

APPENDIX 15.10

Relevant Legislation

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Section

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Species	Legislation (England)	Offences	Licensing procedures (England)
Bats <i>European protected species</i>	Conservation of Habitats and Species Regulations 2010 (as amended) Reg 41	Deliberately ¹ capture, injure or kill a bat; deliberate disturbance ² of bats; or damage or destroy a breeding site or resting place used by a bat. [The protection of bat roosts is considered to apply regardless of whether bats are present.]	A Natural England (NE) licence in respect of development is required in England. <i>European Protected Species: Mitigation Licensing- How to get a licence</i> (NE 2010) <i>Bat Mitigation Guidelines</i> (English Nature 2004) <i>Bat Workers Manual</i> (JNCC 2004)
	Wildlife and Countryside Act 1981 (as amended) S.9	Intentionally or recklessly obstruct access to any structure or place used for shelter or protection or disturb a bat in such a place.	Licence from NE is required for surveys (scientific purposes) that would involve disturbance of bats or entering a known or suspected roost site.
Badger	Protection of Badgers Act 1992	Wilfully kill, injure or take a badger; or intentionally or recklessly damage, destroy or obstruct access to a badger sett or disturb a badger in its sett. [It is not illegal to carry out disturbance activities in the vicinity of setts that are not occupied.]	Where required, licences for development activities involving disturbance or sett interference or closure are issued by Natural England (NE). Licences for activities involving watercourse maintenance, drainage works or flood defences are issued under a separate process. Licences are normally not granted from December to June inclusive because cubs may be present within setts. <i>Badgers & Development</i> (NE 2007)
Otter <i>European protected species</i>	Conservation of Habitats and Species Regulations 2010 (as amended) Reg 41	Deliberately ¹ capture, injure or kill an otter; deliberate disturbance ² of otters; or damage or destroy a breeding site or resting place used by an otter.	Licences issued for development by Natural England. <i>European Protected Species: Mitigation Licensing- How to get a licence</i> (NE 2010)
	Wildlife and Countryside Act 1981 (as amended) S.9	Intentionally or recklessly obstruct access to any structure or place used for shelter or protection or disturb an otter in such a place.	No licence is required for survey in England. However, a licence would be required if the survey methodology involved disturbance.
Dormouse <i>European protected species</i>	Conservation of Habitats and Species Regulations 2010 (as amended) Reg 41	Deliberately ¹ capture, injure or kill a dormouse; deliberate disturbance ² of a dormouse; or damage or destroy a breeding site or resting place used by a dormouse.	A Natural England licence in respect of development is required in England. <i>European Protected Species: Mitigation Licensing- How to get a licence</i> (NE 2010) <i>Dormouse Conservation Handbook</i> (English Nature 2006)

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	Wildlife and Countryside Act 1981 (as amended) S.9	Intentionally or recklessly obstruct access to any structure or place used for shelter or protection or disturb a dormouse in such a place.	Licence issued for survey and conservation by Natural England.
Water vole	Wildlife and Countryside Act 1981 (as amended) S.9	Intentionally kill, injure or take water voles; intentionally or recklessly damage, destroy or obstruct access to any structure or place used for shelter or protection or disturb a water vole in such a place.	No licence is required for survey in England, unless you are likely to commit an action that is otherwise illegal. There are currently no licensing purposes that explicitly cover development activities or activities associated with the improvement or maintenance of waterways. However when a proposed lawful activity has no opportunity to retain water voles within a development site and their translocation would result in a conservation benefit then a licence from Natural England may be obtained. <i>The Water Vole Conservation Handbook</i> (R. Strachan & T. Moorhouse, Wildlife Conservation Research Unit, 2nd Edition 2006) England: Water voles and development licensing policy -NE Technical Information Note TIN042 2008 Wales: Water Voles – Guidance for recent legislation changes (2008)
Birds	Wildlife and Countryside Act 1981 (as amended) S.1	Intentionally kill, injure or take any wild bird; intentionally take, damage or destroy the nest of any wild bird while that nest is in use or being built; intentionally take or destroy the nest or eggs of any wild bird. [Special penalties are liable for these offences involving birds on Schedule 1 (e.g. most birds of prey, kingfisher, barn owl, black redstart, little ringed plover).] Intentionally or recklessly disturb a Schedule 1 species while it is building a nest or is in, on or near a nest containing eggs or young; intentionally or recklessly disturb dependent young of such a species.	No licences are available to disturb any birds in regard to development. Licences are available in certain circumstances to damage or destroy nests, but these only apply to the list of licensable activities in the Act and do not cover development. General licences are available in respect of 'pest species' but only for certain very specific purposes e.g. public health, public safety, air safety.

