residential dwelling, listed building, place of worship or a public building but a Reasoned Statement would still be required for repairs/maintenance works to other types of building at this time (e.g. offices, factories, warehouses etc.).

The full guidance on when a Reasoned Statement is not required is found [here](#).

#### **4. Advanced Notice: Reasoned Statement templates and minor changes to content**

Our latest [Reasoned Statement templates](#) were published in May 2015. We recently reviewed whether they make it simpler for applicants to provide us with the essential information we need to determine the purpose and no satisfactory alternative tests in a systematic format and reduce the need to come back to you for further information. Our [August 2015 Newsletter](#), item three, highlighted common issues we identified and asked applicants to ensure they address these issues when preparing documents. Since August the situation has not improved so we are making some minor changes to the two Reasoned Statement templates to help make it clearer to our customers what information we need. The changes centre on the need to provide evidence on what alternatives have been considered. The revised documents will be added to the .GOV.UK web site by the end of January 2016, so please always download a new template to complete with each new application to be sure that you are always working on the most up to date version.

#### **5. Advanced notice: Public consultation on new policies for EPS mitigation licensing**

In February we hope to launch a public consultation which will propose four new policies for EPS mitigation licensing. They are intended to enable better outcomes for EPS and reduced burdens on developers. The policies aim to shift the focus away from protecting individual animals on development sites and towards improving populations in the wider local area; offer flexibility in the

location of compensatory habitat provision; allow EPS access to temporary habitats that will be subsequently developed; and allow reduced survey effort in appropriate circumstances. In the consultation we will discuss the circumstances in which the new policies can be used and we will illustrate them with example cases. We will be seeking views on the extent to which they could benefit EPS and help to reduce delays, costs and uncertainty for developers. We would also like to hear about any real case studies where the policies could make a difference. All recipients of the EPS newsletter will be contacted when the consultation commences.

**6. Reminder: New Great crested newt Method Statement available on .GOV.UK**

Most of you reading this will have received our recent EPS Mailshot Announcement that we have published the revised GCN Method Statement template (found [here](#)). We were alerted to an error with one of the formulas within the tables and have amended this. We also took the opportunity to extend the formulas within the 'Survey Summary tab' to applications which contained more than 10 ponds.

We will no longer accept new GCN applications on the "April 2013" version of the Method Statement from 30 January 2016. Please download a new template each time you start an application to be sure that you are working on the most up to date version available. We will, however, still accept any re-submissions, modifications to existing licences, draft Nationally Significant Infrastructure Projects and draft PSS applications (already reviewed) on the template they were first submitted.

**7. Update and for Awareness: Great crested newt Environmental DNA (eDNA) sampling and accreditation of laboratories**

Natural England has received a number of queries on accreditation of laboratories that undertake eDNA sample testing. We would like to clarify that Natural England does not accredit labs to provide this service.

We are aware of a number of suppliers that provide eDNA tests to the market, working to the DEFRA protocol. These are (in alphabetical order): ADAS, FERA, Nature Metrics, Spygen/FHT, and SureScreen Scientifics. Other suppliers may come into the market as more consultants and developers are aware of its application and suppliers are more prepared. **Natural England, however, does not endorse or maintain a list of suppliers.** We also cannot recommend specific suppliers; the client must satisfy themselves that the supplier can provide a quality service. If they are subsequently applying for a mitigation licence they must be confident that they can meet the requirements to support their application (as set out in the Great crested newt method statement template).

We are working on facilitating a proficiency test being operated to provide validation of laboratories. Proficiency testing and accreditation are not things we can or wish to do ourselves, but we do want to work with the industry to ensure standards are maintained without stifling developments in such technologies. We remain in the situation that we could only accept a deviation from the published protocol if someone provided robust evidence, and could demonstrate, that their approach is comparable, as per deviations from other, conventional approaches.

Please also carefully read Item 8 below which contains additional detail should you wish to use eDNA sampling to support a licence application.

