

# A Framework For District Licensing Of Development Affecting Great Crested Newts

## Introduction

District licensing of development affecting great crested newts (GCN) involves consideration of the conservation of this species at a geographical scale broader than the development site in question. It can allow harm to individual GCN and their habitat caused by a development to be compensated for by the creation and/or restoration of suitable amounts of new habitat elsewhere. District licensing can be operated by local planning authorities (LPAs) within their areas, or by groups of LPAs, or other bodies on their behalf, or by Natural England. At the heart of district licensing is the grant, by Natural England, of an **organisational licence** permitting the holder to authorise developments affecting GCN in cases where planning permission is granted.

In appropriate cases, instead of requiring harm to GCN to be avoided or mitigated at a development site, GCN are benefited elsewhere in the area at the developer's expense. This safeguards the conservation status of GCN in the area concerned and also represents a significant streamlining of the GCN licensing element of the development consent process.

These overarching principles set out Natural England's expectations for applications for organisational licences and will also apply to Natural England in the administration of its own district licensing schemes. This document is aimed at helping scheme designers (e.g. LPAs, groups of LPAs, or other public bodies, commercial bodies or non-governmental organisations) who are interested in opportunities to participate in district licensing. This document explains how Natural England will approach the assessment of such a scheme under the legal licensing tests and relevant policy, and the documents and mechanisms that are likely to be needed to enable an organisational licence to be granted. Where it is indicated that Natural England expects or invites an applicant for an organisational licence to address a certain issue it follows that if the applicant does not do this to Natural England's full satisfaction its application will be unsuccessful.

There is no single best way to safeguard and improve the conservation status of GCN by compensating for losses caused by individual developments: within a given area it will be possible to devise differing conservation strategies of comparable effectiveness. The overarching principles set out in this document indicate the boundaries within which Natural England believes that schemes for this purpose should lie. It is not intended to take a prescriptive approach and Natural England will welcome locally tailored proposals that suit the areas and organisations involved, provided that they are not inconsistent with these overarching principles. All applications will be considered on their own merits, and Natural England is happy to work with applicants to develop local solutions under the terms of its Discretionary Advice Service.

When considering an application for an organisational licence Natural England's approach will treat the overriding goal as being the improvement of the conservation status of GCN and its decision-making will always be guided by this principle and by the precautionary principle.

The principles and approaches set out in this document apply only to the licensing of works affecting GCN and should not be taken as having broader relevance.

## A Framework For District Licensing Of Development Affecting Great Crested Newts

These principles and approaches will be subject to internal review over time and in response to evidence generated as district licensing for GCN progresses.

At **Annex 1** is a list of fundamental legal and policy issues affecting organisational licences. Natural England believes that the three statutory licensing tests: “favourable conservation status” (**FCS**), “imperative reasons of overriding public interest” (**IROPI**) and “no suitable alternative” (**NSA**), require it to be fully assured that the matters set out under sub-headings below are accepted by an applicant for an organisational licence and/or satisfactorily addressed by or on behalf of the applicant.

### The Favourable Conservation Status (FCS) Test & The Need For An Area Strategy

1. Before Natural England can grant an organisational licence it **must** be satisfied that the applicant for such a licence can demonstrate that a district licensing scheme for GCN will avoid detriment to population(s) of GCN and seek to improve the conservation status of the species within the scheme area.
2. An applicant must therefore produce a **Strategy** for the conservation of GCN in the area concerned and show that effective mechanisms will be used to ensure that this Strategy will be implemented, so as to fully compensate for any harm to GCN caused by developments authorised under the organisational licence. Natural England anticipates that such a Strategy, subject to review as monitoring evidence is fed back into it, will form the principal basis for its assessment of the FCS test and, whilst accepting that within a given area it will be possible to devise differing conservation strategies of comparable effectiveness, it is suggested that an adequate Strategy, which must take a precautionary approach to the conservation of GCN, should deal in full with the following matters:

#### **The presence and conservation status of GCN in the area**

3. Robust survey and monitoring methodology and results, combined with scientific peer-reviewed species distribution modelling techniques will be needed in order to understand the distribution of GCN in the area and to understand the extent of suitable habitat. Data used for determining species distribution may include bespoke survey work or existing biological records data generated through traditional survey or eDNA methods. Natural England may be able to provide survey information and species data. Where the rights of third parties permit, data and modelling results may be made publically available.
4. Conservation status in the area should be assessed by reference to the criteria of range & distribution, population, habitat and future prospects and having regard to both historic and current positions. Applicants may describe what would amount to favourable conservation status in the area in question.

