

Guidance on Building Development (England) With Respect to Amphibians and Reptiles

The Herpetological Conservation Trust is a non-governmental organisation and registered charity concerned with the conservation of the UK's amphibians and reptiles. As such, we support the protection of these species through the planning system and encourage high standards of those involved in the process. The following information has been produced to support parties concerned with amphibian and reptile sites threatened by building development.

1.1 Key Points

The protection of amphibians and reptiles with respect to development is determined by legislation and planning guidance.

Amphibians and reptiles should be considered at all stages of a proposed development. Current, good quality data is required to guide the planning process.

- > Was the possibility of a wildlife interest raised by planners at the outset? If not, it should have been.
- > Was adequate and appropriate information provided? This usually requires site surveys.
- > Has enough consideration been given to the species that are there? This may require refusal of planning permission or implementation of mitigation measures.

There are three different levels of legal protection for amphibian and reptile species, which have varying status within policy. The strength of site defence will depend on which species are present (and any existing wildlife site designations).

- > Different levels of protection will require different levels of consideration.
- > Different statutory bodies may be involved, and their level of interest will vary depending on the species or its status.

Guidance produced by Government regards biodiversity conservation as part of the planning process. This not only considers reactive protection of species and habitats but also recognises habitat networks (connectivity).

1.2 Introduction

The protection of amphibians and reptiles with respect to development is determined by:

- > Legislation
- > Planning Guidance
- > Biodiversity Action Planning

Introductory information on wildlife and planning

Wildlife and Development Booklet produced by English Nature (now Natural England).
<http://naturalengland.communisis.com/naturalenglandshop/docs/IN18.4.pdf>

Reptiles: guidelines for developers Natural England (2004).
www.lbp.org.uk/downloads/Publications/PlanningGuidance/NE_reptileguidelines.pdf. Booklet containing introductory information on the planning system and development:

Take Action for Wildlife. Pack produced by RSPB.
www.rspb.org.uk/ourwork/conservation/sites/england/action.asp

Engaging with the Planning System Amphibian and Reptile Groups of the United Kingdom Advice Note 1 (2006). www.arguk.org

This guidance note focuses on protection of sites with respect to amphibian and reptile species. However, it should also be noted that land may have existing designations e.g. Special Area of Conservation (SAC), Site of Special Scientific Interest (SSSI) or local wildlife site. Such designations should be taken into account with regard to development, but are beyond the scope of this guidance.

1.3 Legislation

All native amphibian and reptile species are protected under UK laws to varying degrees. Information on legislation pertaining to amphibians and reptiles is given on our website www.herpconstrust.org.uk/new_hab_directive_2007_EW.htm and a summary of legal protection is given in this document.

Amphibians and reptiles fall into three groupings with differing levels of protection:

- > Widespread amphibians
- > Widespread reptiles
- > European protected species

N.B. The northern clade pool frog is regarded as a native species to England, but as it is currently confined to a single site it is not considered within this note. Marine turtles have strict protection within UK legislation, but as they are unlikely to be involved in planning issues they, too, are excluded from this note.

The key pieces of legislation relevant to species protection in England are:

- > Wildlife and Countryside Act 1981 (and amendments)
www.jncc.gov.uk/default.aspx?page=1377 and www.naturenet.net/law/wcagen.html
- > Conservation (Natural Habitats etc.) Regulations 1994 (Regulation 39)
www.opsi.gov.uk/si/si1994/Uksi_19942716_en_1.htm
- > Natural Environment and Rural Communities (NERC) Act 2006
www.opsi.gov.uk/ACTS/acts2006/ukpga_20060016_en_1

Important amendments to the above legislation include:

- > The Wildlife and Countryside Act (Variation of Schedules) Order 1988
1988 www.opsi.gov.uk/si/si1988/Uksi_19880288_en_1.htm.
- > **Wildlife and Countryside Act 1981 (Variation of Schedules 5 and 8) Order 1991**
(Section 2) www.opsi.gov.uk/SI/si1991/Uksi_19910367_en_1.htm
- > Schedule 12 of the Countryside and Rights of Way Act 2000
www.opsi.gov.uk/Acts/acts2000/20000037.htm.
- > The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007
(Regulation 13) www.opsi.gov.uk/si/si2007/ukxi_20071843_en.pdf