#### **8. Important Advice: The use of environmental DNA test for Great crested newt licensing purposes during 2016**

In 2014, Natural England first started to accept the use of environmental DNA (eDNA) to detect the presence or presumed absence of Great crested newt (GCN) in water bodies. Use of eDNA is simply another survey technique – it is not a mandatory requirement. We will, however, only accept this survey technique to determine GCN presence or absence if samples are undertaken in strict accordance with the published technical advice note and they are collected by a suitably trained and experienced licensed GCN surveyor (see below). In relation to licensing requirements for 2016:

- NE will continue to accept eDNA test results as evidence of presence or presumed absence of GCN from consultants and developers, provided the method set out in the [Technical Advice Note](#) is strictly followed.
- Natural England will accept eDNA samples taken between the 15 April and 30 June, provided that animals are active and moving in the areas the samples are taken. We will also consider accepting surveys taken a short time outside this period (earlier or later), on a case by case basis, if good evidence can be provided within the Method Statement demonstrating that Great crested newts were active.
- Expert judgement must be applied to ensure samples are collected at the optimum time bearing in mind geographical location and conditions early in the year; the Great crested newt Method Statement template now contains the following requirement in a new section for eDNA surveying: "It is only acceptable to use Accredited Agents under a GCN survey licence to collect eDNA samples if it can be demonstrated that they are adequately trained and competent in GCN ecology, conventional survey techniques, trained in the collection of eDNA samples and are experienced GCN surveyors even if they do not hold their own GCN survey licences. The named ecologist and applicant are responsible for ensuring that this condition is met"
- The new Great crested newt Method Statement template now contains a section on eDNA sampling and surveys and sets out licensing requirements within it. There remains a requirement to include on the relevant survey figure/s water bodies sampled and surveyed, clearly indicating water body references and results (presence or absence).
- The age of samples and results must conform to current 'age of survey' within the guidance set out in the method statement template.
- This technique will not provide population size class assessments. Should a population size class assessment be required for the proposed development/project then the applicant will require six survey visits using conventional survey methods, in accordance with current recommendations within the "*Great Crested Newt Mitigation Guidelines, 2001*" (GCNMG). The survey section of the Method Statement must be completed as usual for a population size class estimate.
- Applicants must ensure they retain or have access to the records set out in the technical advice note, and used to support the licence application, for at least 12 months from the first licence return (which will be set out in any licence granted).

- eDNA can also be used for post development monitoring surveys if presence or absence only surveying is required under licence.

In deciding whether or not to use this test you will need to make an informed **risk based judgement** about whether eDNA or conventional surveys to detect presence and absence best meets your needs. In particular applicants should be aware of:

- The factors that affect the likelihood of false negatives when collecting water samples.
- The need for training and recognising there will be difficult or less suitable sites for this technique.
- Factors affecting laboratory performance. When commissioning laboratory analysis users should satisfy themselves that they can achieve a satisfactory level of performance.
- Whether the project timetable allows sufficient time to undertake the required number of population size class assessment surveys (ie the conventional 6 surveys between March-June – see the GCNMG for details) if an eDNA test shows presence of GCN and as such a population assessment is required for the proposed development and impacts. This will require careful forward planning.
- The study looked at one type of eDNA test – quantitative Polymerase Chain Reaction (qPCR).

**For the immediate future we will therefore only accept eDNA evidence using the qPCR test set out in the technical advice note.** Industry will need to demonstrate equivalence or better for any alternative tests used.

**9 Important Reminder: A licence is not always needed for the construction or creation of compensation**

We receive some bat applications well in advance of requiring a licence to cover the creation of compensation, such as stand-alone bat houses, when no offences will be committed by building them (so no licence is needed for this particular aspect of the work) and licensable works affecting the roost or bats occupying the roost will not take place for several months or over a year. We would like to remind applicants and consultants that it is not appropriate to apply to cover non-licensable activities within a licence application and to take this into consideration

when applying for a licence. If an applicant wants an early view on whether the compensation proposals are adequate, or in line with licensing requirements, then it is recommended that our Pre-submission Screening Service is considered.

