



# BORDER CONSULTANTS (FORESTRY) LTD

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## **European Protected Species (EPS) and its impacts on forestry**

In 1994, the European Union passed a directive which gave special protection to a number of species of animals and plants, because of their vulnerable status in a European context (European Protected Species EPS). Locally, they may be quite abundant.

The UK put this directive into law in all four countries, basically making an action to damage the species or its habitat an offence, but adding that “incidental damage during a lawful operation was not an offence”. Europe objected to this addition and took UK, as well as others (Netherlands and Germany) to the European Court. UK removed the exclusion clause in August 2007. This means that any action which affects a listed species, or its habitat, is a criminal offence, whether done intentionally or otherwise.

I have been to a recent seminar by Forestry Commission England to have the impacts explained for the north of England. Although it is bad news for forestry, Forestry Commission England deserves praise for the effort they have put into mitigating the worst effects of the law to forestry.

The directive, of course, also applies to Scotland. Forestry Commission Scotland’s approach seems similar to England, but much less active in guiding and supporting the private sector. Interim guidance notes are available on [www.forestry.gov.uk](http://www.forestry.gov.uk)

The most relevant species to northern England’s woods are:

All species of bats  
Great crested newts  
Otters

In Scotland, the wild cat is added.

The bats are the main problem. Many species are common and present in most woodlands.

In England, Natural England is empowered to issue licences to carry out operations which otherwise would contravene the law. The application for the licence is quite demanding. There is no appeal.

Forestry Commission England and Natural England have agreed a series of Guidance Notes (currently, interim). If these are adhered to, a prosecution is unlikely to be considered “in the public interest”, but it is acknowledged that a criminal offence may still have been committed. Of course, it is the Crown Prosecution Service (in England) which decides if a prosecution will proceed, not Natural England, nor Forestry Commission England. Forestry Commission England promises to stand by anyone prosecuted, if the guidelines have been adhered to.

A note of caution is necessary. The Guidance Notes include a series of tick boxes. It is a mistake to think that simply ticking the boxes is sufficient. A site visit is necessary to ensure that there are no local conditions which may require additional measures to be taken.

The Forestry Commission England Guidance Notes only apply to trees in a woodland context and those requiring a felling licence. Problems with individual trees will need a licence from Natural England direct.

There will be occasions where the Guidance Notes cannot provide a way forward and a licence from Natural England has to be sought. Forestry Commission England will only go down this route as a last resort. The applicant will deal with Forestry Commission England, not Natural England (In Scotland the applicant has to apply direct to SNH, or other agencies in various circumstances).

Mature hardwood crops may be particularly affected as there may well be bat roosts in many trees. The Guidance Notes allow for 10% felling over 10 years, assuming no individual trees with a known bat roost are felled. Forestry Commission England advises that in semi-mature and mature plantations, only trees with clean stems should be felled, leaving the trees with holes, deadwood crowns etc - in fact, all those that you would wish to remove in a good, silvicultural thinning. Growing hardwoods commercially seems tricky.

This obviously brings up the issue of dangerous trees.

Health and safety legislation is equal to that of habitat protection, i.e. neither takes precedence over the other. However, in an emergency, it is suggested that a “commonsense” approach should reduce the risk of prosecution. If there is an immediate threat to human life, the tree should be felled, regardless of the risk to any inhabitants. If it is blocking a road, it may be necessary to get the road closed, the tree should be inspected for bats and, if they are present, a “bat expert” should be found to remove them (uncertified people are not allowed to touch them).

If it is a very busy road, the police may require the road to be cleared immediately, then the bat section should be cut out and tied to another tree.

However, emergencies should be avoided by regular inspections of trees which pose a risk to the general public. Mostly, we have felled any roadside trees under a felling licence and hence, negotiated with the Forestry Commission. Only experience will show how complicated that will be in future.

Forestry Commission England is obliged to report breaches of the Guidance Notes to the police.

Individual dangerous trees will need a licence from Natural England if any of the listed species are present. If this is refused, the tree owner may still be liable, should it cause damage to a third party.

Great crested newts are also frequently an issue near ponds. However, the Guidance Notes provide a phased solution, which will allow woodland management to proceed in most circumstances.

Of course, farmers, game-keepers, gardeners and others working the land are just as much affected by the law as foresters. Farmers have their own guidance.

I find it uncomfortable that laws are being passed, which potentially criminalise most foresters practising good forestry. The Countryside and Wildlife Act does the same. Harvesting in spring and early summer inevitably damages bird nests and harvesting conifer woodlands any time is likely to damage crossbill nests, as they can nest throughout the year. The principle of passing laws and then partly ignoring them by general consent must be bad legislation.

### **The way forward**

Forestry Commission England (and no doubt in Scotland) is committed to supporting and encouraging sustainable forest management and indeed its recent woodfuel strategy is now going to be significantly more challenging. I hope we can all work together to make the best of this difficult situation so that we can continue to manage woodlands sustainably and professionally. Owners, contractors, managers and timber merchants all have a role to play. The risk of prosecution is real and an offence can be reported by anyone to the police.

**Owners:** it is essential you assist by making any information available, which helps in assessing the risk of an offence. If wildlife organisations or enthusiasts visit your woodlands, please pass on their contact details to your managers or contractors. Relevant historic records should also be passed on.

**Contractors:** will need to be especially vigilant. Bat surveys are only valid at the time of survey, thus, when felling is taking place, trees should be checked for signs of bats, and if in doubt, operations should stop immediately and experts called in.

**Timber merchants:** have a role to play when surveying woodlands for purchase, especially with woodland owners who may not be aware of the legislation.

All those involved with woodland management should look for expert training in order to be able to identify the indications of bats and etc.

It is also vital to keep a written record of every step of any forestry operation from planning to activity, which may cause an offence. Third parties may report an offence, which can be impossible to defend unless a good record is in place.

Of course, felling timber is the most likely operation to breach the law, however, cultivation prior to planting, clearing scrub and other operations can affect otters and great crested newts, as well as bats.

The necessary research and site survey inevitably increases the cost of felling applications and grant schemes. In the past, we have rarely charged for simple thinning and felling applications. However, a search for information and site visit are inevitable in future and will mean that even simple applications have a significant cost.

### **Further information**

The Guidance Notes and further explanation can be downloaded from [www.forestry.gov.uk/england-protectedspecies](http://www.forestry.gov.uk/england-protectedspecies)

Guidance for Scotland is at

[http://www.forestry.gov.uk/pdf/Guidancenote34protectedspecies2.pdf/\\$FILE/Guidancenote34protectedspecies2.pdf](http://www.forestry.gov.uk/pdf/Guidancenote34protectedspecies2.pdf/$FILE/Guidancenote34protectedspecies2.pdf)

You may also be interested to read Tilhill's take on this in the April 08 issue of Forestry & Timber News. Copies on request.

Coincidentally, the issue of managing the risk of trees and public safety was already under examination by a group of interested parties (led by Forestry Commissioner Harry Studholme) and a conference is to be held in London on 29 May to seek the basis of a sensible industry statement. Details and booking are at [www.treeworks.co.uk](http://www.treeworks.co.uk)

The National Biodiversity Network website provides maps which serves as rough guidance as to whether a species may be present. [www.nbn.org.uk](http://www.nbn.org.uk)

You may be interested to know that, since the first seminars held at the end of last year, ConFor has recognised the difficulties EPS regulations are causing in forestry and has been working with European partners and others, seeking any possible avenues to reduce the impacts. [www.confor.org.uk](http://www.confor.org.uk)

Felix and Jane Karthaus  
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