Widespread Amphibians The palmate newt, smooth newt, common frog and common toad are listed on Schedule 5 of the Wildlife and Countryside Act 1981, but are protected (section 9[5]) only with respect to trade (prohibition of sale and advertising for sale, etc.). Hence these species are not legally protected from development, although other considerations may be taken into account (e.g. existing site designations, planning guidance and Biodiversity Action Planning).

Widespread Reptiles Four reptile species, slow-worm, viviparous (or common) lizard, grass snake and adder also have protection under the Wildlife and Countryside Act 1981. Their inclusion on Schedule 5 gives 'partial protection' (i.e. only parts of section 9 apply). In addition to the restrictions on sale (as for the widespread amphibians, above) they are also protected from intentional killing or injuring. (Note that this latter protection was bestowed through amendments to their original listing on the 1981 Act through Variation of Schedules Orders in 1988 www.opsi.gov.uk/si/si1988/Uksi_19880288_en_1.htm and 1991 www.opsi.gov.uk/SI/si1991/Uksi_19910367_en_1.htm).

Section 10(3)c of the Wildlife and Countryside Act 1981 offers a defence in situations where killing and injury are an *incidental result a lawful action and could not reasonably have been avoided*. Interpretation can be difficult, but courts have taken the view that activities, such as development, that lead to injuring or killing reptiles, can constitute an intentional act (and we have seen other legal opinions to support this view) if insufficient care to avoid harm was given.

Note that some operations that occur in conjunction with building developments, such as survey, capture, handling and moving (translocation), are not illegal for these widespread species and so no licence is required for them.

European Protected Species These are strictly protected species (great crested newt, natterjack toad, sand lizard and smooth snake) which are protected by a combination of both the Wildlife and Countryside Act 1981 and the Conservation (Natural Habitats etc.) Regulations 1994. The latter are domestic implementation of the European Commission's 'Habitats Directive', hence the term 'European protected species'

http://europa.eu.int/eur-lex/en/consleg/pdf/1992/en_1992L0043_do_001.pdf.

Protection of these species differs from that of the widespread reptiles in that not only are they protected from killing and injury, but also from disturbance and capture. Additionally, the habitat of European protected species is legally protected, from damage or destruction. The development of a site where European protected species occur can therefore go ahead only if licensed by Natural England.

Note that the natterjack toad, sand lizard and smooth snake are rare species, occurring in a few specific locations, so they only infrequently coincide with building development issues. In contrast, the great crested newt has a large range in England and is hence more likely to occur in areas subject to building development. The great crested newt's strict protection stems from a decline throughout its European range – England is a stronghold area for the species.

- > The ranges occupied by different species can be viewed via the National Biodiversity Network <http://data.nbn.org.uk/>.
- > More detailed information on local distribution is usually held locally, either by Local Records Centres www.nbn-nfbr.org.uk/nfbr.php or Amphibian and Reptile Groups www.arguk.org or the Wildlife Trusts www.wildlifetrusts.org/index.php?section=localtrusts.
- > More detailed information on the range of rare species (natterjack toad, sand lizard, smooth snake) is held by the Herpetological Conservation Trust.

Existing records of species' presence are important in informing the development process. However, data holdings are usually not comprehensive, especially for the widespread species. Hence, even if there are no protected species records, surveys may still be required in some cases. Indications that surveys should be carried out to provide better information include:

- > Existence of species records nearby.
- > Presence of habitat favourable to the species in question.

