APPENDIX V

Legislation and Conservation Status of Protected Species

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Introduction

1.1 The text below provides a brief summary of the legislation in relation to the species or species group in England and Wales. The original Acts, Regulations and any amendments should be referred to for the precise wording.

Badgers

1.2 Badgers (*Meles meles*) are not an endangered species but have a long history of persecution and cruelty. As such, badgers and their setts are protected under the Protection of Badgers Act 1992 (as amended), which makes it illegal for any person to kill, injure or take a badger. It is also an offence to destroy, damage or obstruct a badger sett, or to disturb a badger whilst it is within a sett. There are also additional offences relating to possession of, buying and selling a dead badger or anything derived from a badger, and causing a dog to enter a sett.

1.3 The Act defines a sett as 'any structure or place which displays signs of current use by a badger'. Setts are defined by English Nature (1995) as 'usually underground tunnel systems providing shelter for badgers, but may include other structures used by badgers such as hay bales, drainage culverts, or cellars'. 'Current use' is more difficult to define but is usually interpreted by the presence/absence of badger field signs over several observations of the sett (Natural England 2006).

1.4 In Planning Policy Statement 9, the presence of a protected species is a material consideration when a Planning Authority in England is considering a development proposal that, if carried out, would be likely to result in harm to the species or its habitat. Local Authorities in England are required to consider the likelihood of any proposed development adversely affecting badgers' foraging territory, or links between them, or significantly increasing the likelihood of road or rail casualties amongst badger populations. The planning guidance for Wales, Technical Advice Note (Wales) 5, identifies the need to comply with the Protection of Badgers Act 1992.

Bats

1.5 All wild species of bat are protected under the Wildlife and Countryside Act (WCA) 1981, which has also been amended by later legislation, including the Countryside and Rights of Way (CRoW) Act 2000 and the Conservation of Habitats and Species Regulations 2010, and this legislation is applicable to England and Wales. Bats are listed on Schedule 5 of the WCA and are, therefore, subject to some the provisions of Section 9 which, with the amendments, make it an offence to:

- Intentionally or recklessly disturb a bat while it is occupying a structure or place which it uses for shelter or protection (S9:4b).
- Intentionally or recklessly obstruct access to any structure or place used for shelter or protection by a bat (S9:4c).

1.6 There are additional offences in relation to buying and selling (S9:5) any live or dead animal of this species or anything derived from them.

1.7 Bat species are also listed under Annexes IIa and IVa of the EC Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora, also known as the 'Habitats Directive'. Inclusion on Annex IVa means they are consequently identified as European Protected Species (EPS) and protected under the Conservation of Habitats and Species Regulations 2010.

1.8 The Conservation of Habitats and Species Regulations 2010 state that a person commits an offence if they:

(a) deliberately capture, injure or kill any wild animal of a EPS,

(b) deliberately disturb wild animals of any such species, in such a way as –

(i) to impair their ability to survive, to breed or reproduce, or to rear their young, or

(ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate, or

(iii) to affect significantly the local distribution or abundance of the species to which they belong;

(c) deliberately take or destroy the eggs of such an animal, or

(d) damage or destroy a breeding site or resting place of such an animal.

1.9 Under these Regulations it is an offence to damage or destroy a breeding site or resting place whether the animal is in occupation or not, and protection extends to all life stages of the animal in question. There are additional offences relating to possession, control and sale of a live or dead bat or part of such an animal.

1.10 In addition, under the UK Biodiversity Action Plan (BAP), seven native British bat species, including the soprano pipistrelle (*Pipistrellus pygmaeus*) and the brown long-eared bat (*Plecotus auritus*), that are frequently found in buildings, are listed as a 'Priority Species'. UK BAP Priority Species are also referred to as 'species of principal importance' for the conservation of biodiversity in England and Wales within Section 74 of the CRoW Act 2000, and Sections 41 (England) and 42 (Wales) of the Natural Environment and Rural Communities (NERC) Act 2006. In Planning Policy Statement 9, Local Authorities in England are required to take measures to protect the habitats of these species from further decline, protect the species from the adverse effect of development and refuse planning permission for development that harms these species unless the need for, or benefit of, the development clearly outweighs that harm. The commitment to preserving, restoring or enhancing biodiversity is further emphasised for England and Wales in Section 40 of the NERC Act 2006.

