

## PROTECTED SPECIES AND HABITATS – AN INTERIM GUIDE

Following the seminar for Council staff on the biodiversity duty held on 18<sup>th</sup> May 2006, this interim guidance note is to advise Council officers of activities that may impact on protected species and habitats and the types of action required to be compliant with the law.

Amendments to the criminal legislation made under the Nature Conservation (Scotland) Act 2004 has introduced recklessness into the offences, so that individuals and organisations must demonstrate that they have taken reasonable steps to avoid killing, injuring or some instances disturbing the protected biodiversity. In brief summary, the following applies under the Wildlife & Countryside Act 1981 (as amended by the Nature Conservation (Scotland) Act 2004), The Conservation (Natural Habitats, & c.) Regulations 1994 (as amended) and The Protection of Badgers Act 1992 were applicable:

- *It is illegal to intentionally or recklessly kill, injure or take any **wild bird**, or to damage or destroy the nest or eggs of breeding birds.*
- *It is also illegal to “intentionally or recklessly disturb” **bird species on Schedule 1 of the WCA 1981 when they are breeding.***
- *It is illegal to intentionally or recklessly kill or injure **badgers** or to disturb badgers while they are occupying a sett or to intentionally or recklessly damage, destroy or obstruct access to a badger sett*
- *it is illegal to intentionally or recklessly kill, injure or disturb **bats** or to damage, destroy or obstruct bat roosts (whether occupied or not).*
- *it is illegal to intentionally or recklessly kill, injure, or disturb **otters** or to damage, destroy or obstruct their habitat*

The table below indicates some typical activities that Council officers may be undertaking which may impact on protected biodiversity and the types of reasonable steps that are required to ensure that the Council and individuals are compliant with the law. This list is illustrative and not definitive.

Type of Activity	Protected biodiversity	Action
Hedgerow clearance and scrub clearance.  Cutting of hedgerows	Breeding birds, nests and their eggs are protected.  Badgers	Avoid clearance between March- August.  If unavoidable- check for nesting birds. If in any doubt contact consultant to carry out survey  Check for evidence of badger setts  If in any doubt, contact a consultant to carry out survey  Avoid cutting in breeding bird season (March- August). Preferably cut after November (berry crops)

<p>Felling of woodland or individual mature or old trees, or ivy clad trees Tree surgery on mature or old trees. Management of ivy.</p>	<p>Bats and their roosts Breeding birds, nests and their eggs  Badgers</p>	<p>Avoid work May- September for bat maternity roosts.  Avoid work March- August for breeding birds  If works unavoidable check for breeding birds and bat signs*, evidence of badgers setts.  If in any doubt, contact a consultant to carry out survey</p>
<p>Demolition, renovation or alteration of old buildings, out buildings or buildings of any age with a complex roof structure.</p>	<p>Bats and their roosts Breeding birds, nests and their eggs</p>	<p>Avoid work March- August for breeding birds  Avoid work May- September for bat maternity roosts  Avoid work Nov- March for hibernation roosts  If works unavoidable check for breeding birds and bat signs*  If in any doubt contact a consultant to carry out survey</p>
<p>Bridgeworks, roadworks and engineering work that may affect River Tweed</p>	<p>River Tweed Special Area of Conservation (SAC)**.  Qualifying interest: <i>Otter</i> <i>Atlantic Salmon</i> <i>Sea lamprey</i> <i>River lamprey</i> <i>Brook lamprey</i> <i>Water crowfoot communities</i>  Bats and their roosts (see above)*  Otters, their holts and resting places are protected in any location.</p>	<p>Environmental risk assessment of any works that may impact on River Tweed.  Adopt SEPA best practice guidelines to avoid any significant impacts  If in doubt contact SNH and SBC Ecology Officer.  Note bat timings as above  Note, activity may no longer be permitted development, it may now require planning permission. Seek advice from SBC Ecology Officer and SNH</p>

\*Useful link for further information on bats [Ask Us Your Bat Questions \(www.bats.org.uk/helpline/helpline\\_roosts.asp\)](http://www.bats.org.uk/helpline/helpline_roosts.asp)

\*\* Useful link for guidance on Freshwater SACs <http://www.snh.org.uk/pdfs/publications/heritagemanagement/guidanceforcompetentauthorities.pdf>

Further guidance will be developed by P&ED for Council staff to help ensure that the Council is compliant with the wildlife legislation.

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