#### **Risk zones**

5. Natural England expects to see mapping of risk zones based on the presence or predicted presence of GCN. Whilst accepting that different areas may require different solutions, Natural England anticipates the need to map an area into the following general types of zone:
  - High risk. Areas of exceptional importance for GCN, including but not necessarily limited to areas supporting GCN populations that are of importance at regional, national or international scales and SSSIs and SACs for which GCN are a notified feature. These are areas where Natural England will be minded to advise LPAs that there should be a strong presumption

## A Framework For District Licensing Of Development Affecting Great Crested Newts

against any development which would be expected to reduce or damage GCN habitat. It is likely that proposed development in these areas will not be considered eligible to enter a district licensing scheme. Applicants for an organisational licence for an area containing sites of this nature are invited to identify them and scope them out of the scheme. If it is proposed to retain such areas within a scheme the applicant will need to explain the special mechanisms it proposes for ensuring that the three licensing tests can be met.

- Medium risk. Areas where GCN are or are likely to be present.
  - Low risk. Areas where GCN are not present or not likely to be present.
6. Because of the variability of the status of GCN across their range in England the criteria for defining high, medium and low risk zones must be tailored to suit the area in question.
  7. The risk zone maps, and the criteria behind them, must be made available to the LPA and the public at appropriate resolution, in order that they may be taken into account in planning matters and to inform plan-making.

### **Assessment of the impacts of proposed development**

8. Applicants for an organisational licence will need to demonstrate a methodology for assessment of development impacts which estimates impact in terms of the conservation status parameters: range & distribution, population, habitat and future prospects. The methodology **must** be used to estimate the cumulative impact of all the development which may go through the licence in the first two years of scheme implementation and every effort should be made to assess cumulative impacts for the full period of the current development plan (or plans) in the licence area. Where detailed information about long term impacts is not available assessment should be based on precautionary estimates.
9. Any assessment of development impact must of necessity deal with pond loss, associated loss of habitat and impact on connectivity. Applicants are expected to provide a definition of “pond” that is appropriate to the area in question.

### **Scale of assessment**

10. Applicants ought to explain their views about the appropriate scale at which impacts on local conservation status should be assessed. This is the scale at which harm will be compensated for so that it can be ensured that there is no detriment to local conservation status. Relevant to this are maximum allowable distances between impacts and compensation. Local factors, including the geography of the scheme area in question or the distribution of GCN and their habitat in the area, may inform the scale of assessment. In any event, applicants will need to demonstrate that their proposed scale(s) of assessment ensure that there will be no detriment to any of the FCS parameters.
11. Applicants should explain either: the confidence with which they will be able to ensure that GCN will not be lost from any currently occupied 10km square and that there will be no reduction in the number of occupied 1km squares within the area of the Strategy; or any locally appropriate alternative approach to the question of scale of assessment.
12. Licence applications must show how the impact assessment methodology will be applied to development sites during implementation of the licence.

## A Framework For District Licensing Of Development Affecting Great Crested Newts

### Use of survey data

13. Applicants are invited to outline the circumstances in which it is appropriate to issue development authorisations without the developer having submitted detailed site survey data. Similarly, applicants should address the appropriate criteria for accepting site survey data that has not been collected recently.

### Where to deliver compensation

14. Natural England expects to see **strategic opportunity areas**, where the creation or restoration of compensatory habitat will be of most benefit to the conservation of GCN, defined and mapped, with evidence and methodologies explained. The aim should be to improve the distribution of the species by increasing connectivity between and within meta-populations and/or occupied ponds. Compensatory habitat should typically be placed where it is expected to be colonised by natural dispersal, where suitable terrestrial habitat already exists or will be created and where water quality issues are not anticipated. The specific criteria by which these matters will be judged during implementation will need to be set out by an applicant for an organisational licence.
15. Classified and proposed Natura 2000 sites, plus a suitable buffer zone around them, must be mapped-out of strategic opportunity areas, in order to prevent any likelihood of habitat compensation having a significant effect on any of these sites. If an exception to this rule is put forward, it must be subject to prior Habitat Regulations Assessment<sup>1</sup> and the relevant information should be submitted to Natural England to allow this assessment to be carried out. Similarly, habitat compensation works must not have negative impact on SSSIs and, overall, it must be clear that any harm arising from the creation of compensatory habitat is outweighed by benefits.

