

Highland's Statutorily Protected Species Gnèithean na Gàidhealtachd le Dìon Reachdail



Acknowledgements

Aithnichidhean

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Status of the Guidance

Inbhe an Stiùiridh

The guidance reflects the policy advice given in Scottish Planning Policy, and will supplement Policy 58 of The Highland Council's Highland wide Local Development Plan which states:

Policy 58 Protected Species

Where there is good reason to believe that a protected species may be present on site or may be affected by a proposed development, we will require a survey to be carried out to establish any such presence and if necessary a mitigation plan to avoid or minimise any impacts on the species, before determining the application.

Development that is likely to have an adverse effect, individually and/or cumulatively, on European Protected Species (see Glossary) will only be permitted where:

- There is no satisfactory alternative;
- The development is required for preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment; and
- The development will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

Development that is likely to have an adverse effect, individually and/or cumulatively, on protected bird species (see Glossary) will only be permitted where:

- There is no other satisfactory solution; and
- The development is required in the interests of public health or public safety.

This will include but is not limited to avoiding adverse effects, individually and/or cumulatively, on the populations of the following priority protected bird species:

- Species listed in Annex 1 of the EC Birds Directive;
- Regularly occurring migratory species listed in Annex II of the Birds Directive;
- Species listed in Schedule 1 of the Wildlife and Countryside Act 1981 as amended;
- [Birds of conservation concern](#).

Development that is likely to have an adverse effect, individually and/or

cumulatively (see glossary), on other protected animals and plants (see Glossary) will only be permitted where the development is required for preserving public health or public safety.

Development proposals should avoid adverse disturbance, including cumulatively, to badgers and badger setts, protected under the Protection of Badgers Act 1992 (as amended by the Nature Conservation (Scotland) Act 2004).

This guidance is to be adopted as statutory Supplementary Guidance under the Planning Etc. (Scotland) Act 2006.

The Highland Council will monitor the effectiveness of the guidance and review its contents at regular intervals to ensure it remains relevant and compliant with Scottish Government Policy and Highland Council Policies and Strategies.

What is Biodiversity? Dè th' ann am Bith-iomadachd?

The word biodiversity is used throughout this document in three contexts:

1. The variability among living organisms from all sources, including, amongst other things, terrestrial, marine, and other aquatic ecosystems, and the ecological complexes of which they are part: this includes diversity within species, between species and of ecosystems". Or all life on Earth and the places where it is found.
2. An activity the same as nature conservation.
3. A process to deliver 2. e.g. The Scottish Biodiversity Strategy, Local Biodiversity Action Plan.

Introduction

Ro-ràdh

It is important to remind ourselves why we have protected species legislation. It is there to protect the populations of species that have been identified at the UK or European level as being rare and/ or threatened and so in need of protection. In this context it is very much part of nature conservation in the broadest sense. As the remit of the supplementary guidance is to explain protected species legislation it is beyond the scope of it to go into detail about general nature conservation issues that do not have direct legislative connections. However, these issues and how they are dealt with will have an impact on any protected species on a site, the two are inextricably linked.

Further general information on biodiversity and development is contained in the [Sustainable Design Guide Supplementary Guidance](#) and [Construction Environmental Management Process for Large Scale Projects Guidance Note](#) produced by Highland Council. Other advice is available in [Planning Advice Note 60 - Natural Heritage](#).

The protected species legislation can seem very complex and sometimes inappropriate when applying to small sites, but there is no minimum size of development that the legislation applies to or for that matter population size. The size and importance of a population of protected species and the impact of the proposed development on that population will determine how the protected species legislation will affect the development.

Although the UK and European protected species legislation differs in the strength of protection for particular species, it is useful to treat both similarly and in a proactive manner. By this we mean that the applicant should determine if protected species are likely to be on a site and if species are present and they will be affected by the proposed development then the applicant should commission or undertake a survey that includes changes to the development or mitigation that would either remove the impact on the protected species present or make the impacts on the protected species licensable.

The Biodiversity Checklist has been developed to help in the first two steps of the aforementioned process, namely if protected species are likely to be on a site and if species are present (using currently available distribution information). It should be borne in mind that the determination of planning applications would be speeded up by including a full general habitat and species site survey with the initial application as the Planning Officers would have all the information they require to make a determination.

The presence of these species does not automatically preclude development but does mean that a certain sequence of procedures is required to be followed. National guidance on protected species is available in [Scottish Planning Policy, Subject Policies - paragraph 142 to 145](#) and [SNH's species licencing pages](#)

In addition the Wildlife and Natural Environment Act (Scotland) 2011 became law in 2011. The [Wildlife and Natural Environment \(Scotland\) Act 2011](#) amended the section on species licensing in the Wildlife and Countryside Act 1981 (section 16). This broadened the range of activities for which a licence can be given to "any other social, economic or environmental purpose".

Although some information is included in this document, further detailed information on protected species and licencing and related guidance notes can be found on the [SNH Protecting Scotland's Nature](#) webpages.

More detailed information on the timing of species surveys and case studies of applications and developments dealing with protected species will be produced in the future and added as an appendix to this document.