Since its original enactment, the Wildlife and Countryside Act has been subject to many changes (notably via Schedule 12 of the Countryside and Rights of Way Act 2000). These have in particular affected penalties and enforcement. Offences under section 9 of the Act are now 'arrestable'. Enforcement is usually by the Police and less frequently by Natural England. However, section 25(2) of Wildlife and Countryside Act also states that a local authority may institute proceedings. Prosecutions can result in a level five fine (currently £5000) for each offence (and the Act is specific that killing/injuring of each individual animal can constitute a separate offence), the forfeiture of any equipment, etc., used to perpetrate that offence and (under the Countryside and Rights of Way Act 2000) up to six months imprisonment.

Guidance about amphibians and reptiles, in the context of licensing, can be found on Natural England's website www.english-nature.org.uk/science/licensing/faq_ar.asp

Legal protection and BAP status of amphibians and reptiles in England				
Group	Species	Killing and injury	Disturbance, capture and habitat	BAP Priority
Widespread amphibians	Smooth newt			
	Palmate newt			
	Common frog			
	Common toad			
Widespread reptiles	Viviparous lizard	Yellow		Red
	Slow-worm			
	Grass snake			
	Adder			
European Protected Species	Natterjack toad	Yellow	Orange	Red
	Great crested newt			
	Sand lizard			
	Smooth snake			

Biodiversity Duty This is a legal undertaking given in the Natural Environment and Rural Communities Act 2006 www.opsi.gov.uk/ACTS/acts2006/20060016.htm, which places a duty on public authorities (including local planning authorities) to conserve biodiversity. This provides legal reinforcement of [guidance given with regard to wildlife and planning](#).

Section 40(1) of the Natural Environment and Rural Communities (NERC) Act 2006
<p>Duty to conserve biodiversity</p> <p>Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.</p>

Defra has published guidance for local authorities on implementing the Biodiversity Duty: www.defra.gov.uk/wildlife-countryside/pdfs/biodiversity/la-guid-english.pdf. This reiterates that local authorities have a key role to play in conserving biodiversity, through planning and development control. It also notes that biodiversity conservation extends to restoring and enhancing species populations and habitats, as well as protecting them.

Section 41 Listing This is a list of species and habitats considered by the Secretary of State to be of *principal importance for conserving biodiversity in England*. The government was committed to publish this under Section 41 of the NERC Act 2006.

The Section 41 list guides decision-makers, especially public bodies, including local and regional authorities, in implementing the biodiversity duty.

Defra has produced lists of habitats and species of most relevance to seven public sectors, to assist relevant parties who may not be ecological experts. Species were identified for each sector either because they are widespread or because conservation actions targeted

at them are likely to benefit other species. In the land use planning sector the following amphibian and reptile species have been highlighted:

- > Great Crested Newt
- > Common Lizard
- > Slow-worm
- > Adder

These sectoral listings should not limit biodiversity duty to the listed species – but rather provide a readily usable guide. Even the full Section 41 listing does not define the limitations of the biodiversity duty (since the NERC Act refers to biodiversity in broad terms), though in reality it is expected that public bodies will refer to this sectoral listing to identify priorities.

Reference

Defra (2008). Explanatory Note: Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006 - Habitats and Species of Principal Importance in England [www.ukbap-reporting.org.uk/uploaded/files/s41 list - explanatory note \(final\).doc](http://www.ukbap-reporting.org.uk/uploaded/files/s41%20list%20-%20explanatory%20note%20(final).doc)

1.4 Planning Guidance

A useful introduction to reptiles and planning issues is given in a booklet published by Natural England (2004). *Reptiles: guidelines for developers*. This guidance notes that *Mitigation and compensation is normally required when development is permitted on reptile habitat*.

National planning policy guidance is given in a series of Planning Policy Statements. Of particular significance is *Planning Policy Statement 9: Biodiversity and Geological Conservation (PPS9)*. This sets out government policies on protection of biodiversity and geological features. These encompass conservation and enhancement of wildlife and habitat and address habitat connectivity. PSS 9 states that *The planning system has a significant part to play in meeting the Government's international commitments and domestic policies for habitats, species and ecosystems*. Government's objectives for planning are *to conserve, enhance and restore the diversity of England's wildlife by sustaining, and where possible improving, the quality and extent of natural habitat...and the populations of naturally occurring species which they support*.

