



## SCOTTISH EXECUTIVE

Development Department  
Planning Division

Victoria Quay  
Edinburgh EH6 6QQ

Heads of Planning  
Planning Authorities

Telephone: 0131-244 7061  
Fax: 0131-244 7083  
john.o'brien@scotland.gsi.gov.uk  
<http://www.scotland.gov.uk>

Your ref:  
Our ref:

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Dear Sir/Madam

### **EC DIRECTIVE 92/43/EEC ON THE CONSERVATION OF NATURAL HABITATS AND OF WILD FLORA AND FAUNA ("THE HABITATS DIRECTIVE")**

### **THE CONSERVATION (NATURAL HABITATS &c) REGULATIONS 1994 ("THE 1994 REGULATIONS")**

### **EUROPEAN PROTECTED SPECIES, DEVELOPMENT SITES AND THE PLANNING SYSTEM: INTERIM GUIDANCE FOR LOCAL AUTHORITIES ON LICENSING ARRANGEMENTS ("THE GUIDANCE")**

It has come to our attention that some planning authorities are attaching suspensive conditions to planning permissions instead of fully ascertaining, prior to the determination of the planning application, whether a European Protected Species (EPS) is present on a site, or what the effect might be of such a species being present on a site. An example of this is a condition requiring that a development should not commence until a survey has been undertaken to determine whether bats, otters etc are present.

This letter is to remind planning authorities of the terms of the above Guidance; for ease of reference here is a link to the Guidance: <http://www.scotland.gov.uk/library3/environment/epsg-oo.asp>. The main paragraph that I would draw to your attention is paragraph 29. It states "*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.*" Case law has reinforced the general message that the EPS requirements must be met with the European Commission showing itself willing to pursue Member States where the process is not properly followed.

Accordingly, to ensure that all decisions are compliant with the Habitats Directive and the Regulations and the above mentioned Guidance, planning authorities should fully ascertain whether



protected species are on site and what the implications of this might be before considering whether to approve an application or not.

It should be noted that, if any future applications notified to the Scottish Ministers are found to have such conditions attached, they will be returned to the planning authority to (a) arrange for any necessary survey etc action to be carried out, and (b) reconsider the proposal in the light of the results.

SNH have reminded its staff of the requirements of this Guidance.

Yours faithfully

**JOHN O'BRIEN**