1 Relevant Highland Council Policies pertaining to biodiversity

Poileasaidhean Iomchaidh Chomhairle na Gàidhealtachd a' buntainn ri bith-iomadachd

The Highland wide Local Development Plan has [6 policies directly relating to biodiversity](#): Policy 58 – Natural Build and Cultural Heritage, Policy 59 – Protected Species, Policy 60 – Other Important Species, Policy 61 – Other Important Habitats, Policy 75 - Green Networks and Policy 29 - Sustainable Design.

2 Key principles for Furthering the Conservation of Biodiversity

Prìomh phrionnsapalan airson an Dìon air Bith-iomadachd Adhartachadh

The principles for furthering the conservation of biodiversity on development sites are listed below. If followed they will minimise the impact on protected species on a site arising from a development and reduce or avoid the need for licencing of operations.

- 1 Avoid**
Damage to existing habitats from the development.
- 2 Mitigate**
Take measures to reduce any adverse impacts on habitats and species arising from the development.
- 3 Compensate – if neither avoidance nor mitigation is possible.**
Offset any residual adverse effects, either on- or off-site. (in this context offset means to recreate the habitat that is lost).
- 4 Restore.**
Habitat management beyond any existing requirement for mitigation/compensation.

3 Tiers of Legislation Ìrean Reachdais

Table 1. Tiers of conservation legislation.

International	The Convention on Wetlands of International Importance especially as Waterfowl Habitat. This is also known as the Ramsar Convention and adopted in 1971 and ratified by the UK in 1976. It affords areas designated as Ramsar sites the same protection as sites designated under the European legislation detailed below.
European	The Convention on the Conservation of European Wildlife and Natural Habitats or the Bern Convention was implemented through the adoption of Council Directive 79/409/EEC (now updated to 2009/147/EC) on the conservation of wild birds - better known as the Birds Directive and in 1992 the Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora, better known as the Habitats Directive. These Directives were transposed into UK law through the Conservation (Natural Habitats, &c.) Regulations 1994 as amended in Scotland (better known as the Habitats Regulations) and, for European Protected Species (EPS), by -The Conservation (Natural Habitats, &c.) (Scotland) as amended.
UK	Wildlife and Countryside Act (1981) as amended by the Nature Conservation (Scotland) Act 2004 is the legislation that protects certain GB species and habitats. For a list of the main species protected under this legislation, see Section 6 and Appendix 2. Specific legislation for protecting badgers is provided by the Protection of Badgers Act, 1992 (amended, for Scotland, by the Nature Conservation (Scotland) Act 2004).
Scottish	Nature Conservation (Scotland) Act 2004. This places a Biodiversity Duty on all public bodies. This duty relates to locally-present species included in the UK Biodiversity Action Plan (UKBAP), the Scottish Biodiversity List and the Local Biodiversity Action Plans. The Wildlife and Natural Environment (Scotland) Act 2011 further amend the Nature Conservation (Scotland) Act 2004 particularly in relation to species licensing.

3.1 Other relevant legislation

Environmental Impact Assessment

The first three principles of furthering the conservation of biodiversity on development sites are generally accepted steps in Environmental Impact Assessment as detailed in 1985 European Council Directive (No. 85/337/EEC) "on the assessment of the effects of certain public and private projects on the environment". The [Environmental Impact Assessment \(Scotland\) Regulations](#) (Scottish Statutory Instrument 1999 No. 1) transpose the EIA Directive as amended into Scottish planning law there has been a further update to these regulations in 2011,

Strategic Environmental Assessment.

[SEA](#) aims to ensure environmental protection and sustainable development by requiring an assessment of the environmental effects of plans and programmes, to be carried out by public bodies, as they are being developed. It is a key component of sustainable development, establishing new procedures for protecting the environment and extending opportunities for participation in public policy decision making.

The EU Environment Liability Directive

The [Environmental Liability \(Scotland\) Regulations](#) 2009 transposed the EU Environmental Liability Directive 2004/35/EC (ELD) of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage.

This Directive enshrines a framework of environmental liability based on the "polluter/ damager pays" principle and the stated aim is to prevent and remedy environmental damage.

This Directive defines 'significant' environmental damage in terms of;

- Biodiversity - protected species and natural habitats listed in the Birds and Habitats Directives where this has significant adverse effects on reaching or maintaining favorable conservation status.
- Water bodies - any damage that significantly and adversely affects the status or ecological potential of a water body as defined under the Water Framework Directive.
- Public Health - To land where public health is at 'significant' risk of being adversely affected.

These defined types of environmental damage may occur singly or in combination on a particular site.

The Regulations do not replace any existing laws therefore ordinary day-to-day activities/accidents should continue to be dealt with under existing legislation.

4 Dealing with Protected Species Dèiligeadh ri Gnèithean Dìonta

SNH's [Service Statement for Planning and Development](#) sets out what Planning Authorities and other stakeholders can expect from SNH in relation to planning and development proposals.

SNH are working with planning authorities, developers and others to help deliver good development in the right places. They will:

- work with planning authorities on the preparation of Development Plans;
- engage with developers and planners at the pre-application stage to help developments happen in ways that enhance, rather than damage, Scotland's nature and landscapes;
- limit our use of objections to cases where a development proposal raises natural heritage issues of national interest.

5 European Protected Species Gnèithean Dìonta Eòrpach

5.1 Offences

Arguably the most important offence arguably in terms of development of a site, is to destroy or damage a breeding site or resting place of an EPS. In respect of the strict liability that the animal does not have to be presently using such a breeding site or resting place for an offence to be committed. Being a 'strict liability' or absolute offence this means ignorance and lack of any intention to damage the breeding site/ resting place is no defence against prosecution.