### Licence for habitat creation works

16. Since it is expected that compensatory ponds will be located so as to enable GCN to colonise by natural dispersal there is a risk that GCN or their habitat will be harmed during the creation of compensatory habitat. Holders of organisational licences may therefore need to be licenced for pond creation or restoration works, with conditions relating to the avoidance and mitigation of harm. In order to streamline these considerations applicants for organisational licences are invited to propose mechanisms to prevent habitat compensation works from harming GCN or their habitat. Where Natural England is satisfied that GCN and their habitat will be protected by the adoption of these mechanisms they may be embodied within the overall scheme of an organisational licence.

### Compensation ratios

17. Natural England expects compensatory measures to increase availability of suitable habitat for GCN. For every pond known to be occupied by GCN, which is lost to development, Natural England will require the delivery of at least four new compensatory ponds (4:1 compensation ratio). Where there is no survey data on particular pond(s) to be lost, Natural England will accept an estimate of the proportion of them that are occupied, provided that it is in line with the occupancy level indicated by satisfactory recent surveys and data in the area covered by the licence. Thus, if there is known to be an average GCN pond occupancy of 33% in the area in

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<sup>1</sup> Regulation 63 of the Conservation of Habitats and Species Regulations 2017.

## A Framework For District Licensing Of Development Affecting Great Crested Newts

question, 1 pond in 3 may be assumed to be occupied, and the compensation ratio calculated accordingly.

18. Natural England will wish to see a precautionary approach taken to the calculation of compensation ratios and will monitor, in particular, situations in which compensation ratios are applied in the absence of site survey data.

19. Please also see “Contingency Provisions”, below.

### **Interrelationship between compensation and any proposals for site-based avoidance or mitigation**

20. Natural England will consider strategies that balance on-site avoidance and/or mitigation measures with the creation of new compensatory habitat for GCN elsewhere. In these strategies, ponds lost to development must still be compensated for as required by para. 17 but on-site avoidance and/or mitigation measures may be taken in to account when determining the number of ponds lost to development. In any event, there must be a net gain in habitat provision.

21. Natural England does not require the translocation of GCN, but if an applicant proposes to incorporate translocation within its proposed Strategy this should be fully explained and, unless there has been sufficient disease screening, movements should not exceed 2km or cross a significant dispersal barrier.

### **Timing – relationship between the timing of impacts and the delivery of compensation**

22. As a general proposition, Natural England expects to see compensatory habitat being capable of use by GCN for breeding in advance of impacts occurring. However, where this is not likely to be practicable applicants for an organisational licence will be expected to put forward increased compensation ratios in order to compensate for time lag risks.

23. In any event, provision of compensatory habitat must be undertaken at the earliest opportunity and applicants must explain the efforts they will make to ensure there is a supply of ready habitat compensation sufficient for development impacts when they are authorised under an organisational licence.

### **Timing – duration of compensation**

24. Natural England requires the scale and quality of habitat compensation to be maintained for at least 25 years from the point of impact.

25. Please also see “Contingency Provisions”, below.

### **Means of identifying suitable sites within strategic opportunity areas**

26. Natural England expects an applicant for an organisational licence to have a plan for identifying suitable places for the construction of new habitat or restoring existing habitat and for interacting with the owners of such land, and to be able to demonstrate that it will be able to commence work on habitat delivery upon the grant of an organisational licence.

## A Framework For District Licensing Of Development Affecting Great Crested Newts

### **Ownership of the land on which compensatory habitat is delivered and means of dealing with changes of ownership, attitude or land use**

27. Whilst Natural England wishes to ensure the long-term provision of compensatory habitat, it does not require the holder of an organisational licence to own or have a lease or licence over land on which new ponds are dug, though these are options. In the absence of formal terms Natural England requires a non-binding indication of commitment to be given by a landowner. The strength of the landowner's commitment will affect the requirement for contingency provisions against the loss or failure of new habitat.
28. Please also see "Contingency Provisions", below.

### **Specifications for compensatory habitat**

29. Natural England expects compensatory habitat design and creation (including pond size, profile and construction methods) to be based on published best practice and set out in detail. Natural England will review and update its guidance and specifications over time and in response to evidence and feedback.