Birds

1.11 All wild species of breeding birds and their nests are protected under Part 1 of the WCA 1981, as amended by later legislation including the CRoW Act 2000. This legislation applies in England and Wales.

1.12 Part 1 (Section 1:1) of the WCA states that:

'If any person intentionally,

(a) kills, injures or takes any wild bird;

(b) takes, damages or destroys the nest of any wild bird while that nest is in use or being built; or

(c) takes or destroys an egg of any wild bird,

he shall be guilty of an offence.'

1.13 Part 1 (Section 1:5) of the WCA (amended by the CRoW Act 2000) refers to specific birds listed on Schedule 1 of the WCA, and states that:

'If any person intentionally or recklessly,

(a) disturbs and wild bird included in Schedule 1 while it is building a nest or is in, on or near a nest containing eggs or young; or

(b) disturbs dependent young of such a bird,

he shall be guilty of an offence and liable to a special penalty

1.14 Schedule 1 includes birds such as barn owl (*Tyto alba*), black redstart (*Phoenicurus ochruros*), woodlark (*Lullula arborea*) and Cetti's warbler (*Cettia cetti*). Please refer to the WCA for a complete list of Schedule 1 species.

Great Crested Newts

1.15 Great crested (or warty) newts (*Triturus cristatus*) (GCN) are protected under the WCA 1981, which has also been amended by various legislation including the CRoW Act 2000 and the Conservation of Habitats and Species Regulations 2010, and this legislation is applicable to England and Wales. Great crested newts are listed on Schedule 5 of the WCA and are, therefore, subject to some the provisions of Section 9 which, with the amendments, make it an offence to:

- Intentionally or recklessly disturb a GCN while it is occupying a structure or place which it uses for shelter or protection (S9:4b).
- Intentionally or recklessly obstruct access to any structure or place used for shelter or protection by a GCN (S9:4c).

1.16 There are additional offences in relation to buying and selling (S9:5) any live or dead animal of this species or anything derived from them.

1.17 Great crested newts are also listed under Annexes IIa and IVa of EC Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora, also known as the 'Habitats Directive'. Inclusion on Annex IVa means they are consequently identified as EPS and protected under the Conservation of Habitats and Species Regulations 2010. The Conservation of Habitats and Species Regulations 2010 state that a person commits an offence if they:

(a) deliberately capture, injure or kill any wild animal of a EPS,

(b) deliberately disturb wild animals of any such species, in such a way as –

(i) to impair their ability to survive, to breed or reproduce, or to rear their young, or

(ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate, or

(iii) to affect significantly the local distribution or abundance of the species to which they belong;

(c) deliberately take or destroy the eggs of such an animal, or

(d) damage or destroy a breeding site or resting place of such an animal.

1.18 Under these Regulations it is an offence to damage or destroy a breeding site or resting place, whether the animal is in occupation or not, and protection extends to all life stages of the animal in question. There are additional offences relating to possession, control and sale of a live or dead GCN or part of such an animal.

1.19 In addition, GCN are listed as a 'Priority Species' on the UK BAP. UK BAP Priority Species are also referred to as 'species of principal importance' for the conservation of biodiversity in England and Wales within Section 74 of the CRoW Act 2000, and Sections 41 (England) and 42 (Wales) of the NERC Act 2006. In Planning Policy Statement 9, Local Authorities in England are required to take measures to protect the habitats of these species from further decline, protect the species from the adverse effect of development and refuse planning permission for development that harms these species unless the need for, or benefit of, the development clearly outweighs that harm. The commitment to preserving, restoring or enhancing biodiversity is further emphasised for England and Wales in Section 40 of the NERC Act 2006.

Otters

1.20 Otters (*Lutra lutra*), also known as European otters, are protected under the WCA 1981, which has also been amended by various later legislation including the CRoW Act 2000 and the Conservation of Habitats and Species Regulations 2010, and this legislation is applicable to England and Wales. Otters are listed on Schedule 5 of the WCA and are, therefore, subject to some the provisions of Section 9 which, with the amendments, make it an offence to:

- Intentionally or recklessly disturb an otter while it is occupying a structure or place which it uses for shelter or protection (S9:4b).
- Intentionally or recklessly obstruct access to any structure or place used for shelter or protection by an otter (S9:4c).