Under this legislation all of the following are offences if undertaken deliberately or recklessly:

- capture, injure or kill a wild animal which is a European Protected Species (EPS)
- capture or harass a wild animal or group of wild animals of EPS
- to disturb such an animal while it is occupying a structure or place it uses for shelter or protection
- to disturb such an animal while it is rearing or otherwise caring for its young
- obstructing access to a breeding site or resting place, or otherwise denying the animal the use of a breeding site or resting place
- to disturb such an animal in a manner that is, or in circumstances which are, likely to significantly affect the local distribution or abundance of the species to which it belongs
- to disturb such an animal in a manner that is, or in circumstances which are, likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young
- to take or destroy the eggs of such an animal
- deliberately or recklessly disturbing such an animal while it is migrating or hibernating
- to disturb any dolphin, porpoise or whale (cetacean)
- to pick, collect, cut, uproot or destroy a wild plant of EPS

For a full list of offences see SNH's [Protected Species A-Z](#)

For the above an offence is only committed if the person knew their actions were highly likely to kill or disturb the animal etc.

If any of these activities are likely to happen on a development site then a Regulation 44 licence application must be made to determine if they will be

allowable. If a licence is not granted for these activities then they cannot take place without breaking the law. It should be noted that SNH have been delegated the responsibility to issue these licence. In due course SNH hopes to be able to place guidance on their website on the application of the EPS (and WCA) licensing tests.

5.2 Planning Application with European Protected Species Issues

If the development even with mitigation will require a licence to proceed and the Planning Authority is minded to grant planning permission then it must be satisfied that all three EPS licensing tests can be met before granting permission'

"it is clearly essential that planning permission is not granted without the planning authority having satisfied itself that the proposed development either will not impact adversely on any European protected species on the site or that, in its opinion, all three tests necessary for the eventual grant of a Regulation 44 (the 1994 Regulations) licence are likely to be satisfied. To do otherwise would be to risk breaching the requirements of the (Habitats) Directive and Regulation 3(4). It would also present the very real danger that the developer of the site would be unable to make practical use of the planning permission which had been granted, because no Regulation 44 licence would be forthcoming. Such a situation is in the interests of no-one."

(Quote from the Planning Division of the Scottish Executive, 16th May 2006.)

If a development is likely to have a significant impact on an EPS this will be a material consideration, see paragraph 142-145 of the Scottish Planning Policy, in the planning process.

5.3 The Three Licencing Tests

The circumstances in which licences may be granted are narrowly defined. All three of these tests must be satisfied for a licence to be issued. Highland Council is the competent body determining if these tests have been satisfied, prior to any licence application or planning determination.

Firstly, that the licence application must demonstrably relate to one of the purposes specified in Regulation 44(2). In the case of development, the purpose most likely to be relevant is that found at Regulation 44(2) (e). This purpose is defined as:

“preserving public health or public safety or other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment.”

If the application does not meet this requirement then a licence cannot be issued.

If this test is passed then two further tests must be passed:

1. there is no satisfactory alternative (to the granting of a licence), and
2. that the action authorised will not be detrimental to the maintenance of the population of the European protected species concerned at a favourable conservation status in their natural range. (SNH will provide advice on this)

If all three tests are satisfied then planning permission can be granted and the applicant can apply for a Regulation 44 licence.

Work cannot begin on site until a licence is granted; as such unlicensed work may be breaking the law.

For further details see SNH’s [Species Licencing](#)

5.4 European Protected Species in Highland

Table 2. EPS have been recorded in Highland Council area:

Note: The information here is only a guide to species distribution not a definitive statement on where species do or do not occur. All these species are under-recorded.

For a full list of offences see SNH’s [Protected Species A-Z](#)

Species	Distribution
Vertebrates	
Dolphins, Porpoises and Whales	Resident populations of Porpoises in most inshore waters. Resident population of around 130 Bottle-nosed Dolphins in the Moray Firth. Seasonal passage of whales in all offshore waters and area of summer residence. Information currently being collated by SNH.

All bat species	Roosts of 4 species are widespread in Highland (two species of Pipistrelle, Brown Long-eared and Daubenton's). Roosts of Natterer's bats are scarcer, occurring as far north as Easter Ross and Lochalsh. Roosts occur in houses, old trees, bridges and rock crevices – especially in wooded areas or near watercourses/waterbodies. Limited distribution information from SNH or the local bat group.
Otter	Found in nearly all watercourses in Highland Otters are widespread in coastal areas, particularly on the west coast. Most recent information from Highland Biological Recording Group and 2001 Vincent Wildlife Trust UK Otter Survey.
Wildcat	This species could occur across most of Highland away from population centres, particularly in areas of mixed farmland, woodland and heath. Hard evidence of their presence is scarce and difficult to establish. Most recent distribution survey completed in 2010.
Great Crested Newt	Several ponds and wetlands in lowland areas around the Inner Moray Firth (Muir of Ord, Strathpeffer, Nairn and Inverness) but also scattered locations elsewhere (Aviemore, Skye, NW Sutherland). They also need to be considered in proposed development affecting land adjacent to these ponds.
Marine turtles (5 species)	These are uncommon summer visitors to our waters. Sightings of them have increased in the last decade.
Plants - All these plants are rare or very localised	
Killarney Fern	Coastal, found in 25, 10 kilometer squares. Morven, Small Isles, Sleat, Strathaird and Lochalsh.
Slender Naiad	Found in two lochs south east of Mallaig towards Loch Morar and possibly Loch Flemington.
Floating-leaved water- plantain, There is a debate as to whether this species in Scotland is an EPS	In one, 10 kilometer square at the head of Loch Etive.
Yellow Marsh Saxifrage	In one, 10 kilometer square between Mybster and Loch Rangag.

