# Compliance Audit Guidance Note for EPS development licences

## 1. Scope and purpose

Licences issued for development under Regulation 55(2) of the Conservation of Habitats and Species Regulations 2017 (as amended) for European Protected Species (EPS) have a standard condition that the works be carried out in accordance with the method statement provided with the licence application. It is an offence to breach a licence condition under Regulation 60(1).

An appraisal undertaken by Waring (2011)[[1]](#footnote-1) for Snowdonia National Park Authority highlighted the significance of problems resulting from non-compliance with method statements for bat mitigation and compensation. It is clear that this is an issue for other EPS and that compliance audit is required that is proportionate to the scheme and to the risk of impacts resulting from the works.

This document describes NRW’s compliance audit process. Related documents include the NRW EPS licence report form, templates for compliance audit reports (bats, great crested newts, otters and dormice) and licence method statement templates. These are available from the permitting section of the NRW website.

## 2. Compliance audit process

The compliance audit process comprises three levels:

1. Licence report submitted to NRW by the developer on expiry of the licence.
2. Internal compliance audit(s) completed on behalf of a developer throughout construction. NRW licence report also submitted.
3. Internal compliance audit(s) completed by the developer and verified by an external auditor throughout phases of a scheme. NRW licence report also submitted.

The appropriate compliance audit level for each licence is determined as part of the licence application assessment process. A risk analysis process is used taking into account:

a) the importance of the site for the species

b) the likelihood of damaging impacts occurring and

c) the size/complexity of the scheme.

**In all cases, the extent of the reporting required will be proportionate to the risk of the scheme to the species at the site.** Example scenarios are given in Table 1.

Where NRW determines that compliance audit is required beyond what has already been proposed by the applicant in their method statement, this will be specified as a condition of the licence.

NRW will also undertake a programme of compliance monitoring checks of licensed works. The programme will range from routine assessment of information supplied in monitoring reports, to unannounced site inspections by NRW staff. Licence applicants will be made aware that compliance monitoring checks may be made of any scheme to encourage compliance across the board as well as identifying any scheme-specific problems that need to be addressed.

### 2.1. Licence report submitted by developer – tier 1

Schemes where the impact and risk to the species is expected to be low will be required to submit a completed NRW licence report form giving details of the works undertaken under licence. The report should provide information on the work completed under the licence as well as supporting ecological information demonstrating the effectiveness of the mitigation (e.g. confirmation that the new access for bats has been constructed as designed).

#### Roles and responsibilities

The licensee is responsible for submitting the information and for its accuracy, but should seek the advice of the scheme ecological consultant, or other relevant specialists on the information to be provided. The information should be supplied by completing all relevant sections of the licence report form.

Routine checks of licence reports submitted by licensees will in the main be considered sufficient for such schemes but a percentage will also be followed up by NRW compliance audit visits.

### 2.2 Internal licence compliance audit report completed by developer – tier 2

In larger development schemes where there is a higher risk or greater complexity, more detailed information is needed to demonstrate compliance with the method statement. The developer will be required to undertake a compliance audit using key performance indicators. The licensee is responsible for submitting the information and for its accuracy. In most cases the scheme ecological consultant will complete the species-specific sections of the report form and sign off that they have been undertaken as specified.

#### Roles and responsibilities

The developer will be responsible for appointing the ecological consultant to undertake the internal audit.

The ecological consultant will be responsible for:

* defining appropriate (key) performance indicators that will inform an inspection, utilising the NRW audit template
* determining the minimum number of assessment visits required to demonstrate compliance
* defining what documentation, including logs, will be required to inform inspections; and
* progressing remedial or contingency actions identified during audit
* reporting back to the developer and NRW

### 2.3. Internal compliance audit completed by the developer and verified by an external auditor – tier 3

In certain circumstances external verification of compliance with the licence and method statement is required. This may particularly apply to very large developments where multiple contractors are working on the scheme, but also to other developments where the complexity of the scheme creates material risk to the EPS. The scheme ecologist will undertake internal compliance audit as described in 2.2, but external verification will also be required. The licensee is also required to submit an NRW licence report form on expiry of the licence.

