

Notice to all developers and developers' consultant ecologists with regard to Nationally Significant Infrastructure Projects (NSIPs) involving European Protected Species (EPS) and applications to the Infrastructure Planning Commission (IPC) for a Development Consent Order (DCO)



This guidance has been prepared to help developers and developers' consultant ecologists understand the process for engaging with Natural England about Nationally Significant Infrastructure Projects (NSIPs) and issues relating to European Protected Species (EPS). Please note that this guidance will be kept under review and may from time to time be amended. We will keep our customers updated on any changes via the EPS Newsletter and our Latest News pages found on [Natural England's Wildlife Management and Licensing web pages](#).

*Whilst this guidance note is primarily aimed at developments where EPS are affected (i.e. those species listed under the Conservation of Habitats and Species Regulations 2010), the procedure as set out below also applies to NSIPs involving protected species **not covered by European legislation** (e.g. Badgers, Water Voles, native White-Clawed Crayfish, Roman Snails etc.).*

Please also note that any reference to the '3 licensing tests' below is not applicable to those species.

References to 'you' below should be taken to refer to 'developer and/or developer's consultant ecologist' as appropriate.

Introduction

For NSIPs which involve EPS, Natural England's Regulation team will provide you with early advice and opinion on your protected species proposals in relation to **all 3 licensing tests without a planning consent needing to be in place**. This is done so that the Infrastructure Planning Commission (IPC) can have confidence that Natural England, as the relevant licensing authority, has considered the issues relating to protected species. In order to do this, Natural England needs to conduct an assessment, based on a **full draft mitigation licence application, in advance of** the formal submission to the IPC. The steps to be followed when submitting the appropriate information, in respect of an NSIP project which has the potential to affect EPS, are set out below and in the Flow Chart on page 6.

Step 1 Is a licence required? Informal engagement with Natural England

You should **consult Natural England's [published guidance for the relevant species](#)** and **decide whether a mitigation licence is required. If you decide that a mitigation licence is required you should start to develop the mitigation scheme** which again should follow Natural England's published guidance for the relevant species. Although optional, to avoid any unforeseen problems arising further along in the process, you are encouraged to engage **as early as possible with** Natural England using the following contacts:

Rob.Cooke@naturalengland.org.uk, 0300 060 0503: Rob Cooke is Natural England's lead for engagement with the IPC and oversees the appointment of a case officer within Natural England's Land Use team for each NSIP that Natural England engages with.

eric.steer@naturalengland.org.uk, 0300 060 0660: Eric Steer, from Natural England's Land Use team, is the Nationally Significant Infrastructure Project coordinator and provides an alternative contact to Rob Cooke.

For EPS licensing issues: Kathryn Murray is the EPS Senior Specialist for licensing (0300 060 1917) and John Gordon is the Lead Adviser for EPS mitigation licensing within Natural England's Regulation team (0300 060 1442). They coordinate, advise and oversee NSIP licensing issues and are the main contacts in 'Licensing' for this area of work. Contact for them should initially be via eps.mitigation@naturalengland.org.uk, marked 'NSIP - FAO Kathryn Murray and John Gordon'.

In terms of informal advice about licensing issues, arrangements will be put in place for a general discussion as soon as possible and advice given regarding what further outline information is needed to facilitate this informal pre-application discussion further. Natural England's Regulation team aims to provide this **general advice** on licensing requirements over the telephone within 5 working days. If, however, the request seeks **detailed advice** on specific questions relating to the protected species, Natural England's Regulation team will require a **written note** from you on the proposed scheme to enable a full consideration of the request. Ideally your request will be in the relevant species Method Statement format. Providing this will help ensure that, when the request is made, it is clear to Natural England staff what the issues are. This will enable us to consider and advise upon it more quickly. Should *written* advice be required, Natural England's Regulation team aims to provide a response within 15 to 20 working days. However, please note that this may not be possible for cases which are particularly complex, when the team is experiencing high workloads or where a site visit is considered necessary in order for advice to be given. In these situations, Natural England's Regulation team will advise you as soon as it is possible for them to form a view on the case.

Please note that, at this stage in the process, **no formal** assessment of the Method Statement will take place. Depending on the level of risk or opportunities presented through the mitigation, a teleconference or face to face meeting may be appropriate to discuss matters in detail.

Step 2 – Draft licence application submitted to Natural England

In order for Natural England to provide a formal opinion on the acceptability of the proposed licence application and mitigation, as soon as you are **confident** that the proposals are **sufficiently advanced** and that the mitigation proposals take account of the **final design** you should:

- prepare a full draft licence application including :
 - an application form,
 - Method Statement and maps together with a proposed timetable (which should be Specific, Measurable, Achievable, Realistic and Time-limited (“SMART”), and
 - Reasoned Statement¹.
- email it to eps.mitigation@naturalengland.org.uk, marked ‘NSIP - FAO Kathryn Murray and John Gordon’.