Habitat connectivity The guidance notes that ecological networks should *be protected from development, and, where possible, strengthened by or integrated within it*. This is of particular significance with respect to amphibians and reptiles. Movement of individuals between patches of habitat is important to the long-term survival of populations. Amphibians and reptiles cannot move long distances between different habitat patches, but can only disperse over relatively hospitable terrain. Hence in matters of development not only should the presence of species and the conservation importance of a site be considered, but also its significance within the wider landscape as part of a habitat network. For example, the development of a former arable field with little wildlife present may not be

significant, when viewed in isolation. However, if the field lay between a patch of woodland where toads overwinter and a lake where they breed, then the field is of significance as part of an ecological network.

Validation of planning applications Biodiversity information is not an absolute requirement, however for most types of application it is suggested as a 'local requirement' (Department for Communities and Local Government, 2007). Biodiversity survey and reporting should be provided when a proposed development may have possible impacts on wildlife/biodiversity. Biodiversity information includes *existing biodiversity interests and possible impacts on them to allow full consideration of those impacts.*

Where proposals are being made for mitigation and/or compensation measures information to support those proposals will be needed. Where appropriate, accompanying plans should indicate any significant wildlife habitats or features and the location of habitats of any species protected under the Wildlife and Countryside Act 1981, the Conservation (Natural Habitats etc) Regulations 1994 or the Protection of Badgers Act 1992. Applications for development in the countryside that will affect areas designated for their biodiversity interests are likely to need to include assessments of impacts and proposals for long term maintenance and management. This information might form part of an Environmental Statement, where one is necessary. Certain proposals which include work such as the demolition of older buildings or roof spaces, removal of trees, scrub, hedgerows or alterations to water courses may affect protected species and will need to provide information on them, any potential impacts for them and any mitigation proposals for such impacts.

Governmental guidance and policy

- > Planning Policy Statement 1: Delivering Sustainable Development
www.communities.gov.uk/documents/planningandbuilding/pdf/planningpolicystatement1.pdf
- > ODPM (2005). Planning Policy Statement 9: Biodiversity and Geological Conservation.
www.communities.gov.uk/publications/planningandbuilding/pps9
- > ODPM (2005). Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within the Planning System. ODPM Circular 06/2005; Defra Circular 01/2005. ODPM.
www.communities.gov.uk/documents/planningandbuilding/pdf/147570.pdf
- > ODPM, Defra and English Nature (2006). Planning for Biodiversity and Geological Conservation: A Guide to Good Practice. ODPM.
www.communities.gov.uk/documents/planningandbuilding/pdf/143792.pdf
- > The Validation of Planning Applications: Guidance for Local Planning Authorities (2007). Department for Communities and Local Government: London
www.communities.gov.uk/documents/planningandbuilding/doc/validationplanningappl.doc

Note that ODPM refers to the former Office of the Deputy Prime Minister, which is now Communities and Local Government.

1.5 Biodiversity Action Plan

The UK Biodiversity Action Plan www.ukbap.org.uk reviewed the UK's biological resources and developed plans for the protection of a list of priority species (and habitats) which included:

- > Great crested newt
- > Natterjack toad and
- > Sand lizard

These species have individual plans which can be viewed on the UK BAP website. All three of these species have strict legal protection, so their inclusion as BAP priority species adds little to their protection within the planning system. However, in 2007 the list of BAP species was revised to include (in addition to the former three species):

- > Common toad
- > Viviparous lizard
- > Slow-worm
- > Grass snake
- > Adder

Species action plans have not been developed for the latter four, however, all 'BAP-listed' amphibians and reptiles have also been listed under [Section 41](#) of the Natural Environment and Rural Communities (NERC) Act 2006. This makes them of *principal importance for conserving biodiversity in England*, which may strengthen their case within the planning system.

