

Biodiversity Duty Workshop Pack Overview

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General Principles

The materials are free for you to use and adapt in any way that might assist in increasing compliance with biodiversity legislation or in improving nature conservation activity.

We describe below how we have used the materials ourselves on previous occasions but please feel free to adapt these methods to fit better with your own groups or circumstances.

Workshop Activity

We split the group into mixed groups at tables of about 4 – 8 people and carried out the following exercises:

10mins: introduction – explain the rough plan and timings and that the participants can add cards of their own if they don't like our suggestions, if they achieve the objective before time is up, they can make use of the further questions on each card.

5-10mins: as individuals, choosing three cards that you consider most helpful/effective, that you would prioritise if you were deciding what to do.

10-15mins: with a partner debating your choices and coming up with an agreed, prioritised (1,2,3) set of three cards.

15-20mins: as a table/group debate choices and come up with one agreed, prioritised set of cards. The facilitator sitting at the table wrote these down on a large piece of paper.

10mins (approx) over lunch: All lists were displayed so whole group could see each others choices, which stimulated more debate on the subject and allowed people to regroup as departments or local authority to decide on local next steps.

Decision Making Exercise

We handed out handout 1 but not handout 2, and asked different pairs to start with difference scenarios (so that we could get input from around the room on all the scenarios).

15-20mins: with a partner consider the scenario (A, B, C, D or E), decide what you think the issues are, how you would deal with the scenario and who you would ask for advice. If you have time, work your way through the other scenarios on the list.

15-20mins: as a table/group debate choices you made and come up with an agreed position. The facilitator sitting then shares handout 2 as a basis for further debate.

We rounded up the session by seeking any changes that could be made to improve the examples and solutions.

Feedback

These were handed out towards the end of the session but at a point where there was still plenty of time to allow for completion and were used as a basis for follow up meetings some weeks after the workshop events.

Final Word

You may also find it useful to have copies of some or all of the Checklists available at your event. They can be found on the Wales Biodiversity Partnership website and cover topics such as guidelines for:

- **Developers**
- **Local Authorities**
- **Local Planning Authorities**
- **Police Service in Wales**
- **Ecological Advisors**
- **Public Sector Bodies**
- **Biodiversity Champions**
- **Project Officers**
- **Risks of non-compliance and enforcement**

For further information and advice or support in developing new checklists or workshop materials, please contact (William Somerfield, 01970 653817)

Establish the biodiversity duty as a regular item on meeting agendas:

- ⇒ How frequently?
- ⇒ Who will produce the paper?
- ⇒ What format would be useful?
- ⇒ How can you secure contributions from all areas?

Use planning regulations, 106 agreements or other mechanisms to establish increased numbers and quality of nature sites as part of developments:

- ⇒ Who will lead on this?
- ⇒ How would you convince them?
- ⇒ How could you measure success?

Organise a biodiversity away day for cabinet members or senior management team:

- ⇒ Should you include a visit to a nature site?
- ⇒ How could such a meeting be a focus for change?
- ⇒ What outcomes would you seek?

Use tidy towns, coastal access, Communities First or other funding streams to leverage gains for biodiversity:

- ⇒ What sort of legitimate gains might be possible?
- ⇒ Are any of these “full cycle” e.g. reducing waste and recycling as well as nature conservation?
- ⇒ Who are the key players you need to convince?

Instigate a biodiversity duty section as a required element in all meeting papers, so that all projects and plans have to indicate the value they are adding to biodiversity:

- ⇒ What guidance will you provide?
- ⇒ Who could proof/validate the content?
- ⇒ How can you keep this simple yet effective?

Set an example by engaging the cabinet members or senior management team in regular nature conservation activities (e.g. removing Japanese Knotweed):

- ⇒ Who can help you organise such activities?
- ⇒ How will you intersperse these with cabinet meetings?
- ⇒ How will you ensure that the people you want to influence know about what you're doing?

Provide a paper to cabinet or senior management team highlighting the risks of non-compliance with biodiversity legislation, resource requirements and support available:

- ⇒ Who will lead?
- ⇒ What support do you need and from whom?
- ⇒ What specific local outcomes would you be seeking?

Replace all grass verges with mixed meadow and only cut once a year (also saving on fuel costs and carbon emissions):

- ⇒ Who is responsible for making decisions of this type?
- ⇒ Who will you need to convince?
- ⇒ How can you monitor compliance and effects?

