

Consultation (Terrestrial Regulations)  
Department for Environment, Food and Rural Affairs  
Zone 1/06c  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol, BS1 6EB

Thursday 29<sup>th</sup> June 2006

Dear Sir/Madam

**Consultation to the Conservation (Natural Habitats, &c.) (Amendment) (England and Wales) Regulations 2006.**

Thank you for providing the opportunity to comment on the above consultation.

The Bat Conservation Trust (BCT) is a registered charity. It serves a network of nearly 100 bat groups across the UK and has a membership of over 4,000 people. BCT manages the National Bat Monitoring Programme, providing population trends for 11 of the UK's 17 bat species, and runs the National Bat Helpline, which gives free advice to callers on issues relating to bats. BCT is lead partner on four Species Action Plans under the UK's Biodiversity Strategy. Government agencies, professional and volunteer bat workers support the work of BCT.

In commenting on this consultation, we will confine our comments to those areas which directly affect bats and their habitats and which directly affect bat workers' efforts to conserve them, i.e. areas with which we, our supporters and bat workers are directly concerned.

BCT would like to note that our response is hampered by the lack of detail in relation to what will happen in practice following the proposed changes. Whilst we have been delighted to discuss with Defra the possible implications and way forward, it is difficult to respond effectively to this consultation without the detail of how Defra proposes to manage the outcomes of the changes, for example for householders with bat roosts.

We acknowledge that the proposed amendments bring some clear conservation benefits, for example in setting out the need for surveillance of the conservation status of European protected species (EPS) and making failure to comply with licence conditions enforceable. The amendments also better transpose the Habitats Directive regarding strict protection.

We are concerned, however, that the removal of the dwelling house defence in particular could present real challenges for bat conservation. It is important that interpretation of the legislation remains flexible for differing circumstances, as advocated in the Article 12 guidance currently being developed by the European Commission.

We consider it imperative that good practice guidance be made available as soon as possible (preferably before the amendments come into force) to ensure that all those who encounter bats during their work or at home respond within the law but proportionately and with common sense; also that bat workers are fully aware of the new licensing requirements and arrangements for that licensing, which we urge should not be overly onerous for them. We would be happy to work with Defra and with the other country departments and agencies to produce such guidance. In addition we urge that those persons assessing licence applications at Natural England, Countryside Council for Wales and the Welsh Assembly Government should have sufficient expertise of bats to make an appropriate assessment and judgement in licence applications.

Our response is ordered according to the paragraph numbers given in the consultation document.

**Paragraph 14 - Regulation 8** BCT welcomes the move to explicitly set out a duty for the surveillance of the conservation status of natural habitats and species of Community interest within a land-use planning context. However BCT considers that the sentence “...*and in particular priority natural habitat types and priority species*” should be deleted because this duty should apply equally to all habitats/species of Community interest.

BCT requests that the Secretary of State involve us in drawing up the ‘arrangements’ in relation to bats, to ensure that the surveillance is adequate to show the conservation status of individual species and that it is relevant to the planning context. We would also like to be involved in implementing the surveillance itself and have a proven track record in coordinating the National Bat Monitoring Programme (NBMP). We have already conducted preliminary work on conservation status assessment for bats and were partners in hosting a seminar on the subject of favourable conservation status in March 2006. BCT also contributed to the report *Towards European Habitats and Species – Assessment, Monitoring and Reporting of the Conservation Status of European Habitats and Species* recently produced by the European Habitats Forum. We are currently setting out a long-term strategic approach to determining Favourable Conservation Status for all UK bat species and providing a framework for assessing progress towards this. BCT would like to see additional resources provided for national biological monitoring schemes, such as the NBMP, in order to implement the surveillance requirements, and greater integration of information with planning authorities.

**Paragraph 16 – Regulation 8** BCT welcomes the requirement for the Secretary of State and National Assembly for Wales to consult with one another and with other devolved administrations and considers that it is useful to explicitly set out such requirements. However, according to the proposed amendment this requirement will only relate to deciding what arrangements to make for Annex V species [as per 37A(4)]. We urge the Secretary of State and National Assembly for Wales to consult with one another and with other devolved administrations (and with stakeholders such as ourselves) over arrangements for all species and habitats of Community interest [i.e. relating to 37A(1) also].