6 Species Protected under the Wildlife and Countryside Act 1981 (as amended)

Gnèithean Dìonta fon Achd Fiadh-bheatha agus Dùthcha 1981 (mar atharraichte)

Paragraph 144 in the Scottish Planning Policy states, "Planning permission must not be granted for development that would be likely to have an adverse effect on a species protected under the Wildlife and Countryside Act 1981 unless the development is required for preserving public health or public safety. For development affecting a species of bird protected under the 1981

Act there must also be no other satisfactory solution."

All breeding birds and some animal species have protection at a GB level (animals under Schedule 5 and plants under Schedule 8) of the Wildlife and Countryside Act (1981), as amended by the Nature Conservation (Scotland) Act 2004. If a development is likely to have a significant impact on one of these species, it will be a material consideration, see paragraph 142-145 of the Scottish Planning Policy, in the planning process. In addition to these species UK Biodiversity Action Plan species and habitats found in Scotland are also material considerations in the planning process; though they do not have specific protection.

For animals protection relates to intentional or reckless killing and injuring, disturbance and interference with places used for shelter or protection. In the legislation a lack of knowledge of the presence of species is NOT a defence against prosecution.

It should be noted that the Wildlife and Natural Environment Bill (Scotland) 2011 changed the licensing provisions now available for certain species covered in the Wildlife and Countryside Act (1981), as amended and the 'tests' applicable to them.

All breeding birds are protected under this legislation. Some of the illegal activities are listed below.

- intentionally or recklessly kill, injure or take any wild bird
- intentionally or recklessly take, damage or destroy the nest of any wild bird whilst it is in use or being built
- intentionally or recklessly take or destroy the egg of any wild bird

Some of these species, those on Schedule 1, 1A and A1 of the WCA (1981) as amended, have greater protection, offences include:

- Intentionally or recklessly disturb any wild bird listed on Schedule 1 while it is nest building, or at a nest containing eggs or young, or disturb the dependent young of such a bird.
- Additional protection is afforded to species listed on Schedule 1A (against intentional or reckless harassment).
- Those listed on A1 of the Act (against intentional or reckless taking, damage, destruction or interference with a nest habitually used by such a species at any time of year).

For a full list of species and offences see SNH’s [Protected Species A-Z](#)

Table 3. Species Protected under the Wildlife and Countryside Act (1981) as amended.

Species		Distribution Information
	Birds	All breeding bird species. Good distribution information held by the RSPB and local bird recorders.
Mammals	Pine Marten	Very widespread.
	Red Squirrel	Widespread in suitable habitat. Distribution information from Red Squirrels of the Highlands
	Water Vole	Very little information on distribution, but could be widespread in all suitable watercourses and wetlands.
Reptiles	Slow Worm	Widespread.
	Adder	Widespread.
	Viviparous Lizard	Widespread.
Fish	Allis Shad	Recorded from west of Ballachulish in Loch Linnhe, Spey and Arisaig. Likely to be under-recorded.
	Twaite Shad	Recorded from west of Ballachulish in Loch Linnhe. Likely to be under-recorded.
Invertebrates	Freshwater Pearl Mussel	Restricted distribution. Good survey information, but confidential. Available on request from SNH.
	Fan Mussel (mollusc)	Found in 4 marine 10km squares on the West Coast. Contact SNH for more information.

Plants	Bluebell	Very widespread
	Slender Naiad	Found in two lochs south east of Mallaig towards Loch Morar and Loch Flemington.
	Floating Water-plantain	In one, 10 kilometer square at the head of Loch Etive.
	Marsh Saxifrage	In one, 10 kilometer square between Mybster and Loch Rangag.
	Green Shield Moss	Found in Rothiemurchus and Abernethy Forests, Moniack Glen, Rogie Falls, Boath (Easter Ross) and Ruttie Wood (Strathglass).
	Petalwort	Found only at Achnahaird.

6.1 Birds

As already mentioned, all birds have general protection during the breeding season. Birds nesting in buildings are particularly likely to be affected by redevelopment. Barn owls are crepuscular (particularly active at dawn and dusk) so their presence may be unsuspected although they leave obvious pellets at their roost sites. They are specially protected under Schedule 1 of the Wildlife and Countryside Act (as amended). They are particularly liable to disturbance by building activities, especially steading conversions. See guidance on this issue on the Barn Owl Trust's [website](#)

Another bird that nests almost exclusively in buildings and whose nest sites are very difficult to locate is the Swift. It is particularly vulnerable to demolition and renovations of buildings which destroy, or interfere with access to, active nests during the breeding season (May-August). Information on distribution is available from Highland Biodiversity Officer or see [Concern for Swifts Scotland](#) for information on creating nest spaces for Swifts in buildings.

Sand Martens and Ground nesting birds are other species that regularly come up in planning applications. For these species the timing and location of works is a key issue.