### **Monitoring and management of compensatory habitat**

30. Natural England expects that an applicant's Strategy will contain an achievable monitoring and management plan that will last for as long as the compensation itself. The monitoring and management plan should report and quantify the scale of effects of district licensing on GCN to allow a full understanding of whether an organisational licence has resulted in neutral, negative or positive effects on GCN by:
- Providing a reasonable on-going assessment of GCN occupancy and population trends, as well as the suitability of compensation ponds for GCN;
  - Demonstrating connectivity between compensatory ponds and existing GCN populations;
  - Adopting standardised sampling frameworks, common standards and analytical tools;
  - Providing an objective measure of GCN background trends via additional survey effort or contributing to the sustainable operation of the national surveillance programme for GCN;
  - Measuring compliance and the extent to which agreed measures are implemented;
  - Evaluating the accuracy of initial impact assessments on ponds in and within 250m of development sites authorised under the licence;
  - Evaluating wider benefits on other species;
  - Making data available to the public.

### **Criteria for success and triggers for intervention**

31. Natural England will consider a compensatory pond successful if, having regard to the age of the pond in question, monitoring shows it to be occupied by GCN, has a Habitat Suitability Index score  $\geq 0.7$  and is not in evident decline.
32. Applicants will be required to set out how they will assess whether ponds are fulfilling their compensatory function and how they will decide on the implementation of contingency provisions
33. Natural England will consider that a district licensing scheme is performing well if its use can be seen to deliver a net benefit to the conservation status of GCN in the area in question.



## A Framework For District Licensing Of Development Affecting Great Crested Newts

### **Contingency provisions**

34. Natural England considers that all compensatory ponds carry a risk of failure and that a precautionary approach must be taken to meeting this risk. Accordingly, applicants for an organisational licence must set out their proposals for identification of lost or failing ponds, and their replacement, inspection and maintenance, including provisions for funding those proposals. If landowners are not to be legally obliged to maintain a newly created pond for 25 years contingency provisions should allow for the replacement of each new pond that is created. Natural England encourages the creation of such “shadow” ponds before the point of need.

### **The “Conservation Payment”**

35. Natural England must be confident that an applicant for an organisational licence will secure sufficient funding to deliver the required compensation, and its inspection and maintenance (with contingency provisions), for the necessary duration. Whilst holders of organisational licences will be at liberty to devise their own charging schemes Natural England will wish to see indicative costings per new pond, broken down as to nature and anticipated date of expenditure. Such costings should be realistic, with uncertainties approached in a precautionary way. In the event of multiple applicants for a district licence in any given area Natural England will prioritise the quality of an applicant’s Strategy above any savings that an applicant may offer in the calculation of the Conservation Payment.

### **Means of delivery and the use of sub-contractors**

36. Natural England must be confident that an applicant for an organisational licence will be able to deliver the required compensation. Where elements of delivery are to be sub-contracted, Natural England will need to be satisfied that responsibility for delivery remains with the holder of the organisational licence. Where all aspects of habitat delivery are to be subcontracted Natural England will require assurance that delivery bodies have appropriate ecological expertise available to them.
37. Natural England will consider requesting legal mechanisms to enforce contracts against sub-contractors directly, but will not be obliged to take up such rights.

### **Means of holding and safeguarding unspent monies**

38. Natural England must be confident that an applicant for an organisational licence is empowered to collect and hold the monies required for full implementation of the scheme, that such monies are effectively ring-fenced and that they are held in a way that is secure against commercial vicissitudes. Applicants are invited to set out their proposals for meeting these criteria.

### **Securing scheme requirements, scheme capping, further assurance and exit strategy**

39. During the operation of an organisational licence and throughout the term of the accompanying agreement between the licence holder and Natural England (see para. 47) the licence holder will be responsible for the delivery of compensatory habitat. However, Natural England will wish to retain an interest in the effectiveness of delivery and licence conditions/contract terms will give Natural England the ability to secure matters such as: the location (at strategic level) of compensatory habitat; the total number of ponds to be lost/gained within a strategy area, and the status of land where habitat is to be created. It is envisaged that such powers of direction will be

## A Framework For District Licensing Of Development Affecting Great Crested Newts

exercised in the course of periodic reviews of scheme progress and during the process of periodic licence renewal.

40. Natural England must be confident that the holder of an organisational licence has the necessary stability, financial security, governance mechanisms, skills and resources to operate the licence over a period of at least 25 years and may require additional controls or assurances in specific cases.
41. Applicants for organisational licences are invited to outline a proposed exit strategy that would ensure the continuing inspection and maintenance of compensatory habitat post-exit and the accounting for and transfer of monies collected for those purposes.