**Paragraph 18 – Regulation 9** The proposed amendment making it unlawful to possess specimens of Annex IV(a) wild animals which had been taken or killed, or died of natural causes, on or after 10 June 1994 will have implications for bat workers who care for live bats or who keep specimens of dead bats for educational purposes. It will also impose an additional licensing burden upon the relevant authorities. It is essential that licensing of these activities should fit within the existing system and not bring undue bureaucracy or divert much needed resources away from active conservation. It would be detrimental to bat conservation if, because of the new licensing requirements placed upon them, bat workers were dissuaded from caring for and rehabilitating bats or using dead specimens for training new bat workers in order that they can adequately carry out the function of the nature

conservation agencies (i.e. Natural England and Countryside Council for Wales) through roost visiting and thereby uphold the nature conservation legislation. Prior to the amendments coming in bat workers must be provided with sufficient information to understand the licensing process and reasoning behind it.

Licensing of continued possession of specimens obtained between 10 June 1994 and the amendments coming into force in 2006 is clearly preferable to not permitting people to obtain licences for this period (and consequently having to either dispose of specimens or risk prosecution by keeping them). However, we question whether backdating the legislation to 1994 is strictly necessary. There is no impact on conservation status of outlawing such possession. Would it be possible to start these prohibitions from the date the amendments come into force in 2006 rather than backdating them? In other words, any persons coming into the possession of a dead bat after 20 October 2006 (or whatever date it comes into force) would require a licence to keep it.

If continued possession of specimens obtained between 1994 and the amendments coming into force in 2006 has to be licensed, we consider that, in order to minimise the administrative burden on both bat workers and the licensing authorities, a general licence to cover specimens obtained during this time would be desirable. For specimens obtained after that time we suggest that there should be an additional tick box on the conservation/roost visitors' licence application form stating that they wish to keep dead or live specimens for educational or conservation purposes. In addition, the Secretary of State might like to consider a greater length of time between renewals of these licences to care for bats and keep specimens, in an attempt to minimise the administrative burden further, for example a three-yearly renewal cycle instead of annual.

For clarity we consider the detailed issues surrounding licensing the possession of live bats and dead bats separately in our response:

- (a) *Possession of dead bats.* This amendment will make unlawful an activity that has little or no impact on conservation status of bats. Killing of bats is already prohibited by law and there is no apparent recent history of persons actively collecting bat specimens in the UK (in contrast to those who collect rare birds' eggs for example). Those keeping dead bats (or live ones) are the people least likely to have infringed the law to obtain them. Anyone killing, maiming or injuring a bat intentionally is likely to get rid of the evidence.

In fact possession of a dead bat by a bat worker may actually have a positive impact on conservation status where that specimen is used in education (either in training bat workers in species identification or in educating the public, for example school children or builders). Similarly a dead specimen has a value for research in the case of passive surveillance for rabies. The BCT, in partnership with Defra, work to encourage persons finding dead bats to send them to the Veterinary Laboratories Agency (VLA) for rabies testing; hence the number of persons keeping such specimens is likely to have decreased over time. In these instances where a dead bat is found and sent straight off to the VLA, BCT considers that no licence should be needed by the sender provided the bat is sent within a reasonable time. We consider it would be useful to have a caveat in accompanying guidance stating this explicitly. The VLA must of course also be licensed to keep these specimens for scientific purposes as part of its passive rabies surveillance work.

We recommend that if longer term possession of dead bats by bat workers must be licensed it should fit under the existing licensing framework, perhaps though an additional tick box on the conservation/roost visitors' licence application form. Licences should be granted for educational or scientific purposes or to protect a

zoological collection (for example in the case of a museum). Defra may like to consider whether a limit should be placed on the number of bat specimens licensed for possession by an individual.

Clear guidance must be provided for bat workers to ensure they are aware of the legislation, for example, what evidence will be required to show that an animal had been lawfully obtained, or how the legislation relates to the keeping of bat droppings which are often kept as reference collections by surveyors. Would these be considered 'anything derived from' and hence be subject to the offence or could they be made exempt? Again, we consider that bureaucracy must be kept to the minimum in this instance.