Species	Legislation (England)	Offences	Licensing procedures (England)
Great crested newt <i>European protected species</i>	Conservation of Habitats and Species Regulations 2010 (as amended) Reg 41	Deliberately ¹ capture, injure or kill a great crested newt; deliberate disturbance ² of a great crested newt; deliberately take or destroy its eggs; or damage or destroy a breeding site or resting place used by a great crested newt.	Licences issued for development by Natural England. <i>European Protected Species: Mitigation Licensing- How to get a licence</i> (NE 2010) <i>Great Crested Newt Mitigation Guidelines</i> (English Nature 2001)
	Wildlife and Countryside Act 1981 (as amended) S.9	Intentionally or recklessly obstruct access to any structure or place used for shelter or protection or disturb a great crested newt in such a place.	Licences issued for science (survey), education and conservation by Natural.
Natterjack toad Sand lizard Smooth snake <i>European protected species</i>	Conservation of Habitats and Species Regulations 2010 (as amended) Reg 41	Deliberately ¹ capture, injure or kill it; deliberate disturbance ² of it; deliberately take or destroy its eggs; or damage or destroy a breeding site or resting place used by it.	Licences issued for development by Natural England. <i>European Protected Species: Mitigation Licensing- How to get a licence</i> (NE 2010)
	Wildlife and Countryside Act 1981 (as amended) S.9	Intentionally or recklessly obstruct access to any structure or place used for shelter or protection or disturb ³ it in such a place.	A licence is required from Natural England for surveying and handling.
Adder Common lizard Grass snake Slow worm	Wildlife and Countryside Act 1981 S.9(1) (part); S.9(5)	Intentionally kill or injure any common reptile species.	No licence is required in England. However an assessment for the potential of a site to support reptiles should be undertaken prior to any development works which have potential to affect these animals.
White-clawed crayfish	Wildlife and Countryside Act 1981 S.9(1) (part) only	Intentionally take from the wild.	Licences issued for survey by Natural England. No licences in respect of development are available. Trapping and removal of crayfish for maintenance or development activities in a watercourse requires a conservation licence from Natural England and a permit from the Environment Agency.
Rabbits, foxes and other wild mammals	Wild Mammals (Protection) Act 1996	Intentionally inflict unnecessary suffering to any wild mammal.	Natural England provides guidance in relation to rabbits (TIN003, Rabbits- management options for preventing damage, July 2007) and foxes (which are also protected under the Wildlife and Countryside Act 1981 from live baits and decoys, see TAN43 April 2005 and TAN08 April 2005) as well as other wild mammals; see Natural England's website for the list of 'Regulatory Guidance, Best Practice and Information'. Lawful and humane pest control of these species is permitted.

¹Deliberate capture or killing is taken to include “accepting the possibility” of such capture or killing

²Deliberate disturbance of animals includes in particular any disturbance which is likely a) to impair their ability (i) to survive, to breed or reproduce, or to rear or nurture their young, or (ii) in the case of animals of hibernating or migratory species, to hibernate or migrate; or b) to affect significantly the local distribution or abundance of the species to which they belong.
Lower levels of disturbance not covered by the Conservation of Habitats and Species Regulations 2010 remain an offence under the Wildlife and Countryside Act 1981 although a defence is available where such actions are the incidental result of a lawful activity that could not reasonably be avoided.