1.21 There are additional offences in relation to buying and selling (S9:5) any live or dead animal of this species or anything derived from them.

1.22 Otters are also listed under Annexes IIa and IVa of EC Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora, also known as the 'Habitats Directive'. Inclusion on Annex IVa means they are consequently identified as EPS and protected under the Conservation of Habitats and Species Regulations 2010.

1.23 The Conservation of Habitats and Species Regulations 2010 state that a person commits an offence if they:

(a) deliberately capture, injure or kill any wild animal of a EPS,

(b) deliberately disturb wild animals of any such species, in such a way as –

(i) to impair their ability to survive, to breed or reproduce, or to rear their young, or

(ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate, or

(iii) to affect significantly the local distribution or abundance of the species to which they belong;

(c) deliberately take or destroy the eggs of such an animal, or

(d) damage or destroy a breeding site or resting place of such an animal.

1.24 Under these Regulations it is an offence to damage or destroy a breeding site or resting place, whether the animal is in occupation or not, and protection extends to all life stages of the animal in question. There are additional offences relating to possession, control and sale of a live or dead otter or part of such an animal.

1.25 In addition, otters are listed as a 'Priority Species' on the UK BAP. UK BAP Priority Species are also referred to as 'species of principal importance' for the conservation of biodiversity in England and Wales within Section 74 of the CRoW Act 2000, and Sections 41 (England) and 42 (Wales) of the NERC Act 2006. In Planning Policy Statement 9, Local Authorities in England are required to take measures to protect the habitats of these species from further decline, protect the species from the adverse effect of development and refuse planning permission for development that harms these species unless the need for, or benefit of, the development clearly outweighs that harm. The commitment to preserving, restoring or enhancing biodiversity is further emphasised for England and Wales in Section 40 of the NERC Act 2006.

Water Voles

1.26 Water voles (*Arvicola amphibius*) are protected under the WCA 1981, as amended, and this legislation is applicable to England and Wales. Water voles are listed on Schedule 5 of the Act and are, therefore, subject to some the provisions of Section 9 which, with the amendments, make it (in brief) an offence to:

- Intentionally kill, injure or take a water vole (S9:1);
- Intentionally or recklessly damage or destroy or a structure or place used for shelter or protection by a water vole (S9:4a);
- Intentionally or recklessly disturb a water vole while it is occupying such a place (S9:4b); or
- Intentionally or recklessly obstruct access to any structure or place a water vole uses for shelter or protection (S9:4c).

1.27 There are additional offences in relation to possessing, controlling (S9:2), and buying and selling (S9:5) any live or dead animal of this species or anything derived from them.

1.28 Water voles are also listed as a 'Priority Species' on the UK BAP. UK BAP Priority Species are also referred to as 'species of principal importance' for the conservation of biodiversity in England and Wales within Section 74 of the CRoW Act 2000, and Sections 41 (England) and 42 (Wales) of the NERC Act 2006. In Planning Policy Statement 9, Local Authorities in England are required to take measures to protect the habitats of these species from further decline, protect

the species from the adverse effect of development and refuse planning permission for development that harms these species unless the need for, or benefit of, the development clearly outweighs that harm. The commitment to preserving, restoring or enhancing biodiversity is further emphasised for both England and Wales in Section 40 of the NERC Act 2006.

White-Clawed Crayfish

The white-clawed, or Atlantic stream, crayfish (*Austropotamobius pallipes*) is afforded protection under the Wildlife and Countryside Act (WCA) 1981. This species is listed on Schedule 5 of the Act and is afforded part protection under Section 9(1) making it an offence to intentionally kill, injure or take any of these species. There are additional offences in relation to buying, selling or exchanging any live or dead animal of this species or anything derived from a white-clawed crayfish, under Section 9(5).

White-clawed crayfish are listed on Annex II(a) of the EC Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora, also known as the 'Habitats Directive'. This means that the UK is required to establish Special Areas of Conservation (SACs) to protect the habitat of this species. These sites form part of the Natura 2000 network across Europe. In addition, its inclusion on Annex V of this Directive also restricts the taking, capture or killing of this species in the wild.