*(b) Possession of live bats.*

Live bats are kept by bat workers for two main reasons. Firstly, there are long-term captives that have been brought in injured and are unfit for release. These animals are great ambassadors for the species, being used in education (for example school visits and countryside events). Consequently their continued possession should be licensed for educational purposes. Secondly, live bats are kept for rehabilitation prior to release. This temporary possession by bat workers experienced in bat care should be licensed for reason of conservation as it is in the best interests of the individual bat and of the species that they receive this care; this is concordant with the spirit of the Directive.

BCT considers that, in general, requiring bat carers to be licensed to keep live bats is a positive move. It is preferable that only those who are trained and experienced keep bats, rather than others who may have less concern or knowledge about bat welfare. However some bat workers are concerned that unnecessary bureaucracy associated with licensing will cause some people to give up bat care, a situation which we hope can be avoided.

The requirement to be licensed will strengthen standards and also assist with managing the risk of bat rabies, but only if adequate guidance and funding is made available. BCT would be pleased to be involved in the production of guidance and in training of carers to an appropriate standard for obtaining a licence. Defra might like to consider whether a limit should be placed on the number of live bats licensed for possession by each individual; however, it should be noted that some facilities, such as bat care hospitals, might receive a great many more animals from a wider area for rehabilitation than might an individual. Also, some bat workers engage in a much greater number of educational activities than others and hence might accordingly keep more bats. BCT is aware of a small number of bat carers who are aged under 18. We see from the current licence application form that there is no explicit age restriction on obtaining a licence, although applicants are asked to declare their age if under 18. We hope that this will remain the same in the future as we would not want to discourage young carers, although, as for anyone obtaining a licence, they would have to demonstrate competency.

Consideration needs to be given to how members of the public who find a grounded, injured, dead or baby bat will be treated once the amendments come into force. The National Bat Helpline receives numerous calls of this nature during the summer months. Callers are given instructions on how to safely release the bat, and where this is not possible, they are given details of a bat carer (who will now be licensed under the proposed changes) to whom they can pass the bat for rehabilitation and release. It would not be workable or desirable for all members of the public who find a bat to have to apply for a licence. This would be negative to the conservation of bats and contrary to the aims of the Habitats Directive (and Regulations). It would also be

an administrative nightmare for the licensing authority. Nor should members of the public be dissuaded from assisting an animal by the threat of prosecution. The system of advice provision currently in operation via the National Bat Helpline and volunteer bat workers works well in ensuring the public reacts appropriately to grounded and injured bats and should be adequately resourced, supported and trained to allow this to continue in the future.

Enforcement of the legislation must be proportionate to the offence. We would argue against strict enforcement where a person is acting to liberate a bat, hence improving its conservation status, concurrent with the overarching aims of the Habitats Directive. As mentioned above for dead bats, in these instances where a live bat is found and passed within a reasonable time to a licensed bat carer, we consider it would it be useful to have a caveat in guidance accompanying the legislation stating this explicitly.

**Paragraph 20 – Regulation 9(d)** BCT hopes that the insertion of this requirement will strengthen the legislation by encouraging courts to impose stricter sentences for those people who commit a deliberate or reckless offence (in other words have made no reasonable attempt to avoid that offence) and less strict sentences for those who have made reasonable attempt to avoid the offence. An example would be a tree worker who has followed good practice guidance in assessing a tree for the likelihood of bats, surveyed that tree, checked it before felling, and after all of these precautions found bats unexpectedly while section-felling the tree. The fact that this person has taken steps to reasonably avoid the offence, should be taken into account by the court should a case be brought.

Further to this point, paragraph 20 of the consultation document says that a court could have regard to whether a person has followed codes of practice or guidance. We consider it preferable to make such a consideration explicit in the amended Regulations. We suggest that the following sentence should be added immediately after the proposed wording of Regulation 9(d): *“In considering what is reasonable a court shall have regard to any codes of practice or guidance which may be relevant”*.

This would go some way towards avoiding the scenario where a builder, for example, might claim he could not reasonably have avoided damaging a bat roost because he had no idea bats were there. This interpretation could operate further to reduce the already low fines and sentences for wildlife and bat crime, which must not be allowed to happen. In order to demonstrate that efforts had been made to reasonably avoid the offence we argue that good practice guidance should have been followed and steps have been taken towards avoidance.

