



# Legal Protection and Licensing

## MAIN LEGISLATION

This chapter is concerned with the use of the law to assist conservation work, but it is not designed to address the range of issues arising from situations where habitats are being altered or destroyed. Anyone in doubt over any legal issue relating to great crested newts should contact the relevant Statutory Nature Conservation Organisation (SNCO) in the first instance. What follows is a summary of the main provisions of the law but is not a complete guide.

Great crested newts are safeguarded by both British and European laws. Together these provide strict protection of the species and its habitat, and a means by which sites can be protected from undesirable change. The Wildlife and Countryside Act 1981 is the main nature conservation legislation in Britain. Section 9 of this law provides protection to species listed on Schedule 5 of the Act, which includes the great crested newt. This was enacted to implement the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) to which the UK is a signatory. The Act has been amended several times since it was passed.

The European Union's 'Habitats Directive' (Council Directive 92/43/EEC (a) on the Conservation of Natural Habitats and of Wild Fauna and Flora) requires that areas are designated as Special Areas for Conservation (SACs) for the great crested newt (as it is listed on Annex II) and that the species is given

strict protection (as it is listed on Annex IV). The Directive is implemented in Great Britain by the Conservation (Natural Habitats, etc) Regulations 1994 (also known as The Habitats Regulations) and strict protection is given via Regulation 39 (the species is listed here on Schedule 2). The Countryside and Rights of Way Act 2000 "CROW Act", which applies only to England and Wales, makes further minor amendments to the species protection measures provided by the Wildlife & Countryside Act.

The wording in the 1981 Act and 1994 Regulations is slightly different and these differences are summarised in Table 1. Taken together the Act and the Regulations (following the CROW Act 2000) make it illegal to:

- Intentionally or deliberately capture or kill, or intentionally injure great crested newts
- Deliberately disturb great crested newts or intentionally or recklessly\* disturb them in a place used for shelter or protection
- Damage or destroy a breeding site or resting place
- Intentionally or recklessly damage, destroy or obstruct access to a place used for shelter or protection
- Possess a great crested newt, or any part of it, unless acquired lawfully
- Sell, barter, exchange or transport or offer for sale great crested newts or parts of them.

Table 2: Comparison of provisions in the Wildlife and Countryside Act 1981 (as amended) and the Conservation (Natural Habitats) Regulations 1994.

Actions prohibited under: Wildlife and Countryside Act 1981	Actions prohibited under: Conservation (Natural Habitats & c) Regulations 1994
Intentional killing	Deliberate killing
Intentional injuring	-
Intentional taking	Deliberate taking/destruction of eggs
Possession/control	Keeping
Intentional or reckless* damage to/destruction of/obstruction of any structure/place used for shelter/protection	Damage to/destruction of breeding site/resting place
Intentional or reckless* disturbance at occupied structure/place	Deliberate disturbance
Sale offering/advertising for sale (includes any part or derivative) or transport for sale	Sale/exchange, offering for sale (includes any part or derivative) and transport

\* "Reckless" offences were added by the Countryside and Rights of Way Act 2000, which applies only to England and Wales.

The legislation covers all life stages; eggs, tadpoles and adult newts are all equally covered.

There are cases where the law allows these actions to occur. These include acts carried out for humane reasons, for example tending injured animals and releasing them when they are fit, or the euthanasia of severely injured animals. Protection relating to obstructing access or damage to breeding or resting places, or places used for shelter and protection does not apply within dwelling houses. The law also allows actions that would otherwise be illegal provided these are “the incidental result of a lawful operation and could not reasonably have been avoided” (Section 10(3)c and Regulation 40 (3)c).

The Wildlife and Countryside Act 1981 provides a mechanism for the designation of Sites of Special Scientific Interest (SSSIs), and the mechanisms and level of protection for these sites has been further strengthened via the CROW Act (2000 see below). The Conservation Regulations 1994 identifies ways in which Special Areas of Conservation (SACs) are designated and protected. Both SSSIs and cSACs have been designated specifically for great crested newts.