6.2 Plants

Some plants (and lower plants such as mosses, liverworts and lichens) are protected under the Wildlife and Countryside Act (1981) (as amended in Scotland) Table 4. Nearly all of them have a limited distribution apart. For

these species it is an offence to intentionally or recklessly pick, uproot or destroy these plants. See SNH's [Licencing Wild Plants and Fungi](#).

By using the information held on the National Biodiversity Network or on the [Botanical Society for the British Isles website](#) fairly accurate information on known locations can be found at the 10 kilometer square resolution. However, just because there is no record of a species in an area does not mean that it isn't there.

7 Badgers Bruic

The Badger is covered by the Protection of Badgers Act 1992 as amended in Scotland. See SNH's [Badgers and Development](#).

Table 4. Badger distribution information.

Species	Information
Badgers	Found in every 10km square in lowland, eastern Highland, more sparsely distributed elsewhere in the Highlands. Up to date information held by local Badger Groups, where they exist. See Highland Council Badger Policy Guidance Note.

See [Highland Council Badger Policy Guidance Note](#), [Protected Mammals - Badgers](#) and www.scottishbadgers.org.uk for further information.

8 Survey timing

Tomhas-ama sgrùdaidh

The timing of a species or habitat survey should depend on what information it is aiming to collect. There are general times for breeding and wintering of species but these are influenced by weather and location and will vary annually. There is no straightforward way to collate generic guidance on when it is best to survey for a particular species, as there are too many variables to be considered.

For example, in general breeding birds are active from April until July. However there are some exceptions that breed earlier in the year. Golden Eagle, Sea Eagle, Raven, Rook and Grey Heron can be on their nest from February onwards. Crossbills, a bird that favours Pinewoods and conifer plantations can breed in any month.

The best way to ensure that a survey is taking place at the correct time of year is to ask if it be justified by an ecologist using information on the phenology (the study of the time when events happen) of the species concerned and what is being surveyed for; presence/ absence, population size and/ or breeding activity etc. If there is any doubt or uncertainty about the timing of a survey then a second professional opinion should be sought.

There is a need for flexibility when it comes to general species and habitat surveys, a survey at a sub-optimal time of year (highlighting what may be present but not recorded due to the timing of the survey) is better than none at all. However, for EPS and other protected species, breeding and wintering surveys must take place at the optimum time of year. It is the responsibility of the developer to consider this constraint when planning the timing of their application.

Historic surveys i.e. those undertaken either in a different season from when the development will commence (e.g. breeding/ wintering) or several months previously may need to be updated prior to works beginning on site. As some developments can take years to progress the situation on the ground may have changed significantly in relation to protected species distribution on site.

The granting of planning permission or a licence is no protection from prosecution if the protected species situation on the ground has changed from when they were granted. In this situation it is the responsibility of the developer to undertake a new survey to ascertain if the protected species situation has changed and if the developer does not the Planning Officer should ask the developer to justify why they have not undertaken such a survey.

9 Consideration of Protected Species on Development Sites

Beachdachadh air Gnèithean Dìonta air Làraich Leasachaidh

Determining the presence of protected species on a development area, be they protected under European, GB or Scottish legislation, must go through the same initial information gathering and consideration process. Namely; determining if they are present or use the development site, if the development will adversely affect them, if the development can be altered to avoid adversely affecting them or can be mitigated for. By answering these questions through completing the biodiversity checklist, undertaking survey and drafting a mitigation plan, the course of action required will be determined.

The checklist is not mandatory but planners will require answers to the questions it asks before any determination of an application can be made. See Appendix 1.

9.1 Biodiversity Checklist

It should be noted the Biodiversity Checklist is not a legislative requirement in the planning process, however considering protected species is. The more readily available information an applicant can gather at an early stage in the process then the better informed the applicant will be. The Biodiversity Checklist seeks to make it as easy as possible to do this and also indicate which surveys are likely to be required.

To help identify the key biodiversity issues relating to a site proposed for development a Biodiversity Checklist for Protected Species on Development Sites has been developed. This checklist has been devised to use publically available information to identify protected species distribution on or close to the development site and also to identify habitats on a development site where protected species (see Sections 5, 6 and 7) are likely to be found.

If a site is not suspected to have protected species there must be a written report from the developer detailing how this was determined and what information was used, this need not be long or technical, but is required to allow consent to be granted. This checklist can be found in Appendix 1.

If protected species are absent or highly unlikely to be present on the site then consent may be granted.

If protected species are suspected to be on the site, either from distribution data or the presence of suitable habitat, then a species survey must take place.

9.2 Species Survey

If the completed checklist or another type of desk-based survey indicates protected species are present or likely to be present on the development site, then a detailed protected species survey should be undertaken by the developers.

If the survey shows that there are no protected species on site or their presence is highly unlikely, then planning consent can be granted.

If protected species are found on site and will be affected by the development then a mitigation plan will be required to determine if the activity is licensable.

9.3 Mitigation

If the above survey shows protected species are present on the site or using it some of the time then it must be determined if the development will adversely affect these species resting places, feeding or breeding sites. If there will be no adverse effects then consent may be granted but there may be conditions for protected species resurvey of the site prior to commencement of works to ensure the protected species status on the site has not changed. If there will be adverse effects then a mitigation plan must be prepared to minimise impacts of the development on the protected species found there to a level that will not require licencing before any consent can be granted. If the impacts cannot be sufficiently mitigated, then the activity must be capable of being licensed if the proposed development is to be considered for planning consent. This consent has to be strictly conditional upon the agreed mitigation plan being implemented otherwise the conditions of the licence will not have been followed and an offence will have been committed.