Also relating to Regulation 39 of the Habitats Regulations, BCT would like to see *“or recklessly”* included in paragraphs 1(a) – (c) to bring protection of bats up to Scotland’s standards (as enacted by the Wildlife & Countryside Act 1981 as amended by the Nature Conservation (Scotland) Act 2004). It is vital that, if European protected species were removed from the Wildlife & Countryside Act (one of the options given in paragraph 7 of the current consultation, but not one we necessarily support), the legislation in the UK remains as strict as currently.

Also relating to Regulation 39, BCT notes that the 2003 consultation on the Regulations contained a proposal to insert to paragraph 1(d) *“or to carry out an act which results in the deterioration of,”* in reference to breeding sites or resting places. We urge the Secretary of State to make this insertion in the current amendment to bring the Conservation Regulations into line with the Habitats Directive [specifically Article 12(1)(d)].

**Paragraph 21 – Regulation 10** For clarity issues arising from the removal of each of the defences will be treated in turn:

*Defence 40(1)(a)* – The defence of doing acts under requirements under Section 98 of the Agriculture Act 1947 is removed from the Regulations. Presumably in the future therefore any such action would need to be taken by the issuing of a licence under Regulation 44(2)(f), in which case the relevant authority must be satisfied that there is no satisfactory alternative and the action will not be detrimental to FCS.

*Defence 40(2)* - The defence for deliberately disturbing a bat in a dwelling house or for damaging or destroying a breeding site or resting site of such an animal in a dwelling house is proposed for removal from the Regulations. To date, this defence has allowed householders to remove bats that accidentally enter the living area of their house, and also to disturb or exclude bats or their roosts in the non-living areas subject to notifying the appropriate nature conservation body and allowing them sufficient time to advise whether it should be carried out and, if appropriate, the method to be used as detailed in 40(3)(c). We will treat these two scenarios separately for clarity:

- (a) *Removal of a bat from the living space of a house.* It is the BCT's opinion that a single bat found flying or grounded in the living space of a dwelling house should be treated in the same way as a bat found grounded outside their house or in another place, for example in the utilised areas of a business or a school. In other words, as detailed above in part (b) of our response to Paragraph 18, following advice from the National Bat Helpline, the bat should be released or passed on to a licensed bat carer for rehabilitation and release. It is not workable to expect householders to either live with a bat in their living room (nor would the bat wish to live there) or to have to apply for a licence to liberate that bat. We also argue that to liberate the bat would not actually constitute disturbance and hence would therefore not be an offence and thus would neither require licensing nor risk prosecution. Section II.3.2.(a) on page 39 of the current version (draft 5, April 2006) of the "Guidance document on the strict protection of animal species of Community interest provided by the Habitats Directive 92/43/EEC (Article 12 guidance)" states the following:

*"Disturbance does not necessarily directly affect the physical integrity of a species but can nevertheless have a direct negative effect on the species. Disturbance is detrimental for a protected species e.g. by reducing survival chances, breeding success or reproductive ability. A species-by-species approach needs to be taken as different species will react differently to potentially disturbing activities."*

Liberation of a bat trapped inside a dwelling house or from the ground outside would therefore not constitute disturbance by this definition (it does not affect the physical integrity of the species, nor does it have a direct negative effect, in fact the converse is true. Liberating the bat to the wild increases its survival chances, breeding success and reproductive ability). The Article 12 guidance also gives the example of occasional disturbances such as scaring a wolf away from a sheep enclosure in order to prevent damage and states that this would not be considered disturbance under Article 12. We consider liberating a bat from the living area of a house should also not be considered disturbance under Article 12 (excluding a bat from its roost in the roof however would).

Currently the National Bat Helpline provides advice to those with bats in the living space of their house and volunteer roost visitors can visit to advise in the event that bats repeatedly enter the living space of a house. This advice provision must be allowed to continue as it has an immensely positive result for conservation by informing people about bats and persuading them to react proportionately and in the interests of the species' conservation.

(b) *Disturbance or exclusion of bats/roosts in the non-living space of a house.* To date people who wish to disturb or exclude a bat roost must obtain advice free of charge from volunteer roost visitors acting on behalf of the SNCOs [as specified in Regulation 40(4)]. This system has numerous benefits for bat conservation as already outlined above. There are two scenarios where the positive outcome of advice provision is immediately evident: firstly, when people who had perceived bats as a problem and may have initially been considering having them excluded are persuaded to keep them; and secondly, when people needing to do work on, for example, their loft space, are advised on how to carry out the work sensitively to either avoid completely disturbing bats or damaging/destroying the roost (in which case there is no offence), for example by recommending re-roofing at a time of year when bats are not in residence and maintaining access and roost conditions so the bats can return next season.