Put a Service Level Agreement in place with Local Records Centre to provide data and screen planning applications and project proposals at an early stage:

- ⇒ Where will the funds come from?
- ⇒ How could you use this service to improve effectiveness?
- ⇒ How could you use this service to improve efficiency?

Arrange one-to-one meetings with all other senior directors/ministers to discuss how biodiversity gains can be incorporated into their portfolios:

- ⇒ What supporting information will you need and from whom?
- ⇒ How will you agree an action and improvement?
- ⇒ Will this be the beginning of an ongoing arrangement?

Set standards or targets for funding of biodiversity within all portfolios (often organisations in Wales use 1-5% of total project spend as a standard):

- ⇒ How will you monitor expenditure/ outputs?
- ⇒ What percentage is a reasonable sum?
- ⇒ Who will provide advice and ideas to departments?

NERC Biodiversity Duty Decision Exercise: Handout 1

The duty invites us to consider:

- What the various relevant laws require?
- How we can maximise benefit to biodiversity?

In each case below:

- What are the issues?
- What would *you* do?
- Where could you get the advice you require?

Scenario A

A barn has been built immediately adjacent to a listed building without planning permission or listed building consent.

Scenario A.1 Barn owls and brown long eared bats have subsequently been found nesting in the roof of the barn.

Scenario B

You receive an application for permission to build houses on unimproved pasture.

Scenario B.1 A rare orchid has been found on the land concerned.

Scenario C

You discover that a local retailer is about to remove a long-standing border hedge alongside their property.

Scenario C.1 The hedge has already been removed this morning.

Scenario D

You discover that visibility is poor on a dangerous bend due to spreading foliage on the verge side.

Scenario D.1 and there is a blackbird nest in the foliage.

Scenario E

Local Authority colleagues are about to realign a ditch and footpath.

Scenario E.1 They will also need to remove spoil from the site.

NERC Biodiversity Duty Decision Exercise: Handout 2

Scenario A

Demolition would be the most obvious course of action, particularly due to the barn's close proximity to the listed buildings. However, it would be necessary first to check for presence of any Biodiversity Action Plan (BAP) or European Protected Species (EPS) e.g. barn owls and bats. Reference to the Local Record Centre and CCW would be needed at this time and a survey would need to be carried out. If any protected species were found, then action similar to that outlined below would need to be followed.

Barn owls are protected under the Wildlife & Countryside Act 1981 so they could legally be disturbed (but not killed) in the course of demolition, under the defence that it would be the "incidental result of a lawful operation" as long as "all reasonable steps" had been taken to minimise disturbance.

Bats, which come under the Habitats Regulations, may not be disturbed in this way; demolition would have to be carried out under licence following a formal survey; once the pattern of occupation is known compensation and/or mitigation may well be needed. Brown long-eared bats are not uncommon, but their habitat (large enclosed spaces, such as unused or under-used buildings) is under threat.

Scenario B

You should check that there is an ecological survey contained in the planning proposal and that due process has been followed during the application process. Survey should have ascertained whether there are any Biodiversity Action Plan (BAP), Wildlife & Countryside Act or European Protected Species (EPS) present. The project is for housing rather than for agriculture so EIA Planning would take precedence over EIA Agriculture in this case.

Once due process has been followed then a number of judgements must be made before final decision; How big an effect will the planning proposal have on the orchid population? How rare is the orchid and is it on any lists that allow it legislative protection? Have clear conditions on the action to be taken to protect or move the orchid been included in the planning approval? If the site is considered to be ecologically important (e.g. BAP habitat) then the landowner would be required to produce an Environmental Statement.

Scenario C

Even if removal can be licensed, the hedge must not be removed during the bird nesting season (31st March-31st Aug). Surveys should be carried out to include identification of Biodiversity Action Plan (BAP), Wildlife & Countryside Act or European Protected Species (EPS). If, on the basis of the evidence gathered, presence of EPS is significant, a method statement including mitigation and/or compensation should be prepared. The hedge should also be appraised for its value as a wildlife corridor and connectivity with other habitats. Removal should only be licensed once appropriate mitigation and compensation are in place and the landowner must ensure compliance with the Hedgerows Act.