When preparing the application form documents for submission, the **guidance on naming files and using folder structures** as set out in the ‘Key message’ in section 16 of the ‘How to get a licence’ document should be followed (a link to this document is provided at end of this guidance note).

When submitting draft application documents by paper or electronically, the guidance within the application form and the ‘How to get a licence’ document (section 16) should be followed (e.g. documents over 5MB in size should be submitted to Natural England on CD rather than by email). A link to Natural England’s file **compression guidance** is provided below. Applicants are advised to reduce the size of their application pack when submitting by email as far as possible.

¹ This document is used by our EPS Advisers to assess whether the Purpose and No Satisfactory Alternative tests have been met. It requires you to set out your views and provide evidence to demonstrate that the proposed activity meets one of the prescribed purposes. In addition, evidence is required to demonstrate that there is no satisfactory alternative to undertaking the activity as proposed in the licence application.

Please note that, in terms of the Purpose and No Satisfactory Alternative tests set out under Part 5 of the Conservation of Habitats and Species Regulations 2010 (“Habitats Regulations”), it will not be possible for Natural England to consider that these tests have been **fully** met, in respect of any NSIP, until the IPC has granted the Development Consent Order (DCO). However, a full assessment of your Reasoned Statement and supporting evidence will be undertaken in advance of the DCO being granted, so as to determine whether the appropriate level of detail has otherwise been provided (please see Flow Chart at the end of this document).

Step 3 – Letter of comfort or ‘further information request’ issued from Natural England

Within 30 working days, Natural England will either issue ‘a letter of comfort’ stating that it is satisfied, in so far as it can make a judgement, that the proposals presented comply with the regulations or a letter outlining why we believe the proposals do not meet licensing requirements and what further information is required. If further information is required, this may, on occasion, result in the need for a further re-assessment of the revised draft licence application. It should be noted that time taken by you to provide any amended/enhanced /new information does not count towards the 30 day target.

The ‘**letter of comfort**’ will detail our assessment against the three statutory licensing tests under Part 5 of the Habitats Regulations. You can use this letter to support your application to the IPC. The letter will make clear that, on the basis of the species information and proposals presented, Natural England is satisfied that the licensing tests can be met when a formal application is submitted (on the basis that the information/evidence provided within the application remains the same), subject to the DCO being granted by the IPC. The letter will also draw attention to the fact that ecological conditions on the site may change over time and it is your (the developer’s) responsibility to maintain sufficiently up to date survey information which is then made available to Natural England (along with any resulting amendments to the draft licence application) and the IPC so that there is no delay in issuing the licence once the IPC has granted the DCO.

Step 4 – Submission of the NSIP application to the IPC for a DCO. After you have submitted the DCO application to the IPC, along with the ‘letter of comfort’ and associated mitigation proposals you should keep Natural England’s Regulation team informed of progress to ensure that we remain aware of the likely timeframes so that we know when to expect the official application and can undertake a timely final mitigation licence decision. It is possible that the timetable of activities (which forms a legally enforceable part of the

European Protected Species licence – see regulation 53(8)(c)(ii) of the Habitats Regulations) will require a final update if there has been any slippage in the agreed timings (see Step 5).