### **Provisions for review and improvement**

42. To ensure continuous evidence-based improvement of the Strategy, applicants must expect periodic reviews of all aspects of the management of an organisational licence and the terms of its underlying Strategy and must cooperate with this in full and supply all information required. Natural England will grant its consent to proposals for the updating of a Strategy where this is supported by evidence and may require the amendment of a Strategy, again where this is supported by evidence.

### **Renewal of licences**

43. An organisational licence that permits the destruction of GCN may only last for two years. The holder of an organisational licence must ensure that authorisations granted to developers under the licence are expressed to be similarly time-limited, unless permitted to continue under successor licences. Where complete information is provided to Natural England within a specified timeframe it will use reasonable endeavours to assist with a seamless transition between successive licences. Importantly, however, holders of organisational licences must be aware that the grant of any successor licence represents a new and discrete licensing decision on Natural England's part, the outcome of which cannot be pre-judged.

### **Reporting to Natural England**

44. Holders of an organisational licence will be required to make full reports to Natural England, including information collected from and concerning the activities of those authorised to carry out works under the organisational licence.
45. Holders of organisational licences must be able to demonstrate mechanisms to allow a full and on-going understanding of which development authorisation issued under an organisational licence has led to the creation of which new compensatory habitat.
46. Information relating to all compensatory ponds must be securely retained and made available to Natural England to the extent requested to inform licence reviews and applications for renewal.

### **Potential Mechanisms**

47. Natural England does not wish to be overly prescriptive, and recognises that differences between areas and the preferences of organisations can be respected. However, it is suggested that the following legal instruments are likely to be necessary to the grant and operation of an organisational licence:



## A Framework For District Licensing Of Development Affecting Great Crested Newts

- An agreement between the licence-holder, any agent(s) it may engage in connection with the operation of a district licence, and Natural England concerning the delivery and maintenance of compensatory habitat. Natural England will enter into such an agreement under powers given by the Natural Environment and Rural Communities Act 2006. The Strategy will form an annex to such an agreement;
- The organisational licence itself, granting permission to harm GCN and their habitat within the area covered by the Strategy and permitting the holder to authorise developers to act under the licence; subject to conditions inter alia relating to habitat creation and the terms on which developers are authorised;
- A licence to disturb, capture and transport GCN and to cause short-term harm to their habitat in the course of creating new habitat, potentially to be contained within an overall organisational licence;
- Arrangements between the holder of an organisational licence and the owners of land on which habitat is created;
- Arrangements between the holder of an organisational licence and developers who are to be authorised to act under the authority of the licence. Such arrangements must embody a mechanism that allows the impact of proposed development to be assessed, the costs of compensating for that impact calculated, those monies to be paid and the developer to be relieved of the responsibility of obtaining a licence direct from Natural England;
- Sub-contracts for the delivery of compensatory habitat, if this is not to be undertaken by the holder of the organisational licence.

48. In situations where an LPA holds an organisational licence but engages an external provider to manage the operation of the licence the above list will need to be modified accordingly.

### The NSA and IROPI Tests

49. When Natural England considers the grant of an organisational licence it must, in addition to addressing the FCS test (by appraisal of the applicant's Strategy, as set out above), consider whether there is sufficient need to grant the licence and whether satisfactory alternatives exist. All of the licensing tests are applied proportionately, so the strength of the evidence required to meet each test will depend on the impact of a proposed development on GCN and their habitat.

### **IROPI**

50. Natural England cannot grant an organisational licence unless the applicant can demonstrate that at least one of the statutory purposes for derogation from the strict protection of GCN applies. It is expected that the dominant statutory purpose for an organisational licence will be "imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment"<sup>2</sup>. Although Natural England believes that district licensing will improve the conservation status of GCN and that it has bona fide scientific and educational value it accepts that in appropriate cases social and economic purposes will have primacy as the licensing purpose. Where other statutory licensing purposes are applicable Natural England would wish to see the holder of an organisational licence granted the ability to authorise activities for such purposes.

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<sup>2</sup> Reg 55 (2) (e).

