

EPS Mitigation Licensing: Latest developments



December 2011

Dear Stakeholder

This is the final newsletter of 2011 which contains details of five key items that you need to be aware of. To ensure this newsletter reaches as many people who are involved with mitigation licensing as possible, we encourage you to share it with colleagues and anyone else who you feel may be interested. 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 and publish them on our [website](#).

Headlines:

1. **Important notice:** Two new standard mitigation licence conditions.
2. **New guidance:** Nationally Significant Infrastructure Projects and EPS licensing guidance now available.
3. **Update:** 'How to get a licence' document has been revised.
4. **New:** Web link to all previous EPS newsletters.
5. **New guidance:** Dormouse survey requirements for mitigation licence applications.

1. Important notice: New standard mitigation licence conditions

Two new licence conditions have just been added to the standard mitigation licence conditions, which we wish to draw to your attention:

- i) *'All persons authorised to act under the licence are by virtue of that grant of authority the holder of a licence for the purposes of the offence in regulation 58(1) of the 2010 Regulations'.*

This condition makes it clear that everyone authorised to act under a licence is responsible for complying with the conditions of that licence and they are liable to prosecution if they fail to do so. This was the legal situation following the introduction of enforceable licence conditions in 2007, but during the consolidation of the regulations in 2010 the wording was inadvertently amended so that the offence applied only to the licensee.

This change brings mitigation licences in line with other licences issued by Natural England under the Conservation of Habitats and Species Regulations 2010, which (where appropriate) already include this condition. It is therefore important that all persons authorised to act under a licence read and understand the terms and conditions of the licence and associated method statement and are aware that 58(1) of the 2010 Regulations states that *'it is an offence for the holder of a licence to contravene or fail to comply with any condition attached to the licence'*. A person is not guilty of an offence if they took all reasonable precautions and exercised all due diligence to avoid commission of the offence; or the commission of the offence was otherwise due to matters beyond that person's control (see 58(3) for exact wording).

- ii) *'It is a condition of this licence that any post development monitoring data (e.g. survey data and habitat assessment), including 'nil' returns, are submitted to Natural England to arrive not later than 14 days (two weeks) after the expiry of the licence. Post development survey data (except nil returns) must also be sent to the relevant Local Biological Records Centre within this time period'*.

Licence periods cover post development monitoring so this must be undertaken as a condition of that licence. Post development monitoring data must also be collected in accordance with the licensed method statement and returns sent within the specified timeframe to Natural England and, if appropriate, to the Local Record Centre.

We have also revised standard condition 11 (which applies to great crested newt licences only) and removed the requirement for the ecologist named on the licence to provide Natural England with a list of persons appointed and to notify Natural England of any changes to that list.

2. Important: Nationally Significant Infrastructure Projects (NSIP) and European Protected Species (EPS) licensing.

We have recently published our guidance note [WML-G36](#). This guidance has been prepared to help NSIP developers and developers' consultant ecologists understand the process for engaging with Natural England about NSIPs and issues relating to EPS. Please note that this guidance will be kept under review and may from time to time be amended. We will keep you updated on any changes via this newsletter and our Latest News pages found on [Natural England's Wildlife Management and Licensing web pages](#).

As draft mitigation licence applications are required as part of this process, we encourage you to engage with us as early as possible and well in advance of when you are intending to submit your Development Consent Order application to the Infrastructure Planning Committee.

3. Update: The 'How to get a licence' document has been updated

There have been many changes within Natural England since our organisational re-structure in April 2011 so we have revised the 'How to get a licence' document to reflect these changes (team names, structure, addresses, 'who does what') and taken the opportunity to revise the process flow charts, add new key messages, the NSIP guidance and a new section on 'disputes between licensees and consultant ecologists'. The revised version has been added on to our web page and can be accessed by the following link: [How to get a licence](#).

4. Link to all previous EPS Newsletters on our website

We have now added a page to our website listing all EPS Newsletters. This will save time not having to scroll through the Latest News items for back issues.

<http://www.naturalengland.org.uk/ourwork/regulation/wildlife/species/epsnewsletters.aspx>

5. New Guidance: Dormouse surveys for mitigation licensing - best practice and common misconceptions

Interim guidance on dormouse surveying to support mitigation licence applications has been released [WML-G37](#). Survey queries are the most common dormouse questions from our customers. This guidance aims to dispel the common misconceptions with regard to surveying and provide advice on what is required by Natural England so we hope you find it useful.

Kind regards and best wishes for 2012

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