For some schemes, such as major infrastructure projects, it is usual for an external auditor to audit the scheme (i.e. may be appointed by the commissioning body, but not the contractor). For example, an Ecological Clerk of Works (ECoW) may be employed to assess ecological compliance/act as a verifier. It may be appropriate for the ECoW to undertake the ’verification’ compliance audit, provided the ECoW is not assessing their own work.

If no such arrangements have been proposed by the developer and NRW has identified that the scheme needs to be externally audited, the developer will need to appoint a second ecological contractor specifically for the purposes of undertaking external verification of the compliance audit.

It is expected that a suitable auditor will have working knowledge of (i) the protected species relevant to the scheme; (ii) species protection legislation; and (iii) design and construction of schemes of a similar type and scale and iv) relevant training and experience, e.g. training in audit, a degree (or higher) in nature conservation and a minimum of 5 years’ experience in working with the development sector. External verification auditors should be selected from lists of practitioners from an appropriate professional institute e.g. CIEEM, IEMA. The external audit would comprise an analysis of the information provided by the contractor’s internal auditor plus an examination of on-site works as required.

#### Roles and responsibilities

The roles and responsibilities identified in section 2.2 still apply. In addition the developer will be responsible for:

* funding the external audit
* selection and appointment of the external auditor.
* ensuring the auditor has unrestricted access to all required documentation. Such documentation may include corporate policies, records of decisions and any relevant legal documents relating to mitigation and compensation land, particularly when referenced in method statements.
* ensuring the auditor has access to the site.

The external compliance auditor must:

* complete a report after each inspection. The compliance assessment will be based on evidence collected in the field together with reviews of documentary evidence provided by the developer and project ecologist.
* complete reports within two weeks of an inspection, although major non-compliance issues should be reported immediately following the audit or within 24 hours.
* determine the number of visits based on the scale of a project and risks associated with its implementation.
* undertake some visits unannounced at key or sensitive periods of a project to ensure an accurate record and assessment of circumstances on site.

## 3. Reporting

The licenseemust submit sufficiently detailed information for NRW to assess compliance reports efficiently.

Non-compliance identified by either the internal or external auditor needs to be given full consideration in compliance reports. Where non-compliance is identified, this should be assessed, noted and described in the report. In addition, information should be provided about any decisions regarding non-compliance, as well as any action that may be required.

All licensees are required to submit an NRW licence report form at the end of the project. Projects requiring compliance audit will also need to report against performance indicators. In all cases, additional reports may be submitted as supplementary information.

In general, compliance audit reports should include the following:

* Performance indicators for each species affected and reported condition of each. Compliance audit templates with example key performance indicators are available from NRW for GCN, bats and dormice, in addition to a generic species template.
* An assessment of the level of compliance or non-compliance with the proposed mitigation and / or methods.
* A series of recommendations regarding the findings of the compliance audit.

Audit reports (internal and external) should be sent by the auditor to:

* The client
* Relevant ecological contractors/sub-contractors
* NRW Species Licensing Team and Operational Species staff
* Local Authority ecologist and/or planning officer (where appropriate)