We would argue that in both these instances advice should continue to be offered free of charge to further bat conservation and avoid a potential public backlash against bats. Once the householder defence is removed from the legislation, a licence will be required when an action is to be pursued that will lead to disturbance of bats or to damage or destruction of a bat roost and we have the following concerns:

Following advice, if a householder still wishes to disturb bats (for example to convert a loft or because of health reasons eg phobia) there should be a low-cost, accessible system in place for the assessment of licences. It may also be necessary to retain an amount of flexibility in the interpretation of what Overriding Public Interest means in the case of a domestic dwelling; however we consider that the test of FCS should still be applied. It is henceforth imperative that sufficient resources are invested in the assessment of conservation status for EPS and in researching the effectiveness of mitigation methods to ensure FCS is maintained.

Failure to deal with domestic dwelling licence applications promptly and proportionately could result in a worsened public perception of bats, a backlash against bats and against government, and the potential for work or exclusions to go ahead unlicensed, in an inappropriate manner, and with disastrous consequences for bat conservation. However, a solution needs to be found to the potential two-tier system that could arise (and which actually exists currently). It may be asked why, if a householder can gain a fast-track, cost-effective licence, a developer wanting to destroy a roost to make way for new residential housing or a council needing to fell a tree cannot do the same.

We cannot effectively comment on the best way for the removal of this defence to be dealt with at this time, although we welcome Defra's invitation to be involved in the decision making and the process of guidance provision. We are certain that we can work together towards a solution that will be workable and we welcome further discussions on the implications of this amendment. It is important that we have something in place that is workable before the changes are implemented in the autumn.

*Defence 40(3)* – This defence has three parts, all of which are to be removed, and each will be considered in turn.

(a) *Defence of tending for a disabled animal and then releasing it.* To make rehabilitation and release of bats unlawful is not in the interests of bat conservation. To leave a bat to die rather than tend to it would firstly be cruel and secondly might increase the likelihood of someone else encountering the bat bringing an associated (though small) increased risk of rabies to human

health. It is our opinion, already given above in part (b) of our comments relating to paragraph 18, that bat workers who regularly care for bats should be licensed to do so and that members of the public should receive guidance or have a caveat in law directing them to pass a disabled bat to a licensed carer.

- (b) *Defence of killing a bat for welfare reasons.* To make euthanasia of a severely injured or ill bat unlawful is not in the interests of animal welfare. All bat workers to whom we have spoken are very concerned about the removal of this defence. We urge the Secretary of State to licence sufficiently experienced people to humanely kill a bat that has been so seriously disabled that there is no reasonable chance of it recovering. This option could be added to the current licence application form.

We consider that many bat workers have greater experience in handling and assessing disabled bats than most vets, many of whom are not willing to take in, treat or euthanise injured bats. There is a clear need for greater education and guidance for vets, but we think that bat workers should also be permitted to end a bat's suffering when it is necessary to do so. Many injured bats that would require euthanasia are found out of normal working hours when it would be difficult to consult a vet and may entail unnecessary cost and travel to do so, also prolonging the suffering for the bat in making the journey.

Making euthanasia unlawful might deter people from continuing to care for bats if they felt compelled to break the law. Additionally, if people were compelled to break the law by euthanising an obviously suffering bat, they might then not feel able to submit the carcass to the VLA for rabies surveillance.

- (c) *Defence of any act that is the incidental result of lawful operation and could not reasonably have been avoided.* BCT welcomes the removal of this defence as it closes a potential loophole in the Regulations (for example that might be used by developers), but this loophole must not be allowed to resurface by a lax licensing system. A balance needs to be struck between licensing activities affecting known bat roosts and the use of good practice guidance to minimise the risk of persons breaking the law while going about their business. Where damage or disturbance does unfortunately happen despite someone following good practice, we hope the courts would take account of the efforts to have reasonably avoided the offence. Contrastingly, where someone has acted deliberately or recklessly without regard to good practice there should be no such leniency. (See also our comments relating to paragraph 20 – Regulation 9(d) above.)