White-clawed crayfish are listed as 'Priority Species' under UK's Biodiversity Action Plan (BAP). UK BAP Priority Species are also referred to as 'species of principal importance' for the conservation of biodiversity in England and Wales within Section 74 of the CRoW Act 2000, and Sections 41 (England) and 42 (Wales) of the Natural Environment and Rural Communities (NERC) Act 2006. In Planning Policy Statement 9, local authorities in England are required to take measures to protect the habitats of these species from further decline, protect the species from the adverse effect of development and refuse planning permission for development that harms these species unless the need for, or benefit of, the development clearly outweighs that harm. The commitment to preserving, restoring or enhancing biodiversity is further emphasized for England and Wales in Section 40 of the NERC Act 2006.

Reptiles

1.29 All six of the native British reptile species are afforded varying degrees of protection under the WCA 1981, as amended by various later legislation, and this legislation is applicable to England and Wales. All six species are listed on Schedule 5 of the WCA.

1.30 The four widespread species, common lizard (*Zootoca vivipara*), slow-worm (*Anguis fragilis*), grass snake (*Natrix natrix*) and adder (*Vipera berus*), are afforded part protection under Section 9(1), making it an offence to intentionally kill, injure or take any of these species of reptile. The two rarer species, sand lizard (*Lacerta agilis*) and smooth snake (*Coronella austriaca*), are subject to a greater degree of protection under Section 9(4) which, with the amendments, make it (in brief) an offence to:

- Intentionally or recklessly disturb a sand lizard or smooth snake while it is occupying a structure or place used for shelter or protection (S9:4b); or
- Intentionally or recklessly obstruct access to any structure or place a sand lizard or smooth snake uses for shelter or protection (S9:4c).

1.31 All six species are afforded protection from buying, selling or exchange under Section 9(5) of the WCA.

1.32 Sand lizard and smooth snake are also listed under Annexes IIa and IVa of EC Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora, also known as the 'Habitats Directive'. Inclusion on Annex IVa means they are consequently identified as EPS and protected under the Conservation of Habitats and Species Regulations 2010.

1.33 The Conservation of Habitats and Species Regulations 2010 state that a person commits an offence if they:

(a) deliberately capture, injure or kill any wild animal of a EPS,

(b) deliberately disturb wild animals of any such species, in such a way as –

(i) to impair their ability to survive, to breed or reproduce, or to rear their young, or

(ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate, or

(iii) to affect significantly the local distribution or abundance of the species to which they belong;

(c) deliberately take or destroy the eggs of such an animal, or

(d) damage or destroy a breeding site or resting place of such an animal.

1.34 Under these Regulations it is an offence to damage or destroy a breeding site or resting place whether the animal is in occupation or not, and protection extends to all life stages of the animal in question. There are additional offences relating to possession, control and sale of a live or dead sand lizard or smooth snake or part of such an animal.

1.35 In addition, all six reptile species are listed as 'Priority Species' on the UK BAP. UK BAP Priority Species are also referred to as 'species of principal importance' for the conservation of biodiversity in England and Wales within Section 74 of the CRoW Act 2000, and Sections 41 (England) and 42 (Wales) of the NERC Act 2006. In Planning Policy Statement 9, Local Authorities in England are required to take measures to protect the habitats of these species from further decline, protect the species from the adverse effect of development and refuse planning permission for development that harms these species unless the need for, or benefit of, the development clearly outweighs that harm. The commitment to preserving, restoring or enhancing biodiversity is further emphasised for England and Wales in Section 40 of the NERC Act 2006.

Invasive Plant Species

1.36 Under Section 14 of the WCA 1981 (as amended), it is an offence to '*plant or otherwise cause to grow in the* wild' certain invasive and injurious weeds. These plant species, including Japanese knotweed (*Fallopia japonica*) and Himalayan balsam (*Impatiens glandulifera*) are listed on Schedule 9 to The Act. It should also be noted that inappropriate disposal of Japanese knotweed can also result in prosecutions from the Environment Agency under Schedule 33 and 34 of the Environment Protection Act, 1990.

1.37 Any Japanese knotweed plant material or soils contaminated with fragments of plant material are considered "controlled waste" and must normally be disposed of under a licence obtainable

through the Environment Agency. Consideration must also be given to the Hazardous Waste Regulations 2005. Although untreated Japanese knotweed is not classed as hazardous waste, plant material and soils treated with certain herbicides may be classified as hazardous waste.

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