



## **Habitats Regulations and Biodiversity Duty Enforcement: Support and Intervention Regime**

### ***Overview/Principles***

It is expected, by the Welsh Assembly Government and Wales Biodiversity Partnership, that each local authority and public sector body will provide essential biodiversity and nature conservation services to ensure compliance and enforcement of The Conservation (Natural Habitats, etc.) Regulations 1994 (as amended in 2007) (Habitats Regulations) and the Natural Environment & Rural Communities Act 2006 (NERC Act) Biodiversity Duty.

To achieve compliance and enforcement, it is the responsibility of the authority concerned to provide sufficient resources. Guidelines are provided<sup>1</sup> but it is perfectly legitimate to provide an equivalent service in an alternative format.

These are statutory duties and failure to achieve compliance and enforcement is not acceptable. Intervention by the Welsh Assembly Government, Countryside Council for Wales or the Welsh Police Force can be expected where there is a risk of non-compliance.

This document lists the risks you face from non-compliance including the hierarchy of interventions that may be required. It should be read in combination with the relevant Biodiversity Checklist<sup>2</sup> for your organisation and any relevant guidance from that listed in Annexes F and H to the Biodiversity Framework for Wales<sup>3</sup>. A summary of the support mechanisms available to help you retain local control and achieve best practice are also included.

### ***Potential Risks of Non-compliance***

All figures are rough estimates.

As a Competent Authority under the Habitats Regulations you are responsible for your own and others compliance with this legislation.

To remain compliant you should employ sufficient qualified ecologists and biodiversity staff to provide advice as early as possible in development of your plans, projects and policies and amend these to incorporate the advice provided. If you are not sure what constitutes a plan, project or policy or are

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<sup>1</sup> Current recommended is for a minimum of one full-time permanent or long-term biodiversity co-ordinator, one full-time permanent ecologist and a small programme and training budget for each local authority; one permanent full-time staff member also with small programme and training budget for all other public bodies and large central government departments.

<sup>2</sup> NERC Duty checklists <http://www.biodiversitywales.org.uk/English/Library/default.aspx?pid=13>

<sup>3</sup> <http://www.biodiversitywales.org.uk/English/Library/default.aspx?pid=1>



not clear about how the Habitats Regulations and/or the NERC Duty affect them, always seek advice from the sources below.

In addition to your own internally generated plans and projects, you also need to take account of these compliance issues when involved with externally generated plans and projects.

Failure to comply can lead to:

- PR damage to your employer
- Significant legal costs
- Time consuming and unconstructive workloads
- Judicial Review
- Criminal Conviction

**Don't take the risk: Get it right first time.**

### ***Example Scenarios***

#### **Judicial Review**

Any member of the public can instigate Judicial Review proceedings, which, even if the end result is in your favour, will cost you large amounts of time and resources to process. Worst case they may lead to fines and court costs if successful.

*Estimated cost: minimum £200,000+ for administration, possibly much higher*

#### **Criminal Conviction**

Prosecutions in Wales are rare but arrests have been made and offences can lead to large fines or, in some cases, prison sentences. Public sector staff are not exempt.

*Estimated cost: Majority of sentences for wildlife crime are up to £5000 (+ costs) and/or 6 month sentence; Introduction of Non-native species attracts a 2yr sentence; Offences in relation to protected sites are higher, SSSIs carry a maximum £20 000 fine.*

#### **Call-in**

Anyone in Wales can ask the Welsh Assembly Government to call in a planning decision for reasons including "likely significant effect on sites of nature conservation importance". The administrative costs are high and you face the embarrassment of having the decision made outside your authority.

*Estimated cost: minimum £100,000+ for administration, possibly higher*



## **European Infraction**

Fines are charged as an initial lump sum followed by daily payments until the infringement is removed, in this case for the “natural features to be restored to their original condition”. In the case of mature trees this could take many years. Failure to pay can lead to stoppage of European funds such as convergence or rural development payments. Infraction costs of all three types will be passed on to the local authority within whose purview they occur.

*Estimated cost: up to £11million lump sum plus £1million daily costs in addition to any administrative burden. Recent cases include one off fines of £7million, daily costs of £180,000.*

**Any one of these costs would set you back a large percentage and in some case significantly more than the funding required as an annual budget for nature conservation and biodiversity action.**

## ***Intervention***

Most of the time, most of the public sector in Wales demonstrates compliance and in many cases offers best practice in biodiversity and nature conservation activity. However, as with any complex service, things can go wrong.

The Welsh Assembly Government and Wales Biodiversity Partnership will always attempt to intervene early and positively to allow you to continue to provide an ever-improving high quality service. When advised by our statutory advisors or others of a particularly high level of risk we may also need to intervene to ensure compliance.

## ***Support Mechanisms***

A range of support services, including the following, exist to help you achieve compliance and enforcement within your area of responsibility. It is always advisable to contact the relevant person as early as you can about any particular issue or concern.

- The Countryside Council for Wales (CCW) are able to provide partial funding to assist with biodiversity and ecology roles within Local Authorities
- The Wales Biodiversity Partnership (WBP) provides a support team to assist biodiversity co-ordinators across Wales and your co-ordinator will have a named contact from this team from whom they can ask for advice or guidance at any time.
- Likewise, CCW provide advice and guidance on ecological issues and your ecologist will be supplied with the name of a local contact from whom they can seek advice of guidance when needed.



- Each local police force has a Wildlife Crime Officer who can be contacted for advice or investigation if you are concerned that an offence may have taken place or be at risk of occurring.
- CCW hold regular development meetings with Local Planning Authorities (LPA) to improve ways of working within and between the LPA and CCW.
- The Wales Biodiversity Partnership provides further advice and guidance including on-site visits to assist you in developing best practice.
- The UK web based Biodiversity Action Reporting system is available to report on biodiversity action taken and targets met.

All the services above are provided free of charge. In addition, there are a number of low-cost actions that you may also wish to take such as:

- Establishing a service level agreement with your Local Records Centre (LRC) so that they can provide you with the local biodiversity data that you require for planning and decision making.
- Considering ALGE/IEEM membership for your ecology staff so that you and they can benefit from professional development and up to date guidance to maintain competency and standards in Ecology.
- Enabling attendance of biodiversity co-ordinators at WBP Conference, LBAP Courses or other suitable professional development events.
- Ensuring that all Planning Officers, Building Control Staff (and other relevant staff) regularly attended Habitats Regulations training events with CCW or other providers.
- Contact the Welsh Local Government Association (WLGA) (Rachel Jowitt [[rachel.jowitt@wlga.gov.uk](mailto:rachel.jowitt@wlga.gov.uk)] current WLGA contact for Environment) or Public Sector Management Wales to purchase consultancy support for improving your biodiversity working practices.
- Run internal courses in different departments on the NERC Act Biodiversity Duty and develop best practice examples to demonstrate compliance.