

Protected species and woodland management: our regulatory approach

Guidance note

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What is this document about?

This Guidance Note provides a summary of the ways that protected species need to be considered and protected during woodland management operations in Wales.

It summarises the key legislation and provides advice on how you can manage your woodland without breaking the law, including when you might need to consider applying for a species licence. It provides a general overview and should be read in conjunction with any published Good Practice Guides for species you identify.

This guidance applies to ongoing woodland management activities, whether or not a felling licence is required. Whilst some of the information may be helpful in other contexts, this guidance is not intended to cover activities like the construction of forest roads, or other permanent or semi-permanent infrastructure, or other forest uses, like sporting or recreational events. If your forestry operation will take place within a SSSI, or other protected sites, you are likely to also need additional consent from NRW.

This Guidance Note, and the associated Good Practice Guides that relate to European Protected Species, have been approved by the Welsh Ministers as guidance under paragraph 43(9)(b) of the Conservation of Habitat and Species Regulations 2017. This means that a court must take them into account in proceedings relating to the offences of disturbing European protected animals, or the damage and destruction of their breeding sites or resting places.

Who is this document for?

This guidance is for anyone undertaking woodland management or forestry activities in Wales.

Contact for queries and feedback

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Introduction

Sustainable woodland management is an important element for maintaining biodiversity in Welsh woodlands. It should be possible to accommodate protected species without making your woodland operation unviable.

How you need to comply with the law may be slightly different depending on the species and how it is protected. What measures are “reasonable” will be proportionate to the scale of operation and the potential harm to the species. However, in all cases you should:

- Take reasonable steps to identify if protected species are present.
- Where possible, plan work to avoid risks of inadvertently harming them or their habitat during the operation and ensure your management will lead to the maintenance or improvement of their habitat conditions, once completed.
- Follow any relevant Good Practice Guides or any environmental conditions on your felling licence and manage any residual risks in line with the legal protection for each species.
- Keep records so you can demonstrate how you have considered protected species.

If this is not possible, you may need to rethink your operation, take further advice, or apply for a species licence, if that option is available.

Species protection in Wales: a summary of the law

The two principal pieces of legislation relating to protected species in the UK are the Wildlife and Countryside Act 1981 (WCA) and the Conservation of Habitats and Species Regulations 2017 (The Habitats Regulations).

The Habitats Regulations is UK legislation that transposed the European Habitats Directive into our domestic law. Even though the UK is no longer part of the European Union, most transposed legislation remains in force, including the Habitats Regulations. This is why species that are protected under the Habitats Regulations are often referred to

as 'European Protected Species' or 'EPS' for short. Species that are only protected under the WCA may sometimes be referred to as 'UK Protected Species', or 'UKPS'.

In addition, there is some species-specific domestic legislation, most relevant in the context of forestry is the Protection of Badgers Act 1992 ('The Badgers Act') and the Deer Act 1991 ('The Deer Act').

These pieces of legislation protect the species they relate to slightly differently. Whilst you do not need to understand all the differences, you may need to act differently depending on how the species is protected, so it will usually be helpful to at least know whether the species you need to consider are UKPS or EPS.

The law recognises that land management and other human activities need to happen, even where protected species are present. Some ongoing activities, like sustainable woodland management and agriculture, may also be necessary for the maintenance of the habitat that protected species rely on. The law provides some flexibility to regulate these activities proportionately, so that protected species benefit from sustainable human activity.

The key differences between the WCA and the Habitats Regulations

The Habitats Regulations require you to work in a way that avoids impacting EPS to the extent that it would be an offence. This would include deliberately killing or injuring them, deliberately disturbing them to an extent that significantly impacts them or impairs their ability to survive, breed or hibernate. Damaging or destroying their breeding sites and resting places could be an offence even if you do not do it deliberately.

You should aim to work in a way that means any impacts on EPS do not meet the threshold for an offence. Some of the offences may require careful interpretation and we have published specific Good Practice Guides for some species, to help you understand what you need to do.

If you cannot avoid breaching the EPS protections, NRW may be able to issue a licence to enable you to carry out your work lawfully. We can only do that if we are confident that there is no satisfactory alternative and that it will not harm the favourable conservation status of the species. If these tests are met, we can consider issuing a licence, but only as a last resort.

The WCA works slightly differently. Whilst the offences are similar, and there is still an expectation that you should avoid harming these species, there is a general defence that can apply to activities like forestry, if you can show that the harm was the "*incidental result of a lawful operation and could not reasonably have been avoided*" ('the Incidental Result Defence').

This should not be seen as an 'easy option' because to rely on this defence you may need to show a court that:

- The harm was 'incidental', in other words the harm to the species was a side-effect of your forest management and not an intended outcome.

