



Northern pool frogs in amplexus (ARC)

3. Legislation and Policy

3.1. Legislation

All native amphibians receive some legal protection in Great Britain arising from the following legislation:

- Wildlife and Countryside Act 1981 (as amended) (in Great Britain).
- Nature Conservation (Scotland) Act 2004.
- Conservation of Habitats and Species Regulations 1994 (as amended) (in Scotland).
- Conservation of Habitats and Species Regulations 2010 (in England & Wales).

In England and Wales all amphibian species are listed on schedule 5 of the 1981 Act. The great crested newt, natterjack toad and pool frog are also listed on schedule 2 of the 2010 Regulations, which designate them 'European protected species'. In Scotland natterjack toads and great crested newts are protected through the Conservation of Habitats and Species Regulations (2004).

The legislation effectively creates two levels of protection. The European protected species receive strict protection, making it an offence to capture, possess, disturb, kill, injure, or trade in individuals of these species. In addition it is an offence to damage or destroy the places they use for breeding or resting. The remaining four species are protected only against unlicensed trade. The legislation applies to all life stages of wild animals only.

Legislation also provides protection for sites of particular value to nature conservation. Some amphibian sites may be eligible for designation as Sites of Special Scientific Interest (SSSIs) (NCC, 1989):

- Important, established natterjack sites.
- Exceptional great crested newt sites.
- Outstanding assemblages of widespread species.

SSSIs have legal protection meaning that damaging activities are strictly controlled or prevented. Management

is agreed with landowners to ensure that the site is maintained at, or restored to, a favourable condition. There are also special considerations in planning for development activities that might affect SSSIs.

European legislation affords the great crested newt a higher level of protection than other British amphibians. Under the Habitats Directive 1992 it is listed under schedule 2, which means that member countries should designate Special Areas of Conservation (SAC) for the species. In Britain 22 SACs have been designated for the great crested newt which is also a qualifying feature for 10 other sites ([JNCC website](#)). SAC sites are also SSSIs and so are subject to the same controls.

3.2. Biodiversity Action Plan 'priority species' listing

The following amphibians are priority species of the UK Biodiversity Action Plan (BAP) www.ukbap.org.uk:

- Great crested newt
- Common toad
- Natterjack toad
- Pool frog

Action plans highlight both the threats to these species and the conservation measures needed to address them (see Amphibian and Reptile Conservation's website: www.arc-trust.org).

All BAP species have been included in lists of species of 'principle importance for the purpose of conserving biodiversity' enshrined in national legislation. In Scotland there is a provision to create such a list via Section 2 of the Nature Conservation (Scotland) Act 2004, while in England and Wales the mechanism is through Sections 41 and 42 of the Natural Environment and Rural Communities (NERC) Act 2006 respectively. Section 1 of the Nature Conservation (Scotland) Act 2004 and Section 40 of the NERC act introduce a 'Biodiversity Duty' which gives responsibility to all public bodies to *have regard...to the purpose of conserving biodiversity*.

Legal protection and BAP status of amphibians in Britain

Level of legal protection	Species	Killing and injury	Disturbance, capture and habitat	BAP Priority
Limited protection under Wildlife and Countryside Act	Smooth newt			
	Palmate newt			
	Common frog			
	Common toad			Priority
European Protected Species	Great crested newt	Protected	Protected	Priority
	Natterjack toad	Protected	Protected	Priority
	Northern pool frog	Protected	Protected	Priority

3.3. Implications for site managers

The legal situation regarding the species with limited protection (palmate newt, smooth newt, common frog and common toad) is straightforward. These are protected under the Wildlife and Countryside Act 1981 but only with respect to unlicensed sale. Habitat management activity is not subject to any legal restraint in the case of these species.

Where great crested newts or natterjack toads are present, however, habitat management work must be carefully planned to comply with the legislation protecting these species. Work to improve the habitat for these species could be illegal if it risked killing, injuring or disturbing individual animals.

Otherwise unlawful activities (such as disturbance for conservation purposes) can be made lawful by a licence from the relevant government agency (Natural England, Countryside Council for Wales or Scottish Natural Heritage).

In 2007 amendments to legislation removed the defence which previously made an action lawful if it was the *incidental result of a lawful operation and could not reasonably have been avoided* (known as the 'reasonable avoidance' defence).

In practice most typical habitat management for the great crested newt and natterjack should not require a licence. Work should be planned to avoid committing an offence (such as killing great crested newts during major restoration work to a breeding pond). This may be done by careful timing of operations. For example work to a great crested newt breeding pond should be done in the winter, rather than in the spring or summer.

If habitat management work is planned for a site where great crested newts or natterjack toads are likely to be present, the following is recommended:

- Confirm that the species is in fact present
- Decide on work required.
- Conduct a risk assessment.

