

The Habitats Regulations now provide greater protection for European Protected Species (EPS) since changes were introduced in August 2007. No parties are now exempt from the regulations, and all landowners must consider the presence of a protected species in their work.

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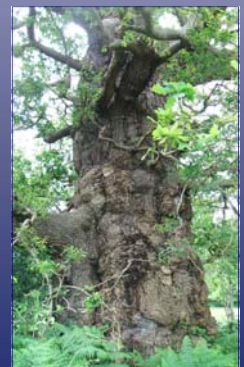
New DF Clark Landscape Architect

Karl Perfetti has joined us from Wyre Borough Council, after four years working for Local Authorities, and 3 years for private consultancies.

He has experience in environmental impact assessment, detailed landscape schemes - including large scale parks and regeneration projects – and also smaller scale gardens and projects for community groups and private owners. Whilst working for Wyre Borough Council, Karl was involved in the design of large scale regeneration projects, including the Cleveleys Coastal Defence Improvement and Promenade Enhancement Scheme, a key part of the regeneration and sustainability of Cleveleys. This included a range of design aspects, from formal display areas and hard landscaping to wildflower meadow creation.

Karl can undertake Landscape Visual Impact Assessments (LVIA's), and has good knowledge of CDM Regulations and related legislation.

Karl holds a BA Honours degree and Post-graduate diploma in Landscape Architecture .



Essex TPO review project

Essex County Council have a large number of old Tree Preservation Orders which they intend to revoke, as now many orders rarely accurately reflect the conditions on the ground.

D F Clark Bionomique Ltd has been appointed as consultant to carry out a full review of these orders in the Rochford District to enable the local authority to serve new orders, prior to the old orders being revoked. The project is in collaboration with the District Council and is an opportunity for the staff to use their experience and expertise regarding Tree Preservation Order reviews.



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DF Clark Bionomique: Technical Update

Issue 2

Protected species and disturbance

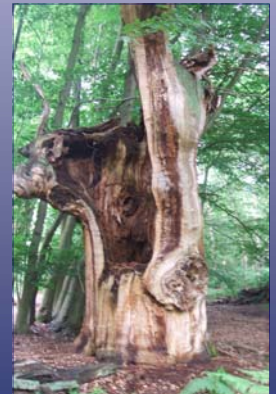
The new Conservation (Natural Habitats &c.) (Amendment) Regulations 2007 are likely to result in a stricter European protected species licencing regime, with greater potential legal risks and a greater need for more detailed and frequent surveys.

However, the expansion of the 'disturbance' offence will allow a greater number of activities which cause a low level of disturbance to continue without a licence. BUT NOTE: this is sensitive to the varying ecological and biological requirements and environment of the species and individuals concerned, and will require advice from an ecologist. It is advisable to keep a written record of such advice.

It should also be noted that the Wildlife and Countryside Act (WCA) still protects against low level disturbance, although a defence covering acts which are an incidental result of a lawful operation still applies to the WCA offence. Those undertaking activities that may deliberately disturb at a low level may decide to rely on the defence or may decide to obtain a licence under the WCA.

An offence under the Habitats Regs. may now occur if a person 'deliberately disturbs wild animals of any such species (i.e EPS) in such a way as to be likely to significantly affect:

- The ability of any significant group of animals of that species to survive, breed, or rear or nurture their young
- The local distribution or abundance of that species'



European Protected Species (EPS)

All species of bat, dormice, great crested newts, otters, sand lizards and smooth snakes

Disturbance - Implications

The size of a 'significant group' varies between species, but is rarely likely to include disturbance of individual animals, particularly outside breeding, rearing and hibernation times, etc. The context will depend upon the local abundance of a species, its behaviours and the circumstances of disturbance. Impacts on an individual of a rare species of bat will be considered greater than that on a small number of common species. Dormice and otters live at very low densities, and disturbance of a female with one or more dependent young, or even a likely pregnant female will constitute an offence.

It is now more important to consider protected species in a development, conservation, land management and domestic sense. It can also be to the benefit of the parties in question, as an ecologist may be able to recommend measures which limit the impact of disturbance such that it is not significant enough to cause an offence and require a licence. Such advice should be formally recorded. By following guidance and using adequate preventative measures, if an offence still occurs, it is unlikely to be seen as 'deliberate'. It is also likely to be covered under the WCA by the incidental result defence.



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Disturbance - Interpretation & Examples

An absolute definition of the term disturbance is impossible, and it is the view of the European Commission that disturbance must have some sort of ecological impact. Trivial acts of disturbance have been excluded from the Habitats Regulations.

BATS

Roof / building maintenance around a bat roost can be undertaken without a licence when fewest bats are present – spring or autumn. At these times they are not in a vulnerable state of hibernation or breeding. The works must not however, damage roost entrances or alter the roost environment, as this is an offence. Note that whilst this may not be licensable, if single bats are present an offence could still occur under the WCA, and for any defence to stand, Natural England should always be consulted on the appropriate timings and route to take.

Installation of lighting along a main flight route is licensable as 'significant disturbance' since it would stop bats using this flight path in return for a less safe alternative. It can be easily avoided with some alterations to the positioning and angling of the lights. A licence would not be granted for such an activity as it would not satisfy the condition 'no satisfactory alternative'.

GREAT CRESTED NEWTS

Timing and frequency of disturbance during the breeding season could also have long term consequences for great crested newt populations. Single, brief disturbance of individuals or small numbers of newts (less than 5) is unlikely to have any adverse effect. Repeated events which impact on behaviours such as feeding, courtship, mating or dispersal would be significant, whereas retreat into refugia for a short period has little adverse impact.

A large number of individuals may disperse to and from breeding ponds, and whilst development activities may not damage habitat or harm newts, an offence may occur whenever the following apply:

- Structures such as buildings, fences and walls may act as a barrier to dispersal
- Lighting may illuminate, or structures shade, a breeding pond - adversely affecting courtship and mating
- Night-time activity around breeding sites may affect breeding activity



DID YOU KNOW...?

A single arousal during hibernation can utilise enough stored fat which would otherwise enable a bat to hibernate for almost 3 weeks

LOCAL RECORDERS

These groups are likely to play a greater role in licencing since the status of local populations can influence the need for a licence



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