- Your work was 'lawful' (not counting the harm to the species), for instance, you might need to demonstrate that you had an appropriate felling licence and were following all of its terms and conditions.
- The harm could not 'reasonably have been avoided', in other words that you had taken all measures that were reasonable, considering the nature and scale of your operation, to avoid or minimise the harm. We might expect such measures to include taking reasonable steps to identify whether protected species were likely to be in your woodland, and to then carry out the work in such a way as not to cause more harm than is strictly necessary to enable you to achieve your objectives; perhaps by not doing the work when the species are most vulnerable, like during its breeding season.

Whilst NRW does have powers to issue licences for activities affecting UKPS, it can only do this for some limited purposes specified in the Act. We do not have the power to issue licences for the purpose of forestry.

There is a similar incidental result defence in the Badgers Act. Welsh Government has powers to issue licences to permit the interference with a badger sett for the purpose of forestry, however, neither NRW nor Welsh Government have powers to issue licences permitting other impacts to badgers for the purpose of forestry.

So, for **all protected species** you will need to:

- take appropriate steps to determine if protected species are present or likely to be: if they are,
- adopt ways of working that mean you will not cause avoidable harm

However, if you cannot avoid causing a sufficient harm to trigger an offence:

- for UKPS you will need to rely on the incidental result defence
- for EPS you will need to apply to NRW for an EPS licence

In either case, you should always aim to avoid the harm occurring in the first place.

What protected species may I need to consider?

Your woodland may contain protected animals or birds as well as protected plants. This guidance focusses on protected animals and birds most likely to be found in woodlands in Wales. We publish a number of additional Good Practice Guides to help you identify and manage these species when carrying out forest management.

Birds

All wild birds and their nests and eggs are protected under the WCA.

In addition, some birds are given enhanced protection, these include Osprey, Barn Owl, and Peregrine. These are referred to as Schedule 1 birds.

Animals

Hazel Dormice, bats, Great Crested Newts, and Eurasian Otters are examples of EPS woodland species that are protected under the Habitats Regulations.

Red Squirrels, Water Voles, and Pine Martens are examples of UKPS woodland species protected under the WCA.

Badgers are specifically protected under the Badgers Act and the management of deer is regulated through the Deer Act.

Knowing your woodland and checking for the presence of protected species

The more you know about the species using your woodland, and the earlier you know, the more easily you can plan your management to ensure it supports biodiversity and does not break the law.

The two main ways to check for protected species are checking for records and carrying out walkover surveys. You may also get useful information from local conservation groups or from local knowledge.

Often, the best way to check a woodland for protected species is to bring in a specialist ecological surveyor, but there would be a cost to this so it may not always be possible.

If you apply for a felling licence from NRW, we will do a records check and may apply specific environmental conditions if we find evidence that protected species are likely to be present (we explain more about this in the section below). However, we will not usually have visited or surveyed your woodland, so you will still have to check for physical signs on site.

Checking for records

There are two main ways you can check for records:

1. Pay for a search
2. Do your own data search

Pay for a search from a Local Environmental Records Centre

Local Environmental Records Centres hold the most up to date and comprehensive data sets and you can commission them to do a search for records in or near your woodland [Local Environmental Records Centres Wales \(lercwales.org.uk\)](http://lercwales.org.uk).

Although this is a chargeable service it may save you time and money in the long run.

Do your own data search using the free NBN Atlas

Alternatively, you can consult the free online NBN Atlas: [NBN Atlas - UK's largest collection of biodiversity information](#)

The NBN Atlas can usually tell you if there are records of a species near your search area, but it may not give you all of the records, or all of the details, that a chargeable search would.

Be aware that data uploaded to the NBN Atlas under the *Creative Commons with attribution non-commercial licence* (CC-BY-NC) cannot be used for commercial purposes. If you are carrying out a data search as part of a commercial forestry operation you may need to disable this layer before beginning your search.

Walkover surveys

A walkover survey involves checking your site for physical signs that indicate the presence of protected species. If you are already aware that protected species are present, this is also an opportunity to identify areas of habitat that they rely on and need to be protected, especially any specific structures such as bat roosts or otter holts that need to be protected from felling, damage or disturbance.

Although we recommend that walkover surveys are carried out with the support of a qualified ecologist, anyone may carry them out if they have relevant experience or training. We would expect that, as a minimum, the person carrying out a walkover survey has attended a relevant species awareness course and is confident that they will be able to identify the relevant signs. If you know you have features like bat roosts in your woodland, it will be particularly important that the person doing the walkover survey has sufficient species-specific competence.

Remember that you may need to rely on the result of the survey to keep you on the right side of the law. If you are not confident that the person doing the walkover survey is competent and able to identify the signs these species, you would be well-advised to bring in a professional.