Legislation is very important in the conservation of great crested newts because it helps Local Planning Authorities (LPAs) to control the way in which land use is determined. LPAs effectively have two major roles: development control (i.e. determining applications for changes in land use), and strategic development planning (i.e. preparing development plans which set out the policies for local land use). Government provides advice on nature conservation issues to LPAs primarily through a series of advice notes. These are: Planning Policy Guidance note 9: Nature Conservation (PPG 9) [England], National Planning Policy Guideline NPPG 14 - ‘Natural Heritage’ [Scotland], Technical Advice Note 5 [Wales]. These notes provide advice to local authorities on domestic and international legislation, and outline their responsibilities with respect to planning matters on other designated sites and sites where protected species such as the great crested newt occurs. LPAs are advised that the presence of great crested newts is a material consideration in the planning process, and that the refusal of permissions and the imposition of planning conditions are options when newts are present. In addition, development plans should take into account landscape features such as ponds, and encourage their protection. It is useful to read Local Plans and Unitary Development Plans in order to get acquainted with the ways in which LPAs set out their nature conservation objectives in policy form. Some of these plans now list great crested newt sites and state that development on these sites will not normally be permitted. There are also some requirements that are fairly specific, for example PPG9 requires LPAs to ensure that Local Plans are based on adequate information about local species and habitats and for linear habitat features such as hedges and ditches to be protected to counter the effect of habitat fragmentation.

### Other legislation

**Protection of Animals Act 1911 (1912 in Scotland) (and amendments)** Prohibits cruelty and ill-treatment. Applies to

captive vertebrate animals only (including captured animals which were previously living wild).

**Abandonment of Animals Act 1960** Prohibits abandonment of captive vertebrate animals if it is likely to cause or causes them unnecessary suffering.

**Animals (Scientific Procedures) Act 1986** Certain activities such as tail and toe-clipping and other invasive sampling or marking procedures, are controlled by this Act. Some recognised procedures can, however, be licensed by the Home Office.

**Countryside and Rights of Way Act 2000** Introduces ‘reckless’ offences in addition to those that are carried out with intent.

In general, legislation sets out what people or organisations are not permitted to do, rather than placing a duty on them to be proactive. The main exceptions to this are the designation of SSSIs and SACs, and Section 74 of The Countryside and Rights of Way Act 2000, which placed a general duty on Government Departments in England and Wales to further the conservation of biodiversity, which can help conservation if species and habitats are properly selected, protected, managed and monitored. On the whole though, conservation objectives are not usually progressed by legislation alone. However, laws do assist conservation by providing a framework for legal protection and encouraging organisations and individuals whose functions impinge on great crested newts to take their interests seriously. Section 25 of The Wildlife and Countryside Act 1981 places a duty on local authorities to promote education concerning nature conservation to the public and Statutory Nature Conservation Organisations can advise on this. Other statutory bodies, such as the Environment Agency (Environment Act 1995, Section 7 England and Wales, Section 34, Scotland) are also given explicit duties to further nature conservation.

### Licensing

Actions that are prohibited by the Wildlife and Countryside Act 1981 and the Conservation (Natural Habitats & c.) Regulations 1994 can be made lawful on the granting of a licence by the appropriate statutory authority. For most conservation purposes, this will be English Nature (EN), the Countryside Council for Wales (CCW) or Scottish Natural Heritage (SNH).

In practice, those working directly on promoting the conservation of great crested newts are most likely to require a licence when undertaking surveys using techniques which involve disturbance or capture of the newts. Licences would therefore certainly be required for netting, bottle trapping, pitfall trapping and refuge searching. For torch surveying, if a degree of disturbance is considered likely, a licence is required. Egg searching may also entail disturbance, and if in doubt a licence should be obtained. Habitat management may require a licence and this should be discussed with the SNCO in