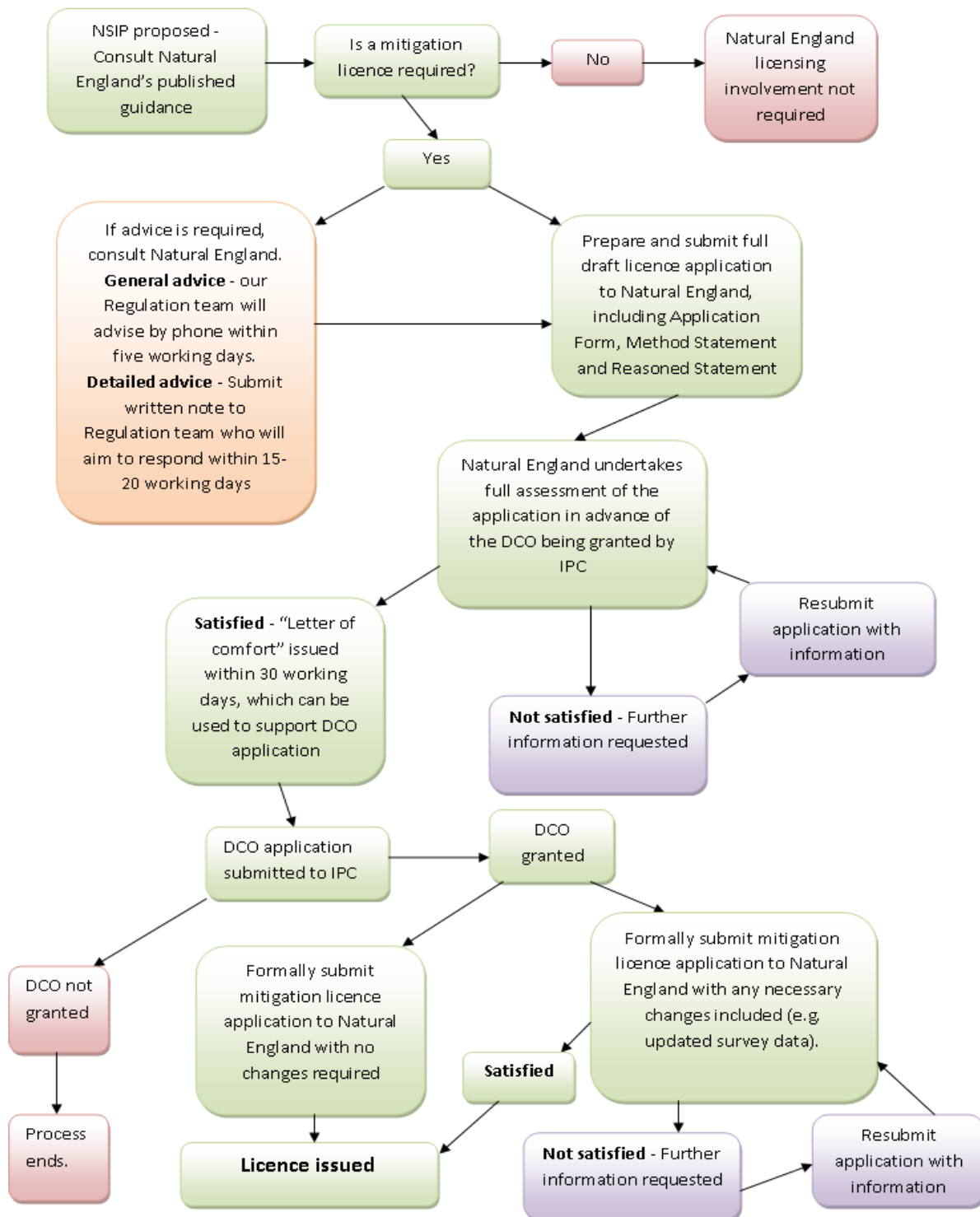
Step 5 - Natural England issuing a mitigation licence following the Development Consent Order being granted

Once the DCO has been granted, you should formally submit the mitigation licence application to Natural England (following the submission process outlined in Step 2 – marking it ‘For the attention of Kathryn Murray and John Gordon’ and including the licensing reference number provided on the letter of comfort). Natural England will issue a licence, provided the proposals and the situation on site either:

- remain the same and the work schedule is still SMART (Specific, Measurable, Achievable, Realistic and Time-limited), or
- have been suitably adjusted to enable Natural England to confirm that the mitigation proposals remain adequate (e.g. timings in the work schedule may change), or
- take account of any further survey requirements resulting from a significant delay between the issue of the ‘letter of comfort’ and the DCO assessment.

Please be aware that if changes are made to proposals or timings which do not enable us to meet the FCS test we will issue a letter outlining why the proposals are not acceptable and what further information is required. These issues would need addressed before a licence can be issued.

Nationally Significant Infrastructure Project (NSIP) Licensing Guidance Process



Summary points:

- You are advised to engage as early as possible with Natural England's Land Use team and subsequently, when necessary, with Natural England's Regulation team.
- When EPS mitigation licences will be required, we strongly encourage you to follow Natural England's published guidance for the relevant species when preparing draft Method Statements and Reasoned Statements either to facilitate early discussions or as part of your draft licence application package.
- If you intend to deviate from Natural England's standard mitigation guidelines, you must fully justify and explain this within the Method Statement itself.
- Please note that Natural England's Regulation team will provide clear advice when consulted and provide a detailed assessment response where it is considered that a draft application does not currently meet our requirements. However, it is your responsibility to design the mitigation proposals based on survey information, impacts and specialist knowledge of the species concerned. It is not Natural England's role to do this.

Useful guidance for preparing a draft application:

Please note that our guidance is regularly updated, leading to small changes in some documents. It is therefore advisable to always work from the latest versions available on Wildlife Management and Licensing Web-pages. The following links will help facilitate this.

- Important reading to understand the licensing process. It also details the submission process as outlined in the above steps: **'How to get a licence'**.
http://www.naturalengland.org.uk/Images/wml-g12_tcm6-4116.pdf
- General Natural England Wildlife Management web-link:
<http://www.naturalengland.org.uk/ourwork/regulation/wildlife/default.aspx>
- Application forms
<http://www.naturalengland.org.uk/ourwork/regulation/wildlife/licences/applicationforms.aspx> (Under each species columns, we provides links to other useful guidance available for putting together an application, including Handy Hints, Experience requirements, the various species mitigation guidelines, putting together a work schedule, guidance on master plan requirements, an example bat method statement, why we advise not to over mitigate, and much more).
- [Compression guidance](#) to help reduce the size of applications.