*Defence 40(4)* – Removal of this defence is consequential of the removal of 40(2) and 40(3)(c), however BCT would like to reiterate the great benefit of advice being freely available to members of the public with bats in their houses and also to persons who might come across bats suddenly during the course of operations such as tree surgery or re-roofing.

*Defence 40(5)* – BCT welcomes the removal of this defence, but as for 40(3)(c), it must not be allowed to resurface by a lax licensing system.

*Defences 40(6) and 40(7)* - Removal of these two defences are consequential of the removal of 40(5) so we have no comment.

**Paragraph 22** – The defence for acts done under the Animal Health Act 1981 is preserved [Regulation 40(1)(b)] and it is under Section 32 of this Act that euthanasia of bats with rabies may take place. This applies in circumstances in which a bat “is affected or suspected of being affected with” rabies. BCT considers that on exercising that power, Defra officials should act so as to comply with the Habitats Directive and, in particular, the requirement that there is no satisfactory alternative to the derogation from the strict prohibition against killing bats. In paragraph 22 of the consultation document Defra say that either the Animal Health Act 1981 or the Conservation (Natural Habitats, &c.) Regulations will be amended to make this explicit, but the 2006 Regulations contain no such amendment. We suggest that this duty should be explicit in legislation and it would be sensible to make it explicit in the Conservation (Natural Habitats, &c.) Regulations, rather than to amend the Animal Health Act 1981; because the primary offence is found in the Conservation Regulations it would be helpful if the requirements of the defence were set out there too.

**Paragraph 23** – BCT has made suggestions and comments above (in relation to Paragraph 21) concerning how the removal of defences in regulations 40(2), 40(3)(a) and (b), and 40(5) could best be reflected through the licensing system.

**Paragraph 25** – BCT supports the suggestion that further guidance is required for operators and prosecutors in order to maintain a proportionate approach and would welcome an invitation by Defra to assist with production and dissemination of such guidance.

**Paragraph 26** – BCT does not agree that references to EPS should be removed from the provisions of the Wildlife & Countryside Act 1981 (as amended) as to do so would weaken legislation for EPS by removing the offence of ‘reckless’ damage to a place of shelter or protection. In case this proposed change to the Wildlife & Countryside Act 1981 (as amended) is made, ‘reckless’ must also be given in the Habitats Regulations, to ensure the same level of protection, in the future, that is currently afforded to EPS in the UK. We would also like to see ‘reckless’ apply to the offence of taking, killing and injuring also as it does in Scotland.

In addition the provisions for enforcement mechanisms and penalties are different for the Wildlife & Countryside Act 1981 (as amended) and the Regulations; notably, the power of arrest and scope for custodial sentences. Both pieces of legislation would need careful checking during any amendment of either to ensure the current level of protection is upheld.

**Paragraph 27 – Regulation 11** BCT welcomes the prohibition of any other indiscriminate means of taking or killing not listed already. Does this infer an obligation to report such indiscriminate means to an authority? BCT considers there should be such an obligation and that there should be a clear mechanism for collating reports and enforcing the prohibition.

**Paragraph 28 - Regulation 12** BCT welcomes the duty to monitor incidental capture and killing and considers it is necessary that requirements for the devolved administrations to consult with one another be explicitly set out; however we do not think this duty goes far enough. Article 12(4) of the Habitats Directive requests that *“In the light of the information gathered, Member States shall take further research or conservation measures as required to ensure that incidental capture and killing does not have a significant negative impact on the species concerned.”* The proposed amendments state that the results of monitoring should inform research to ascertain whether the incidental capture and killing has a negative impact on the species, but they do not presently require the furthering of conservation measures to ensure that the incidental capture and killing does not continue to have a negative impact. Where the results of monitoring and research reveal a negative impact there should be a requirement to implement conservation measures to counter this and we recommend this be inserted to the amendments. In addition it may be useful to clarify the

meaning of negative impact on the species, perhaps by the phrase 'significant negative impact on the conservation status of the species'.

**Paragraph 31 – Regulation 14** BCT is very concerned about the proposed addition of paragraph 2A(a) to Regulation 44. This implies that a licence may be granted for “a purpose not falling within paragraph (2)”. We are worried that this will effectively mean a licence for ‘anything’ and will not be bound by the specific circumstances listed in Article 16(1) of the Habitats Directive (and transposed by paragraph 2). We ask that paragraph 2A(a) be deleted from the proposed amendments.

