
Appendix K Legislation Concerning Protected Species

2 Pages

The following provides a brief summary of some of the key aspects of protected species legislation, as considered relevant to the site. For more comprehensive information, please refer to the legislation in full.

Bats

All British bat species are listed in Schedule 2 of the Habitats Regulations and Regulation 39 makes it an offence, *inter alia*, to:

- deliberately capture, injure or kill a bat;
- damage or destroy a breeding site or resting place of any bat; or
- deliberately disturb a bat (this applies anywhere, not just at its roost) in such a way as to be likely significantly to affect:
 - the ability of any significant group of bat species to survive, breed, or rear or nurture their young; or
 - the local distribution or abundance of that bat species.

All British bat species are listed on Schedule 5 of the *Wildlife and Countryside Act 1981* (as amended) and are afforded full protection under Section 9 of this Act. The Act makes it an offence, *inter alia*, to:

- intentionally or recklessly damage, destroy or obstruct access to any place that a bat uses for shelter or protection (this is taken to mean all bat roosts whether bats are present or not); or
- intentionally or recklessly disturb a bat while it is occupying a structure or place that it uses for shelter or protection.

In addition, five British bat species are also listed on Annex II of the Habitats Directive. These are:

- Greater horseshoe bat (*Rhinolophus ferrumequinum*);
- Lesser horseshoe bat (*Rhinolophus hipposideros*);
- Bechstein's bat (*Myotis bechsteinii*);
- Barbastelle (*Barbastella barbastellus*);
- Greater mouse-eared bat (*Myotis myotis*).

For projects in England: Further details of the above legislation, and of the roles and responsibilities of developers and planners in relation to bats, can be found in Natural England's Bat Mitigation Guidelines, which can be downloaded from the NE website: <http://www.english-nature.org.uk/pubs/publication/PDF/Batmitigationguide2.pdf#search=%22bat%20mitigation%20guidelines%22>

Birds

With certain exceptions⁴⁴, all wild birds, their nests and eggs are protected by the *Wildlife and Countryside Act 1981* (as amended). Therefore, it is an offence, *inter alia*, to:

- intentionally take, damage or destroy the nest of any wild bird while it is in use or being built; or
- take or destroy the egg of any wild bird.

Bird species listed on Schedule 1 of the Act receive further protection, thus for these species it is also an offence to:

- disturb any bird while it is nest building, or is at a nest containing eggs or young; or
- disturb the dependent young of any such bird.

European Protected Species

On 21 August 2007 an amendment to *The Conservation (Natural Habitats &c.) Regulations 1994* came into force. *The Conservation (Natural Habitats &c.) (Amendment) Regulations 2007* have a variety of consequences for the protection of European Protected Species.

The threshold above which a person will commit the offence of deliberately disturbing a wild animal of a European protected species has been raised. Now, a person will commit an offence only if he deliberately disturbs such animals in a way as to be likely significantly to affect (a) the ability of any significant groups of animals of that species to survive, breed, or rear or nurture their young, or (b) the local distribution of abundance of that species. Further advice on the implications of the amendments to the habitat regulations can be found on Natural England's website: <http://www.naturalengland.org.uk/conservation/wildlife-management-licensing/habsregs.htm#disturbance>.

The recent amendments to the Habitat Regulations have also removed many of the defences allowable in the original document. This includes the commonly relied upon 'incidental result defence', which previously covered acts that were the incidental result of an otherwise lawful activity and which could not reasonably have been avoided.

⁴⁴ Some species, such as game birds, are exempt in certain circumstances.