If you believe that an offence may have occurred you should ensure all action on the site is stopped and contact your local Wildlife Crime Officer (WCO). Evidence is very important in these cases and must be gathered to answer a number of questions; Was the hedgerow under agricultural or domestic curtilage? Did the Hedgerows Act protect this hedgerow or did it qualify for one of the many exemptions possible? Is there a cross compliance issue? There would be a possible cross compliance breach if the landowner had received Single Payment Scheme (SPS) payment and not complied with the law. Did the hedgerow have historical significance? A site visit may well be necessary by the Local Authority ecologist or equivalent to gather evidence. They may need to take a representative from the Rural Inspectorate Wales, local archaeological trust or CADW with them.

Scenario D

As a general rule, hedges should not be cut between 31st March and 31st August, however the necessary minimum to ensure safety can be done at any time of year. The spreading foliage (hedge or grass) should be inspected by an ecologist before cutting and action taken to prevent damage to any Biodiversity Action Plan (BAP) or Wildlife & Countryside Act species found. If European Protected Species (EPS) are found then an emergency license may be required.

The general principles that should be applied are:

- Check for presence of nature interest
- Work out how you will minimise damage (do minimum necessary to meet the non-nature requirements)
- Work out how you will take action to mitigate (alternative places, moving species, replacement habitat etc)
- Then engage action necessary to meet combined legislation as closely as possible.
- Keep audit trail of decisions

Best practice is for the part around the nest to be cut by hand, with undisturbed periods either side of cutting to allow the parents to warm eggs or feed young. Blackbirds in particular will sit tight under threat, only leaving as a last-minute panic; this makes them particularly at risk of flying into cutting machines.

Scenario E

Check for protected species such as Water Voles, invertebrates and amphibians including Great Crested Newts and Natterjack Toads. The last two are European Protected Species (EPS), and may only be disturbed under licence. For EPS a formal survey is required; depending on the nature of the colony, timing of the operation may be used to avoid disturbance. If this is not possible, compensation or mitigation will be needed during the operation, and afterwards if the ditch will not return to being suitable habitat. A work site can be fenced, and animals trapped and moved outside the fence. Water voles and other protected wildlife (non EPS) may be disturbed under the defence that it would be the “incidental result of a lawful operation” under Wildlife &

Countryside Act 1981 as long as “all reasonable steps” had been taken to minimise disturbance. Local BAP habitats may also be present and require consideration.

Spoil from such a site may contain viable fragments of Crassula, Japanese Knotweed and other invasive non-native species. These can root vigorously and contaminate disposal sites; if there is any evidence of these, the spoil should be disposed of as hazardous waste. Some aquatic animals are predators of protected species, particularly their eggs (sticklebacks, dragonfly larvae and others) and can survive being moved. Spoil should not be deposited into protected species habitat. Spacing between the path and waterway should be sufficient to avoid disturbance by people and their dogs; this is often consistent with H&S requirements. The opportunity could be taken to plant appropriate local-provenance native species (eg willow, alder etc.) which could stabilise the banks.

Where to get help

Local Record Centre – can provide data on request or via a service level agreement, contact details can be found on the WBP website below, which can then be used by...

Local Government Ecologist – to help provide advice to maintain compliance with international and national legislation

Local Biodiversity Action Plan Partnership Co-ordinator – can provide help with local biodiversity species, habitats and issues including NERC compliance and can provide access to other useful advisors such as local Wildlife Trusts.

Countryside Council for Wales – will provide input as statutory advisor on issues such as European species and sites

Local Wildlife Crime Officer – if you believe an offence may have occurred

Wales Biodiversity Partnership (WBP) – see
<http://www.biodiversitywales.org.uk/>

Welsh Assembly Government - for policy and strategy issues, see also key guidance at:
<http://new.wales.gov.uk/consultations/closed/plancloscons/1207763/?lang=en>

**Holiadur Adborth
Feedback Questionnaire**

Dyddiad/date:

Beth oedd y pethau da am y gweithdy?
What were the good things about the workshop?

Beth oedd y pethau gwael am y gweithdy?
What were the bad things about the workshop?

Diolch am lenwi'r ffurflen hon. Thank you for completing this form.

Beth ydych chi'n mynd i'w wneud?
What are you going to do?

Pa gymorth bydd angen arnoch?
What help will you need?

Enw/ name:

Sefydliad/organisation:

Diolch am lenwi'r ffurflen hon. Thank you for completing this form.