The new licensing power brought by paragraph 2A(b) reflects the Directive and we are in support of its inclusion. However we require clarification as to why licences granted under this power should be issued by the Secretary of State and National Assembly for Wales, whereas licences for similar purposes [44(2)(a)-(d)] are currently issued by the relevant nature conservation authorities. Defra might like to consider whether further amendment of 44(4) is required to better reflect the current licensing system in England and Wales (i.e. it is our understanding that all EPS licensing will now be with Natural England in England but some will remain with CCW and some with the Welsh Assembly Government in Wales as currently. Will Natural England be acting on behalf of the Secretary of State for certain licensing provisions but not for others?)

**Paragraph 32 –** BCT is in favour of this new offence as failure to comply with the conditions of a derogation licence (for example that granted to destroy a roost during development) has long been considered a problem by bat workers and consultants. This new offence must not be allowed to weaken the conditions imposed on a licence. Conditions must include specifications of the way in which any activity should be carried out, necessary mitigation measures and required monitoring with an appropriately long time scale (several years) for this to be meaningful. All of these conditions must be complied with and where they are not, they must be enforced. This will necessitate additional visits to licence holders after the licence has been granted to check compliance.

In the case of householders who had received an initial visit from a volunteer, this might take the form of an aftercare visit, also by a volunteer, to ensure continuity and a personal approach. However, volunteers would need to be adequately supported, trained and resourced to do this.

Where licence breaches are discovered, these must be taken seriously and enforced. In addition, we note that this offence of failure to comply must be additional to the offence of disturbing bats or damaging/destroying a roost where both these offences are found to have taken place.

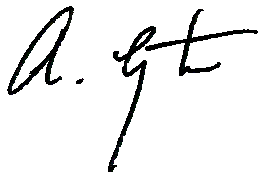
We see the need for a strategic approach to monitoring in order to assess conservation status: firstly, to predict the impact of changes or mitigation on a population ahead of the licence being granted; and secondly, to measure the actual impact once the provisions of the licence have been carried out. Monitoring and reporting of the outcome of licences is essential for two reasons, firstly to know that the FCS test was satisfactorily assessed during granting of the licence, and secondly to know whether any mitigation measures have worked to ensure no negative impact on FCS. This will inform future schemes requiring the use of mitigation measures. Over time, this will ensure a greater level of certainty in applying the FCS test to derogation licences and the need for and costs of monitoring will decrease as knowledge is gained. Short-term monitoring of a development site might still be undertaken by a consultant contracted by the developer for example, but we envisage a useful role for the volunteer network in long-term monitoring of the effectiveness of mitigation measures. We suggest that a development tariff to fund long-term volunteer monitoring would be a practical option.

**Paragraph 33 – Regulation 16** BCT supports this amendment.

**Paragraph 43 – Regulation 19** BCT supports the inclusion of a new duty requiring planning authorities to undertake an Appropriate Assessment of the impact of land-use plans on European sites. We consider a guide to the accepted procedures by which such assessments should be carried would be beneficial in the legislation. In addition, we consider the current wording in 85C(2)(a) should be strengthened so that the conservation status of priority habitats and species is regarded as an element of '*the environment of primary importance*'. Recognition is needed that conservation status of species for which a site has been designated may depend not only on the actual site itself but also on surrounding habitat (for example that is used for foraging or that is used at different times of year).

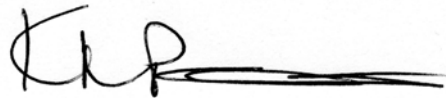
We would be pleased to discuss any of the above points with you further. Thank you again for providing the opportunity to comment.

Yours faithfully



Amy Coyte  
Chief Executive

Direct dial 020 7501 3632  
Email [acoyte@bats.org.uk](mailto:acoyte@bats.org.uk)



Katie Parsons  
Head of Biodiversity

Direct dial 020 7501 3630  
Email [kparsons@bats.org.uk](mailto:kparsons@bats.org.uk)

cc.  
Jane Goodwin, Defra  
Louise George, NAW  
Hilary Thompson, Defra  
Tony Mitchell-Jones, English Nature  
Jean Matthews, Countryside Council for Wales  
Matt Heydon, Defra