## A Framework For District Licensing Of Development Affecting Great Crested Newts

51. In order to satisfy itself that the development that may go on to be authorised under an organisational licence will be justified by IROPI Natural England requires an applicant for an organisational licence to provide a clear inventory of the scope of development which is proposed to be authorised during the licence period, and for an applicant to assess the impact of that development within its Strategy.
52. In relation to development whose location is not known at the time of preparation of a Strategy (e.g. unallocated or windfall development) Natural England may be able to accept an analysis of the anticipated scale and location of such development, and the impacts thereof, but gives no prior assurance of this. The level of development outside the scope of the impact assessment contained in the Strategy cannot fall within the scope of an organisational licence. District licensing may not be available in areas where local plans are not sufficiently up-to-date.
53. When considering “imperative reasons of overriding public interest, including those of a social and economic nature” Natural England will take into account whether the activities/developments are required to meet or provide a contribution to meeting specific needs that include:
- The requirement to maintain the nation’s health, safety, education, environment (sustainable development, green energy, green transport);
  - Complying with planning policies and guidance at a national, regional and local level; and
  - Requirements for economic or social development (Nationally Significant Infrastructure Projects, employment, regeneration, mineral extraction, housing, pipelines, .etc.).
54. The imperative public interest must be sufficient to override the protection of, and any potential impact on, GCN. Objective evidence will be required that the specific need is being addressed.
55. Objective evidence to satisfy the IROPI test should include clear reference to the relevant parts of the LPA’s local plan documentation, other supporting information such as the five year housing land supply and government policy on development need. The issues of location, scale, impact and timeframe should be addressed. Where development is of a type consented by bodies other than LPAs a comparable level of evidence will be required. The status of any plan or policy document provided as evidence must be referenced and taken into account. Where such a document has not been formally adopted additional evidence will be required, for example reference to relevant regional or national planning policy, in order to justify development need.
56. Natural England considers it unlikely that the public interest will be consistent with or override harm to the most important sites for GCN and, accordingly, expects to see such sites scoped out of an organisational licence, or for evidence of particularly high public need to be supplied and special mechanisms to be provided to determine whether suitable alternative locations, designs or methods exist.
57. Natural England believes that the link between the IROPI test and planning criteria means that in the great majority of cases the holder of an organisational licence should only grant authorisation to a developer under that licence once planning permission has been granted for the development in question.

### **NSA**

58. Even where a proposed development is justified by IROPI Natural England must still satisfy itself that there is no satisfactory alternative that will meet the identified need and which is less harmful

## A Framework For District Licensing Of Development Affecting Great Crested Newts

to GCN. If a less damaging satisfactory alternative exists and is feasible and satisfies the need the NSA test has not been met and a licence cannot be granted.

59. To be classed as “satisfactory” Natural England believes that alternatives must be real, not merely theoretical, options and ought themselves to be capable of receiving planning permission, if required. Physical, planning and timing constraints are germane to the question and may prove decisive in determining whether an alternative is “satisfactory”. Natural England should choose, from the possible alternatives that which ensures the best protection of the species whilst delivering the IROPI need.
60. Applicants for an organisational licence should explain what alternatives for delivery of IROPI need they have considered by reference to the EC guidance document on the strict protection of animal species of Community interest under the Habitats Directive. This includes consideration of any alternative locations, scales or designs, or activities, processes or methods that deliver the need. All reasonable alternatives should be considered, and rationales and evidence supplied to demonstrate why the alternative(s) have been discounted. Consideration should be given to whether the need is delivered, whether the alternative is “satisfactory” and whether there is greater or lesser impact on GCN. Natural England is particularly keen on the consideration of alternatives that supply maximum benefit to the conservation status of GCN and is receptive to locally tailored solutions that can deliver this outcome.
61. Natural England’s view is that if two alternatives to a development project are equally justified by IROPI the one that yields net improvement (or most net improvement) to the conservation status of GCN is to be preferred. Natural England is also of the view that, except in relation to sites of particular importance for GCN, the provision of compensatory habitat in suitable amounts and locations is capable of providing more overall benefit to GCN than seeking to avoid or mitigate on-site harm to the species. An applicant for an organisational licence must therefore demonstrate that the application of its Strategy in relation to anticipated IROPI development within the area and time period of the organisational licence will indeed produce overall benefit to GCN.
62. Natural England’s view, at the geographical scale covered by an approved Strategy, is that where a proposed development is to be located in an area of low importance for GCN the inherent benefits of off-site habitat compensation using approved ratios, sites and methodologies mean that alternatives to the proposed development may not secure better protection of the species. However, it is for an applicant to demonstrate to Natural England that this is indeed the case for the area with which the applicant is concerned.
63. Regarding sites that are of some importance for GCN (e.g. sites where GCN are known or predicted to be present or nearby, but not in substantial numbers) Natural England invites applicants to consider the particular treatment of development proposals. Considerations should include the amount and distribution of development needs in these areas and whether it would be a satisfactory alternative for all or some to be provided in lower risk areas. Applicants are invited to consider whether any identified alternatives deliver greater or lesser impact on GCN, taking into account benefits of the proposed strategic approach.
64. Natural England suggests that areas of high importance for GCN should either be scoped-out of district licencing or should be subject to special mechanisms to ensure that the three licensing tests can be met. Natural England gives no assurance that it will accept proposals for inclusion of areas of high importance for GCN within the scope of an organisational licence.