## 10. New information: Natural England Twitter Links

Natural England and each Area Team have their own twitter accounts. We may use these twitter accounts to tell you about application windows, Pre-Submission Screening Service (PSS) availability and job opportunities. If you haven't already, please follow us on twitter now and let us know so we can follow you back:

- @NaturalEngland - our national twitter account
- @NE\_Northumbria – covering Northumbria
- @NECumbria - covering Cumbria
- @NEYorksNLincs – covering Yorkshire and North Lincolnshire
- @NENorthwest – covering Cheshire, Greater Manchester, Merseyside and Lancashire
- @NEEastMidlands – covering Derbyshire, Lincolnshire, Leicestershire, Nottinghamshire and Rutland and the Peak District National Park.
- @NEShropBhmStaf – covering Shropshire, Staffordshire (excluding Peak District), Birmingham and the Black Country
- @NESouthMercia – covering Gloucestershire, Herefordshire, Warwickshire and Worcestershire
- @NE\_WestAnglia – covering Essex, Hertfordshire, Cambridgeshire, Northamptonshire, Peterborough, Bedford Borough, Central Bedfordshire, Thurrock and Southend-on-Sea.
- @NENrfolkSuffolk – covering Norfolk and Suffolk
- @NEThamesValley – covering Oxfordshire, Buckinghamshire (including Milton Keynes), Berkshire, Surrey and London.
- @NESouthWest – covering Somerset, Avon and Wiltshire
- @NE\_DCloS – covering Devon, Cornwall and Isles of Scilly
- @NEDorstHantsIOW – covering Dorset, Hampshire and Isle of Wight
- @NESussexandKent – covering Sussex and Kent

## 11. Reminder: Modification requests prior to a licence expiring

Natural England is unable to amend or modify mitigation licences once they expire and we cannot licence actions taken retrospectively. Should a licence expire, typically a new application is required and a new licence reference will be issued should the three tests be met. We receive a number of requests to extend expired licences each year and would like to remind licensees it is their responsibility to ensure they are aware of the licence period and to apply to extend it should, this be necessary, which will avoid unnecessary costs and delays in preparing a new updated application and subsequent full re-assessment of proposals.

## 12. Update: Checklists for licences on .GOV.UK

The checklist on what to include in your application, as set out in the end of the August 2015 newsletter has now been added to .GOV.UK [here](#).

## 13. Reminder: Withdrawing licence applications

The following correspondence was sent to our mailshot list as a separate item on 10 October 2015: *“We are changing the way in which we respond to some licence applications for projects which we consider to present a low risk of offences.*

*Up to now, when we have received applications for an individual mitigation licence in which we can see no licensable operations, we have issued a further information request (FIR), requesting the applicant to specify more clearly the operations for which they consider a licence to be necessary. This requires us to go through a full assessment and a further administration process, which extends the timescale for sending a response to the applicant.*

*In some cases we are able to form a view on the need for a licence before this full process is complete. We wish to explore the benefits of changing the process to reflect this, as we believe that we can reduce costs and delays for the applicant by making changes and, by reducing our staff time spent on low risk cases, provide a better service on the more complicated higher risk cases.*

*Henceforth, where we come to the view that we cannot see any licensable operations, we will send a message to the applicant as soon as we come to this view. This message will say that we consider the application to be withdrawn unless we receive confirmation that they wish the application to be fully assessed and to receive a further information request. The message will provide an estimate of the timescale within which a FIR is expected to be issued.*

*This change does not affect the Bat Low Impact Class Licence as this permits deliberate disturbance, capture/take and damage and/or destruction of low conservation status roosts (day, night, feeding, transitional/occasional roosts ) for certain species of bats in small numbers (including individual bats) and the use of all licensable methods. These actions and methods are also licensable under the standard mitigation licence application route.”*

**14. Notice: Do we have your current contact details?**

Each time we send out the EPS Newsletter to our current mailshot list we receive a considerable number of ‘undeliverable’ messages. If you have recently changed your email, or are about to do so, or you know someone who is involved with EPS Licensing work and would like to receive our mailshots, please do let us know. Send you current email address to the [EPS.Mitigation@naturalengland.org.uk](mailto:EPS.Mitigation@naturalengland.org.uk) with an email header: *Change of email address for EPS Newsletter mailshot list.*

Kind regards and best wishes for 2016

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This content was withdrawn on 12 October 2020