Many areas of the country have also developed local action plans. These may include actions relevant to local planning issues and they may highlight species that are local priorities, irrespective of their national status. Local action plans and contacts can be found on the Biodiversity Action Reporting System www.ukbap-reporting.org.uk/plans/lbap.asp

1.6 Consultancy Standards

Assessing the wildlife value of sites and the impacts of development is generally carried out commercially by wildlife consultancy companies. Their work on amphibian and reptile issues tends to be guided by a range of published material (see text box). Guidelines have been developed with the aim of setting desirable standards rather than providing inflexible survey specifications. These can provide useful reference material in planning surveys and assessing their quality. However, they should not be used as a substitute for expertise.

A critical factor in the reliability of survey work is likely to be the experience of the consultancy personnel. Locally based consultancies may have greater knowledge of species locally and of the local conservation significance of sites. Engaging local consultancies also reduces travel distances, which not only helps to minimise costs, but also minimises the 'carbon footprint' of ecological work (amphibian and reptile survey work involves repeated site visits).

Many consultants are members of the Institute of Ecology and Environmental Management (IEEM). This professional body has a code of conduct and a complaints procedure, both of which are obtainable from the IEEM website www.ieem.net/default.asp.

Publications giving guidance for developers and planners can be found on the Association of Local Government Ecologists (ALGE) website www.alge.org.uk

Guidance on standards in consultancy work:

English Nature (2004). **Reptiles: guidelines for developers**. English Nature. (Introductory overview).

www.lbp.org.uk/downloads/Publications/PlanningGuidance/NE_reptileguidelines.pdf

English Nature (2001). **Great crested newt mitigation guidelines**. English Nature. (Available on Natural England's website).

<http://naturalengland.communisis.com/naturalenglandshop/docs/newt1.pdf>

Froglife (1999). **Reptile Survey**. Froglife. (Aimed at conservation surveys, but in practice is often used to guide commercial surveys). www.froglife.org/FAS/FAS10.pdf

HGBI Advisory Note for maintaining best practice and lawful standards. (Aimed at voluntary groups, but used within consultancy business).

Highways Agency (2001). **Design Manual for Roads and Bridges**. Volume 10 Environmental Design and Management. Section 4 Nature Conservation, Part 6. Nature Conservation Management Advice in Relation to Amphibians.

www.standardsforhighways.co.uk/dmrb/vol10/section4/ha9801.pdf

Highways Agency (2005). **Design Manual for Roads and Bridges**. Volume 10 Environmental Design and Management. Section 4 The Good Roads Guide: Nature Conservation. Part 7. Nature Conservation Advice in Relation to Reptiles and Roads.

www.standardsforhighways.co.uk/dmrb/vol10/section4/ha11605.pdf

Newton, J. and Williams, C. (2005). **Working with wildlife - site guide (C567)**. CIRIA.

www.ciria.org/bookshopentrance.htm

1.7 Engaging With Development Issues: A Checklist

- > Do you know which amphibian and/or reptile species occur in the area proposed for development?
- > How protected are these species?
- > Are they BAP priority species?
- > Has an Environmental Impact Assessment, or other type of assessment or survey, been carried out on the site? (Ask your local planners).
- > What, if any, ecological information about the site is published (local books, news reports, records in local biological records centres etc.)?
- > Are there other species present (e.g. protected or BAP plants or insects, trees with preservation orders etc.) present on the site that may add weight to its protection?
- > Is the site linked with (or next to) other important or protected areas (local nature reserve, SSSI etc.)?

Letters laying out the above, and other relevant, information (such as any impact on local open space, leisure or visual amenity) should be written **individually** to council officers (planning, asset management, environment or biodiversity officers etc.) as well as the local Wildlife Trust, other local conservation or “friends of” organisations, possibly also your MP and MEP. Petitions and “form letters” signed by several (or even many) people are often discounted – the opinions of individual taxpayers are what seem to count! And if you do not receive a reply, keep trying. Be courteous at all times and plan in advance what you want to say. A well-written and polite letter is much more likely to be well received than an irate telephone call.