## A Framework For District Licensing Of Development Affecting Great Crested Newts

65. Overall, and importantly, Natural England believes that the best means of improving the conservation status of GCN is, over time, to guide development proposals away from areas where GCN are present, whilst in the meantime ensuring that where harm to GCN is caused it is fully compensated for. Applicants are invited to outline to Natural England the extent to which they may be able to contribute to the local plan-making process by alignment of development allocations with the zonal mapping of the presence of GCN that is required as part of a Strategy for an area.
66. Natural England believes that the link between the NSA test and planning criteria means that in the great majority of cases the holder of an organisational licence should only grant authorisation to a developer under that licence once planning permission has been granted for the development in question.
67. Linked to the NSA test is the requirement to have full regard to the NPPF, and in particular to the material consideration set out at its para. 175, as also reflected in New Licensing Policy 1 (NLP 1). Natural England believes that a conscientious science and evidence-based approach can conclude, in appropriate cases, that compensation for impacts on great crested newts and their habitat can deliver greater benefit to this species than the avoidance or mitigation of such impacts on-site. This approach is specific to, and takes into account, the particular characteristics and requirements of great crested newts. Natural England also believes that this is consistent with the overarching requirements of the Habitats Directive and domestic law. Applicants are expected to set out the avoidance and mitigation options they have considered and to explain the circumstances in which this approach is appropriate.

# A Framework For District Licensing Of Development Affecting Great Crested Newts

## Annex 1: Fundamentals

Natural England's licensing functions are contained within a strict legal and policy framework which must be adhered to. Key features of this framework are:

- A. Natural England is the body authorised to grant licences under Part 3 of the Habitats Regulations<sup>3</sup> and this authority, and the exercise of discretion in carrying out this function, is not to be delegated.
- B. An organisational licence granted by Natural England to another body may permit the licence holder to authorise others to operate under the licence, but the licensee remains responsible for the conduct of parties that are authorised.
- C. Legally effective mechanisms must ensure that whenever development is authorised under an organisational licence suitable compensatory habitat is in fact created and maintained so as to ensure that the conservation status of GCN is maintained or enhanced.
- D. The three licensing tests set out at reg. 55 of the Habitats Regulations are applicable to the grant of all licences concerning GCN and are:
  - a valid licensing purpose, one of which is: imperative reasons of overriding public interest ("IROPI");
  - the absence of a satisfactory alternative ("NSA");
  - no detriment to the maintenance of the population of the species concerned at a favourable conservation status in their natural range ("FCS").
- E. A licence which authorises the killing of European Protected Species ("EPS") must not be granted for a period of more than two years.
- F. The New Licensing Policies<sup>4</sup> should be adhered to, and provide as follows:
  - Policy 1: Greater flexibility in the requirements for exclusion or relocation EPS from development sites;
  - Policy 2: Greater flexibility in the location of newly created habitats that compensate for habitats that will be lost;
  - Policy 3: Allowing EPS to have access to temporary habitats that will be developed at a later date;
  - Policy 4: Appropriate and relevant surveys where the impacts of development can be confidently predicted.
- G. Due regard must be paid to the avoid-mitigate-compensate hierarchy (paragraph 175 of the revised National Planning Policy Framework (NPPF)).
- H. Due regard must be paid to the EC "Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC (February 2007)" and any revision of this guidance.
- I. Requirements for Habitats Regulations Assessment ("HRA") are unaffected. Mechanisms must ensure that site-specific development is not authorised under an organisational licence or by a site-specific licence until it has been subject to (and "passed") HRA and must also ensure that the creation of compensatory habitat has no impact on Natura 2000 sites and that any impact this may have on GCN is avoided or fully mitigated.
- J. Legal duties toward other protected species are unaffected.
- K. Legal protection of GCN under the Wildlife and Countryside Act 1981 (as amended) are unaffected.

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<sup>3</sup> Conservation of Habitats and Species Regulation 2017 (the "Habitats Regulations").