We have worked with the Mammal Society to produce guidance on what to look for and record on the walkover survey. However, this guidance is not an alternative to using a competent surveyor. Many conservation groups also publish detailed guidance on identifying signs of particular species.

You should record your survey, including when it was carried out, by whom, the methods they used, and what they identified.

You may need to do walkover surveys at different times of day and different times of year depending on the species and features you are looking for.

When might I need to bring in an ecologist?

Where possible, we would always encourage you to work with an ecologist as they can help with lots of things, including carrying out surveys, understanding good practice,

suggesting site specific mitigations to help you work within the law. If you find that you need an EPS licence, they can help you with your application.

However, we understand that the cost may not be always justified against the scale of work. The bigger your operation, the more likely that professional ecological support will be appropriate. Larger professional forestry operators tend to have their own in-house ecologists for this reason.

If you are interested in employing an ecological consultant, the Chartered Institute of Ecology and Environmental Management publish [guidance on how to engage an ecologist: A Householders' Guide to Engaging an Ecologist | CIEEM](#).

Sometimes we refer to consulting a “competent ecologist” in our Good Practice Guides. This does not always have to be a professional ecological consultant. Anyone with the necessary ecological experience and training may take the “competent ecologist” role, for instance, that may be a forester or an advisor from a relevant conservation organisation. The required level of training and experience will depend on the species being considered and the level of advice being provided. Whoever you rely on for this role, you should ensure that you are satisfied that following their advice is reasonable. Ultimately you will be responsible for ensuring an offence is not committed.

Good Practice Guides

If you have protected species in your woodland, check whether we have issued a Good Practice Guide for that species.

The aim should always be to follow good practice so that your woodland management benefits protected species and does not harm them. Forest operations in Wales should comply with UKFS as a minimum standard, whilst this will go a long way to ensuring your woodland management delivers the right outcomes for protected species, it may be necessary to go further.

Good Practice Guides set out ways of working that we consider are the minimum safeguards you should take to help you avoid committing an offence. These will usually be described as actions that you “must” take. They will also usually include additional suggestions for how you can manage your woodland to benefit the species.

If you are relying on following good practice to keep within the law, then you will need to do all the “musts” and as many of the additional measures as you can. Being able to demonstrate that you have planned your work to deliver long-term benefits for a species may be necessary if you need to justify some unavoidable short-term impacts during the operation. Ongoing activities like forestry are sometimes treated differently to other activities like development. In part, this is because they are sometimes critical to maintaining or improving habitat conditions essential for the species.

If you have a protected species in your woodland and cannot follow the measures in the relevant Good Practice Guide, you may be at risk of committing an offence and you will need to consider changing your plans, bringing in a competent ecologist to identify any site-specific mitigations that could allow you to proceed or, if available, applying for a species licence.

If you have protected species in your woodland for which we have not published a Good Practice Guide and there is not a specific condition on your felling licence, you will need to develop your own ways of working to keep within the law. If you are not confident that you can do this, you should seek advice from a competent ecologist.

Felling licences and protected species in Wales: the role of environmental conditions

If you apply to NRW for a felling licence, we will check for records of protected species in or close to your woodland as part of our assessment, as well as other sensitivities like protected sites. We will also consider any information you send us about what species are present in your woodland.

If we find records that suggest species are likely to be using your woodland, or if you tell us about a species being present, we may add environmental conditions to your felling licence to ensure that they are properly considered. We will consult you about any conditions before your licence is formally issued and you will be able to discuss any concerns.

Our ability to include environmental conditions on felling licences can help us to meet our legal duty to secure species protection measures without always needing to resort to additional licences. They help us reduce costs and administration for you and for us, and to focus on what needs to be done to protect the species.

Where we have published a Good Practice Guide for a species, environmental conditions will usually just require that you follow it. However, in some cases, they may need to include additional measures; for instance, if your woodland is a particularly important site for the species, or if it is within or close to a protected site. If we do this, we will explain the reasons.

Environmental conditions will be particularly useful if you have species in your woodland that are not covered by a Good Practice Guide as they can provide clarity on the measures you must take to minimise the harm to the species and keep within the law.

For UKPS complying with any environmental conditions will help you demonstrate that your work was a 'lawful operation' and that you took all reasonable precautions to avoid unnecessary harm. For EPS, demonstrating that you complied with any environmental conditions will be evidence that you took appropriate preventative measures to avoid committing an offence.

However, when we issue a felling licence, we will only be able to consider species that you have told us about, or that there are available records of. This means that just relying on environmental conditions on a felling licence is not enough to ensure to keep within the law. You will also need to carry out walkover surveys and remain vigilant during work. If, at any stage, evidence of additional protected species is found that are not covered by your felling licence conditions, you will need to ensure that you follow appropriate good practice for those species and seek ecological advice if you are unsure.