Some sites are well recorded but smooth newts are sometimes mistaken for great crested newts. Unless identification is definite, this should be confirmed by survey work. Note that surveying for European protected species is a licensable activity since survey techniques cause a degree of disturbance. Amphibian and Reptile Groups may be able to help with surveys.

Planned work should be reviewed to confirm whether it will benefit the conservation of the species. For example, the creation of suitable ponds would clearly be of benefit but the installation of a footpath or bird hide would not.

A risk assessment should be carried out to identify and then minimise, or ideally eliminate, the occurrence of illegal activity (i.e. disturbing, killing or injuring a European protected species) during the course of the proposed work. Risks can be minimised by planning the work when animals are least likely to be present in the area of the proposed activity. For example work on terrestrial habitat away from a pond could be planned for the late spring when amphibians could be expected to be in the pond. Work affecting the aquatic habitat is best planned for late autumn when amphibians are likely to be on land.

If having completed a risk assessment you still consider that illegal activity may occur, you must apply for a conservation licence.

If in doubt over a particular project, contact the licensing section of the relevant national agency or seek advice from a professional consultant ecologist.

Note that the above is intended for general guidance only and it is neither authoritative nor comprehensive. The original legislation should be consulted with reference to specific enquiries. Only a court can decide whether an offence has been committed.

The legal protection for great crested newts and natterjack toads must be given due consideration but it should certainly not deter site managers from undertaking work to benefit these species and this would be contrary to the purpose of the legislation. As long as reasonable measures are taken to avoid harm to amphibians during management that would be beneficial to them there should be no inadvertent breaches of legislation. A prosecution would be unlikely as it would not be in the public interest. Indeed a prosecution for harm during habitat management is likely to occur only if there were evidence of negligence or malicious intent.

When planning habitat management work the legal protection of other species should also be considered. For example, birds and bats using trees targeted for felling.

3.4. Local authority sites

The 'biodiversity duty' introduced in the Natural Environment and Rural Communities Act 2006 places a responsibility on all public bodies to integrate biodiversity conservation into their activities. With regard to sites managed by local authorities, effort should be made to determine which sites support amphibians. Local Amphibian and Reptile Groups (www.arguk.org) may be able to provide advice or assistance with surveys.

These sites should be managed sympathetically for amphibians, in balance with other conservation objectives. Sites managed by local authorities with the potential to support amphibians include local nature reserves, parks and public open spaces, allotments and tenanted farms.

3.5. Development control and forward planning

Mechanisms exist to encourage the recognition of and conservation of wildlife through the development control and forward planning processes in Great Britain and these can be relevant to amphibians. Biodiversity conservation is enshrined in national planning policy in each of the countries of Great Britain and planning authorities are directed to minimise adverse impacts on biodiversity and, in particular, protected species or species of 'principle importance for conservation'. For most developments there will be an assessment made on the effects of development on wildlife – adverse impacts on amphibians include loss of habitat or habitat features, such as ponds, and fragmentation through, for example, roads, or barriers such as walls and fences. Measures to avoid or to mitigate for these should be considered. Increasingly planning officers are being made aware through 'alert mapping' or through identifying certain types of habitat to situations where amphibians may be affected by development. Legal mechanisms may be included through planning conditions to ensure appropriate conservation measures, including long term management or 'mitigation areas', are undertaken.

Opportunities may exist within development proposals to incorporate positive measures to enhance biodiversity; landscape planting, looking for increased connections between greenspaces, use of sustainable urban drainage schemes (SUDS). In forward planning, habitat 'opportunity mapping' can be used to identify areas of importance for biodiversity. Areas of particular value to amphibians can be identified as Local Wildlife Sites (variously also known as Sites of Importance for Nature Conservation, Areas of Biological Interest, etc). These are recognised through the local planning authority, often identified by panels of local experts, and are given increased significance when planning decisions are made.

3.6. Agri-environment mechanisms

Conservation of amphibians in the 'wider countryside' and frequently away from nature reserves can be supported by grants. A key funding mechanism is provided through 'agri-environment' support programmes, with different schemes operating in the different countries of Great Britain. These schemes,

such as Environmental Stewardship (in England), Scottish Rural Development Programme (in Scotland) and Tir Gofal (Glastir from 2012) in Wales, allow funding for positive conservation measures. They can offer general funding to maintain habitats or have specific funding measures targeted towards species, for example for pond creation for natterjack toads or for great crested newts, or survey. Funding is matched to a 'points' system based around the specific environmental benefits that are accrued.

3.7. Literature

Amphibian and Reptile Conservation (website). Policy and Legislation. Information on protected status of amphibians and reptiles in the different countries of the UK.

www.arc-trust.org/policy/

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Nature Conservancy Council (1989). Guidelines for selection of biological SSSIs. Nature Conservancy Council, Peterborough.

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