<sup>4</sup> <https://www.gov.uk/government/news/new-licensing-policies-great-for-wildlife-great-for-business>

## A Framework For District Licensing Of Development Affecting Great Crested Newts

- L. The duty held by every public authority in exercising its functions to have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity are unaffected.
- M. Legal duties toward SSSIs are unaffected.
- N. Indiscriminate means capable of causing local disappearance of or serious disturbance to populations of GCN shall be prohibited.
- O. There should be transparency in relation to district licensing and the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 are unaffected.
- P. The rights of owners of intellectual property must be fully respected.
- Q. Bodies to whom an organisational licence is granted must be stable, substantial and subject to rigorous governance.
- R. Natural England must have the ability to enforce all critical provisions.



# A Framework For District Licensing Of Development Affecting Great Crested Newts

## Annex 2: Privacy Notice for applicants for an organisational licence

<p><b>Who collects your data</b></p> <p>The data controller is Natural England at Foss House, Kings Pool, 1-2 Peasholme Green, York, YO1 7PX. Send questions about how Natural England uses your personal data and your associated rights to the Natural England Data Protection Manager at:</p> <ul style="list-style-type: none"> <li>Natural England, County Hall, Spetchley Road, Worcester, WR5 2NP</li> <li><a href="mailto:foi@naturalengland.org.uk">foi@naturalengland.org.uk</a></li> </ul> <p>The Defra group Data Protection Officer is responsible for checking that Natural England complies with legislation. You can contact them at:</p> <ul style="list-style-type: none"> <li>Department for Environment, Food and Rural Affairs, SW Quarter, 2nd floor, Seacole Block, 2 Marsham Street, London SW1P 4DF</li> <li><a href="mailto:DefraGroupDataProtectionOfficer@defra.gsi.gov.uk">DefraGroupDataProtectionOfficer@defra.gsi.gov.uk</a></li> </ul>
<p><b>What data's collected and how it's used</b></p> <p>The data collected by Natural England includes:</p> <ul style="list-style-type: none"> <li>your name</li> <li>your contact details, or your agent's</li> <li>customer type</li> <li>information supplied by you in support of an application for an organisational licence</li> </ul> <p>Natural England uses your data in connection with your application to hold an organisational licence for the Great Crested Newt (GCN) District Licensing Scheme ('the Scheme') in your area.</p>
<p><b>The legal basis for processing your data</b></p> <p>Processing is necessary for the performance of a task carried out in the public interest. This task is to assess the quality of your application for an organisational licence and, if such a licence is granted, to deliver the Scheme and to create, restore, manage and monitor pond habitat for GCN.</p>
<p><b>Consent to process your data</b></p> <p>The processing of your data is not based on consent. You cannot withdraw it.</p>
<p><b>Who Natural England shares your data with</b></p> <p>Natural England respects your personal privacy when responding to access to information requests. We only share information when necessary to meet the statutory requirements of the Environmental Information Regulations 2004 and the Freedom of Information Act 2000.</p>
<p><b>How long Natural England holds personal data</b></p> <p>Natural England will keep your personal data for 7 years from the date of your application for an organisational licence, or for 7 years from the date of expiry of any organisational licence that you may go on to hold, whichever is the longer.</p>
<p><b>What happens if you do not provide the data</b></p> <p>You will not be able to hold an organisational licence.</p>
<p><b>Use of automated decision-making or profiling</b></p> <p>The information you provide is not used for:</p> <ul style="list-style-type: none"> <li>automated decision making (making a decision by automated means without any human involvement)</li> <li>profiling (automated processing of personal data to evaluate certain things about an individual)</li> </ul>
<p><b>Transfer of data outside the European Economic Area (EEA)</b></p> <p>Natural England will not transfer your data outside the EEA.</p>
<p><b>Your rights</b></p> <p>Find out about your <a href="#">individual rights</a> under the General Data Protection Regulation (GDPR), the Data Protection Act 2018.</p>
<p><b>Complaints</b></p> <p>You have the right to <a href="#">make a complaint</a> to the Information Commissioner's Office at any time.</p>
<p><b>Natural England's personal information charter</b></p> <p>Natural England's <a href="#">personal information charter</a> explains more about your rights over your personal data.</p>

## A Framework For District Licensing Of Development Affecting Great Crested Newts

To find out more about the work of Natural England, please visit [www.gov.uk/government/organisations/natural-england](http://www.gov.uk/government/organisations/natural-england)

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