## Table 1: Examples to illustrate the compliance audit required for different development types

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Scale of proposal** | **Scale of risk1** | **Tier 1****Licence report form only** | **Tier 2****Internal audit and licence report form** | **Tier 3****External audit, internal audit and licence report form** | **Examples2** |
| **Small & medium**e.g. single building, powerline maintenance, small housing development  | Low | 🗸 |  |  | Bats:Alterations to, or conversion of a building used as bat roost (non-breeding roost of a more common species – see list3). GCN:House extension where GCN in garden pondSmall scale loss or temporary loss of habitat e.g. site investigation works such as soil tests/geology boreholesTemporary (within one season) removal of a single short section of hedge Dormouse:Small scale loss or temporary loss of habitat e.g. routine maintenance under powerlinesTemporary (within one season) removal of a single short section of hedge (less than 12m)Otter:Loss of resting place i.e. holt (non breeding) |
|  | Moderate |  | 🗸 |  | Bats:Alterations to, or conversion of a building used as bat roost (breeding roost of more common species or non breeding roost of a rarer species – see list3). GCN:Permanent habitat loss, with mitigation or compensation habitat (aquatic and terrestrial) provided on site or works taking place over just one seasonDormouse:e.g. utility replacement where multiple short sections of hedge are affected across the landscapeHousing development with small scale loss of habitat and no significant loss of connectivity |
|  | High |  | 🗸 | (exceptional with justification) | All SAC EPS;Sites supporting species features of nearby SACs where impact is significant or in combination effects are likelyBats:Alterations to, conversion or demolition of a building used as bat roost, (breeding roost of a rarer species – see list3). GCN:Larger areas of habitat loss. Compensation/mitigation is being provided off site and/or over extended period (e.g. more than one field season)Dormouse:Larger scale of habitat loss, translocation of animals, compensatory habitat being provided off site and/or over extended period (e.g. more than one field season)Housing development with larger loss of habitat and/or significant loss of connectivity |
| **Large** e.g. development site of 1ha +large-scale, complex infrastructure developmentOn/off-line road scheme | Low |  | 🗸 |  | Bats:On-line road scheme affecting bat night roost or non-breeding roost of more common species – see list3). GCN:Small scale loss or temporary loss of habitat e.g. site investigation works such as soil tests/geology boreholesTemporary (within one season) removal of a single short section of hedge Dormouse:Small scale loss or temporary loss of habitat as part of a housing developmentTemporary (within one season) removal of a single short section of hedge, (less than 12m)Otter:Loss of resting place i.e holt (non breeding) |
|  | Moderate |  | 🗸 | (exceptional with justification) | Bats:Replacement of bat nursery roost (more common species – see list3).GCN:Permanent habitat loss >2ha, with mitigation or compensation habitat (aquatic and terrestrial) provided on site or over just one seasonDormouse:e.g. utility replacementwhere multiple short sections of hedge across the landscapeHousing development with small scale loss of habitat and no significant loss of connectivity |
|  | High |  | 🗸 | 🗸 | Bats:Alterations to, conversion or demolition of a building used as bat roost, (breeding roost of a rarer species – see list3). Severance of flight routes close to important roost sites; severance of multiple flight routes demonstrated to be used by a number of species; GCN:Development resulting in larger areas of habitat loss. Compensation/mitigation is being provided off site and/or over extended period (e.g. more than one field season)Dormouse:Larger scale of habitat loss, translocation of animals, compensatory habitat being provided off site and/or over extended period (e.g. more than one field season)Housing development with larger loss of habitat and/or significant loss of connectivityAll SAC EPS;Sites supporting species features of nearby SACs where impact is significant or in combination effects are likely |

1 Factors affecting risks: e.g. location near statutory site (especially N2K sites), nature of use by the species, scale of impact, complexity of scheme, novel or unconventional methods, level of confidence in delivery of mitigation or compensation, contentious or high profile nature of case.

2 Note these are only examples and due consideration of impact and risk needs to be made.

3 List of common and rarer bat species

More common bat species: Brandt’s bat, Daubenton’s bat, whiskered bat, Natterer’s bat, noctule, common pipistrelle, soprano pipistrelle, brown long-eared bat

Rarer bat species: greater horseshoe bat, lesser horseshoe bat, barbastelle bat, Bechstein’s bat, grey long-eared bat, Leisler’s bat, serotine bat and Nathusius’ pipistrelle, Alcathoe

1. Waring, P. (2011) Snowdonia Bat Mitigation Pilot Project. Snowdonia National Park Authority. Penrhyndeudraeth [↑](#footnote-ref-1)