Site Designation	Legislation (England)	Protection	Guidance
Special Area of Conservation (SAC) Special Protection Area (SPA) Wetland of International Importance (Ramsar site)	Conservation of Habitats and Species Regulations 2010 (as amended) EC Directive on the conservation of natural habitats and of wild fauna and flora (92/42/EEC). EC Directive on the conservation of wild birds (79/409/EEC). Convention on Wetlands of International Importance especially as Waterfowl Habitat 1971 (the Ramsar Convention).	Planning controls are effected through Part 2 of the Conservation of Habitats and Species regulations 2010 (Reg 21) and Part 6 (Regs 61-67). The legislation for the Site of Special Scientific Interest which will underpin each designation also applies. These sites are given protection through policies in the Local Development Plan.	Formal Appropriate Assessment is required before undertaking, or giving consent, permission or other authorisation for a plan or project which is likely to have a significant effect on such a site. <i>Planning Policy Statement 9: Biodiversity and Geological Conservation</i> (ODPM 2005) and the accompanying joint Circular (ODPM Circular 6/2005 & Defra Circular 01/2005) for England or Technical Advice Note 5 in Wales.
Site of Special Scientific Interest (SSSI)	Wildlife and Countryside Act 1981 (as amended)	It is an offence to carry out or permit to be carried out any potentially damaging operation. SSSIs are given protection through policies in the Local Development Plan.	Owners, occupiers, public bodies and statutory undertakers must give notice and obtain the appropriate consent under S.28 before undertaking operations likely to damage a SSSI. S.28G places a duty on all public bodies to further the conservation and enhancement of SSSIs. <i>Planning Policy Statement 9: Biodiversity and Geological Conservation</i> (ODPM 2005) for England or Technical Advice Note 5 in Wales.
Local Nature Reserve (LNR)	National Parks and Access to the Countryside Act 1949 S.21	LNRs are given protection through policies in the Local Development Plan.	LNRs are generally owned and managed by local authorities. Development proposals that would potentially affect a LNR would need to provide a detailed justification for the work, an assessment of likely impacts, together with proposals for mitigation and restoration of habitats lost or damaged. <i>Planning Policy Statement 9: Biodiversity and Geological Conservation</i> (ODPM 2005) for England or Technical Advice Note 5 in Wales.
Site of Importance for Nature Conservation (SINC)	There is no statutory designation for SINC	SINC	Development proposals that would potentially affect a SINC would need to provide a detailed justification for the work, an assessment of likely impacts, together with proposals for mitigation and restoration of habitats lost or damaged. <i>Planning Policy Statement 9: Biodiversity and Geological Conservation</i> (ODPM 2005) for England or Technical Advice Note 5 in Wales.

Habitats & Species	Legislation (England)	Guidance
Species and Habitats of Principal Importance for the Conservation of Biodiversity	Natural Environment & Rural Communities Act 2006 S.40 (which superseded S.74 of the Countryside & Rights of Way Act 2000).	S.40 of the NERC Act 2006 sets out the duty for public authorities to conserve biodiversity in England. Habitats and species of principal importance for the conservation of biodiversity are identified by the Secretary of State for, in consultation with NE, are referred to in S.41 of the NERC Act for England. The list of habitats and species was updated in 2008: England: http://www.ukbap-reporting.org.uk/news/details.asp?x=45 The habitats and species listed are not necessarily of higher biodiversity value, but they may be in decline. Habitat Action Plans and Species Action Plans are written for them or are in preparation, to guide their conservation. Ecological impact assessments should include an assessment of the likely impacts to these habitats and species.
Biodiversity Action Plan (BAP) Habitats & Species	No specific legislation, unless it is also a species or habitat of principal importance as described above.	The Biodiversity Action Plan (BAP) is the UK's initiative to maintain and enhance biodiversity in response to the Convention on Biological Diversity signed in 1992. The original BAP list of species and habitats, prepared over 10 years ago, was used to form the new list of species and habitats of principal importance. However some of the species have been taken off the new list and additional species and habitats have been included.
Hedgerows	The Hedgerows Regulations 1997	Under the regulations, it is against the law to remove or destroy certain hedgerows without permission from the local planning authority. In general, permission will be required before removing hedges that are at least 20 metres in length, over 30 years old and contain certain species of plant. The local planning authority will assess the importance of the hedgerow using criteria set out in the regulations. See Defra and Natural England websites for further guidance and information.
Japanese knotweed, hybrid knotweed, giant knotweed Giant hogweed Rhododendron Himalayan balsam	Wildlife and Countryside Act 1981 S.14	It is illegal to plant or otherwise cause to grow in the wild these species. Any contaminated soil or plant material is classified as controlled waste and should be disposed of in a suitably licensed landfill site, accompanied by appropriate Waste Transfer documentation, and must comply with section 34 of the Environmental Protection Act 1990. <i>The Knotweed Code of Practice</i> (Environment Agency 2006) <i>Guidance on Section 14 of the Wildlife and Countryside Act, 1981</i> (Defra 2010)