Protected species on site – they will be unaffected by development, consent can be granted. Justification for this required.

Protected species on site – they will be affected by the proposed development, but this can be mitigated against by altering the development so protected species will be unaffected by it. Consent can be granted, a suitable mitigation plan that can be licenced is required.

Protected species on site – they will be affected by the proposed development, this can't be mitigated against. The next steps to take depend on if the species are protected under European legislation or GB legislation.

Badgers are dealt with under specific legislation. For EPS affected by this the Planning Authority must be confident in its opinion that a licence can be granted prior to granting any planning consent.

9.4 Next Steps

The steps for dealing with EPS are detailed in section 5, with the responsibility for determining the legality of the actions e.g. can they be licenced, being down to the Planning Authority. If the actions are deemed licensable then the planning application can be approved, however work on the development that will affect protected species cannot begin until a licence is granted.

10 Conclusion Co-dhùnadh

This guidance is not intended to cover all aspects of the planning process in relation to biodiversity but to focus on protected species to ensure that all stakeholders in a development have a clear understanding of their legal responsibilities. It is hoped that this guidance will simplify what can seem a very complicated process.

The determination of planning applications would be speeded up by including a full general habitat and species site survey with the initial application, in addition to meeting the requirement for information on protected species. Further information on matters of detail relating to species or legislation can be found in the following section.

11 Links to useful information Ceangalan ri fiosrachadh feumail

[Bat Conservation Trust - Professional Guidance and Good Practice Guidance](#)

[Biodiversity Planning Toolkit](#)

[Species Distribution Maps from the National Biodiversity Network](#) (NB. this information should only be used as a guide and not treated as a definitive statement of a species distribution in a given area)

[Highland Biological Recording Group](#) Distribution of local species

[Highland Biodiversity Action Plans](#)

[The Law and Wild Birds](#) RSPB

[Scottish Biodiversity List](#)

[Scottish Biodiversity Strategy](#)

[SNH Sitelink](#)

Appendix 1 - Biodiversity Checklist for Protected Species on Development Sites

Pàipear-taice 1 – Liosta-sgrùdaidh airson Gnèithean Dìonta air Làraich Leasachaidh

What is Biodiversity?

"The variability among living organisms from all sources, including, amongst other things, terrestrial, marine, and other aquatic ecosystems, and the ecological complexes of which they are part: this includes diversity within species, between species and of ecosystems". Or all life on Earth and the places where it is found.

Introduction

An initial simple site audit should take place to determine the possible ecological issues and opportunities on that development site. This will highlight any potential issues relating to the habitats found on the site and/or European and other Protected Species present on the site.

It should be noted that, "it is clearly essential that planning permission is not granted without the planning authority having that the proposed development either will not impact adversely on any European protected species on the site or that, in its opinion, all three tests necessary for the eventual grant of a Regulation 44 (the 1994 Regulations) licence is likely to be satisfied." Quote from the Planning Division of the Scottish Executive, 16th May 2006. The Scottish Planning Policy – Subject Policies paragraphs 142-5 deals specifically with Protected Species.

Any issues that this checklist highlights should be dealt with prior to the submission of the planning application. As noted above, it is a legal imperative for European Protected Species; though not for other protected species. However having all the species and habitat surveys completed prior to application, will greatly speed up the consideration process.

Many potential negative impacts arising from a development can be avoided by retaining as much wildlife habitat as possible and maximising its connectivity both on- and off-site

This checklist should be used in conjunction with Highland Statutorily Protected Species: Interim Supplementary Guidance.

Steps in assessing the implications of and opportunities for protected species on a development site.

1 Note which of the following habitats are on site or directly adjacent to the site. In respect of the suggested surveys it is up to the applicant to justify if such a survey is not required i.e. that the proposed development will have no impact at all on that habitat or the species found there.

The legislation to back up the need for these surveys can be found SNH's [Protected Species A-Z](#). This should be accompanied by a sketch map showing the habitats on site.

Habitat	Present (Yes/No)	Will the development impact adversely on this habitat? (Yes/No)	If there will be an adverse impact to this habitat then the following action is required. In addition a mitigation and/ or protection plan will be required too
Ancient woodland, long-established woodland of semi-natural origin and long-established woodland of plantation origin.			Habitat survey. Mammal and breeding bird surveys. Reptile survey.
Woodland (broadleaved)			Mammal and breeding bird surveys. Reptile survey.
Woodland (coniferous)			Mammal and breeding bird surveys. Reptile survey. Bluebell survey.
Individual Mature Trees			Mammal and breeding bird surveys. Reptile survey. Bluebell survey.
Hedges/ scrub			Mammal and breeding bird surveys. Reptile survey. Bluebell survey.
Running water (including ditches)			Fish, Freshwater Pearl Mussel, Otter, Water Vole surveys.

Standing water			Otter, Great Crested Newt, Water Vole and breeding bird surveys.
Wetland or bog			Breeding bird survey, Otter, Water Vole.
Rough grassland/moorland			Breeding bird surveys. Reptile survey.
Buildings/ dykes/ walls/ bridges			Bat, breeding bird surveys. Reptile survey.
Brownfield/ post-industrial site			Mammal, breeding bird surveys. Reptile survey.
Coastal/ marine			Fish, Dolphin, Porpoise, Whale, Turtles and Otter Surveys. Breeding and wintering birds. Reptile survey.

NB. For maps of the boundaries of the ancient woodland types present on a site click [here](#)

2 Has a previous survey of the development site recorded the presence of European protected species or other protected species? Or does the 10km square(s) the development site is in have records of any European Protected Species and the habitat on site to support them? See Tables 1 and 2 for respective lists of these species found in Highland area.

	Yes , list the species and go to question 3.
	No , go to question 4.

NB: If the presence of European Protected Species is suspected on the development site, then a survey for each of these species must take place before the planning situation is resolved. A species mitigation plan which includes survey data, an outline of how the laws relating to the protection of these species are being followed and any proposed mitigation and compensation works should be submitted by the applicant with the planning proposals. If the mitigation proposals do not fully avoid an offence being committed, works cannot proceed even if planning permission is granted

unless the applicant applies and is granted an EPS licence from the appropriate licensing authority.

For other protected species, it is good practice although not a legal requirement that a similar species mitigation plan is submitted by the applicant with the planning proposals. This approach allows the planning authority to properly assess the implications of the development on protected species before granting planning consent.

3 Species Checklists.

3.1 EPS

Note: If a species is not present on a site or there is no suitable habitat just leave the Present box blank.

Species	Present	Impact
Vertebrates		
Dolphins, Porpoises and Whales		
All Bat species		
Otter		
Wildcat		
Great Crested Newt		
Five Marine Turtles (Loggerhead, Leatherback, Kemp's Ridley, Green & Hawksbill)		
Plants - All these plants are rare or very localised		
Killarney Fern		
Slender Naiad		
Floating-leaved water-plantain(*)(*) = There is debate as to whether this species in Scotland is an EPS		
Yellow Marsh Saxifrage		

3.2 Other Protected Species

Species	Present Y/N	Impact
Vertebrates		
Badgers		
Birds (breeding and/or on Schedule 1, 1A or A1 of the WCA (1981) (as amended) or Annex 1 of the Habitats Directive)		
Pine Marten		
Red Squirrel		
Water Vole		
Slow Worm		
Adder		
Viviparous Lizard		
Invertebrates		
Fan Mussel (mollusc) – west coast marine		
Freshwater Pearl Mussel		
Fish – Estuarine and under- recorded		
Allis Shad		
Twaite Shad		
Plants – very localised		
Green Shield Moss		
Petalwort		

4 How might the development affect the species identified on the development site (e.g. will the habitat of the species be reduced? Will species be displaced and if so, on a temporary or permanent basis? Don't forget about indirect impacts like noise or light, increased traffic or people movement and possibly at odd times, 'corridor' routes for wildlife movement).

5 Are there any of the following non-native invasive species (INNS) found on the site?

Species	Present (Yes/ No)	If yes, action required
Giant Hogweed		How will this species be controlled/eradicated?
Rhododendron		
Japanese Knotweed However Japanese Knotweed is classed as controlled waste and needs to be considered carefully depending on what groundworks are proposed.		
Himalayan Balsam		
Mink		How will this species be monitored/controlled/ eradicated?

6 Does all or part of this site link two or more areas of undeveloped land?

Yes. Then comment should be made on the impact of the proposed development on this link and how the link could be wholly or partly maintained.
No

7 On considering the above points, summarise your assessment of the development site on the implications of and opportunities for protected species there.

8 If there will be no impact from the development, are there opportunities to further restore the native biodiversity on the site or if this is not possible create features of biodiversity value? If there is a negative impact have you demonstrated what scope is there to mitigate this or compensate for unavoidable impacts both on and off-site?

Table 1. European Protected Species Found in the Highland Area

For detailed information on each species go to the [SNH Protected Species webpage](#)

Species	Distribution
Vertebrates	
Dolphins, Porpoises and Whales	Resident populations of Porpoises in most inshore waters. Resident population of around 130 Bottle-nosed Dolphins in the Moray Firth. Seasonal passage of whales in all offshore waters and area of summer residence. Information currently being collated by SNH.
All bat species	Roosts of 4 species are widespread in Highland (two species of Pipistrelle, Brown Long-eared and Daubenton's). Roosts of Natterer's bats are scarcer, occurring as far north as Easter Ross and Lochalsh. Roosts occur in houses, old trees, bridges and rock crevices – especially in wooded areas or near watercourses/waterbodies. Limited distribution information from SNH or the local bat group.
Otter	Found in nearly all watercourses in Highland Otters are widespread in coastal areas, particularly on the west coast. Most recent information from Highland Biological Recording Group and 2001 Vincent Wildlife Trust UK Otter Survey.
Wildcat	This species could occur across most of Highland away from population centres, particularly in areas of mixed farmland, woodland and heath. Hard evidence of their presence is scarce and difficult to establish. Most recent distribution survey completed in 2010.
Great Crested Newt	Several ponds and wetlands in lowland areas around the Inner Moray Firth (Muir of Ord, Strathpeffer, Nairn and Inverness) but also scattered locations elsewhere (Aviemore, Skye, NW Sutherland). They also need to be considered in proposed development affecting land adjacent to these ponds.
Marine turtles (5 species)	These are uncommon summer visitors to our waters. Sightings of them have increased in the last decade.

Plants - All these plants are rare or very localised	
Killarney Fern	Coastal, found in 25, 10 kilometer squares. Morven, Small Isles, Sleat, Strathaird and Lochalsh.
Slender Naiad	Found in two lochs south east of Mallaig towards Loch Morar and possibly Loch Flemington.
Floating-leaved water- plantain, There is a debate as to whether this species in Scotland is an EPS	In one, 10 kilometer square at the head of Loch Etive.
Yellow Marsh Saxifrage	In one, 10 kilometer square between Mybster and Loch Rangag.

Table 2. Species protected under the Wildlife and Countryside Act 1981 (as amended in Scotland) and the Protection of Badgers Act 1992 (as amended in Scotland)

For detailed information on each species go to the [SNH Protected Species webpage](#)

Species		Distribution Information
Birds		All breeding bird species. Good distribution information held by the RSPB and local bird recorders.
Mammals	Pine Marten	Very widespread.
	Red Squirrel	Widespread in suitable habitat. Distribution information from Red Squirrels of the Highlands
	Water Vole	Very little information on distribution, but could be widespread in all suitable watercourses and wetlands.
Reptiles	Slow Worm	Widespread.
	Adder	Widespread.
	Viviparous Lizard	Widespread.

Fish	Allis Shad	Recorded from west of Ballachulish in Loch Linnhe, Spey and Arisaig. Likely to be under-recorded.
	Twaite Shad	Recorded from west of Ballachulish in Loch Linnhe. Likely to be under-recorded.
Invertebrates	Freshwater Pearl Mussel	Restricted distribution. Good survey information, but confidential. Available on request from SNH.
	Fan Mussel (mollusc)	Found in 4 marine 10km squares on the West Coast. Contact SNH for more information.
Plants	Bluebell	Very widespread
	Slender Naiad	Found in two lochs south east of Mallaig towards Loch Morar and Loch Flemington.
	Floating Water-plantain	In one, 10 kilometer square at the head of Loch Etive.
	Marsh Saxifrage	In one, 10 kilometer square between Mybster and Loch Rangag.
	Green Shield Moss	Found in Rothiemurchus and Abernethy Forests, Moniack Glen, Rogie Falls, Boath (Easter Ross) and Ruttie Wood (Strathglass).
	Petalwort	Found only at Achnahaird.

NB. It should be noted that here are differing levels of protection for the various protected species listed above. Some are protected from intentional or reckless injury or killing but their place of shelter is not, or some only have their places of shelter protected with no protection against injury or killing. Refer to [SNH Protected Species webpage](#) for further information.

Appendix 2 – Protected Bird Species

Pàipear-taice 2 – Gnèithean Eun Dìonta

Table 1. Species regularly breeding in the Highland Council area receiving special protection on Schedule 1 of the Wildlife and Countryside Act (1981) (as amended in Scotland)

In addition to the standard protection for birds it is illegal to:

- intentionally or recklessly disturb any wild bird listed on Schedule 1 while it is nest building, or at a nest containing eggs or young, or whilst lekking.
- disturb the dependent young of such a bird.

For detailed information see SNH's webpages [Protected Species - Birds](#)

Species	Notes
Barn Owl	The only species on this Schedule that regularly breeds in buildings.
Black-Throated Diver	
Bluethroat	Sporadic breeder
Brambling	Sporadic breeder
Common Scoter	
Corncrake	
Crested Tit	
Dotterel	
Fieldfare	Sporadic breeder
Golden Eagle	
Green Sandpiper	Sporadic breeder
Greenshank	
Greylag Goose	
Hen Harrier	
Hobby	
Honey Buzzard	
Kingfisher	
Lapland Bunting	Sporadic breeder

Leach's Storm-petrel	
Little Tern	
Marsh Harrier	Sporadic breeder
Merlin	
Northern Goshawk	
Osprey	
Peregrine Falcon	
Purple Sandpiper	
Quail	Sporadic breeder
Red Kite	
Species	Notes
Red-Backed Shrike	Sporadic breeder
Red-Throated Diver	
Redwing	
Sea Eagle (White-tailed Eagle)	Under the WCA 1981 (as amended); the nest site protected under Schedule A1 and the bird is protected from harassment under Schedule 1A
Scottish Crossbill	Other crossbills WCA 1981 (as amended)
Shore Lark	Sporadic breeder
Slavonian Grebe	
Snow Bunting	
Spotted Crake	Sporadic breeder
(Western) Capercaillie	
Whimbrel	
Wood Sandpiper	
Wryneck	Sporadic breeder

Table 2. Species regularly wintering in the Highland Council area receiving special protection under Annex 1 of the Birds Directive and/or Schedule 1 of the Wildlife and Countryside Act (1981) (as amended in Scotland)

Species	Notes
Black-Tailed Godwit	
Goldeneye	Protected only in the close season
Great Northern Diver	
Greylag Goose (only in Caithness, Sutherland and Wester Ross)	Protected only in the close season
Long-Tailed Duck	
Pintail	Protected only in the close season
Scaup	
Velvet Scoter	
Whooper Swan	



Getting Involved

If you would like more information or to get involved in the production of future plans please contact us in one of the following ways:

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