

Advice Note: Guidance on bat disturbance and appropriate licensing approaches

Date: July 2024



Purpose of this advice note

The following advice note is intended to clarify Natural England's expectations on the most appropriate regulatory route for different likely impacts of, and levels, of bat disturbance and how this pertains to relevant legislation. This advice relates only to 'disturbance only' impacts and does not cover assessment of other impacts and/or offences under the legislation.

This is not intended as legal advice. Persons relying upon the information provided in this advice note should seek independent ecological and/or legal advice prior to undertaking activities which could disturb or otherwise affect roosting bats. Your decision on whether or not a offence will be likely be committed should not be made without the advice of a suitably experienced ecologist.

Contents

Title	Page number
Background and context	1
Key principles for assessing disturbance thresholds	4
Advice on disturbance thresholds	6
Examples of the disturbance thresholds	9
How to notify Natural England	10
Notifications and licensing	11

Background and context

Legislative background

Under the Wildlife and Countryside Act 1981 (as amended) (hereafter referred to as the "WCA") it is an offence under Section 9(4)(b) for a person to intentionally or recklessly disturb a bat whilst it is occupying a structure or place which it uses for shelter or protection (usually defined as a bat roost). As far as Natural England is aware (at the time of writing), there is no published guidance on what constitutes disturbance in relation to bats, nor which defines the actions and their intensity or thresholds which constitute disturbance impacts which would likely to trigger an offence under the WCA.

Disturbance is also an offence listed in the Conservation of Habitats and Species Regulations 2017 (as amended) (hereafter referred to as the 'Habs Regs'). This regulation does include some qualifiers on what 'in particular' might cause an offence (refer to the previous licensing position below), but this may not be an exhaustive list.

There is no clear or definitive guidance on which legislation applies in different cases of disturbance. As such in the past Natural England has seen a range of precautionary licencing applied for to cover potential impacts that are not always actual. This costs time and money for both the applicant and Natural England. In order to help avoid precautionary licence applications and give clarity to the industry, Natural England has set out its expectations on the potential disturbance thresholds and its view on the most appropriate routes for legally derogating a disturbance offence in the following advice note.

Previous licensing position

Prior to the Environment Act 2021 becoming law, there was no Overriding Public Interest (“OPI”) purpose for licence applications made under the WCA. This meant that Natural England could not grant licences for the disturbance of bats under that legislation alone for most development purposes. Natural England could grant licences under the Hab Regs for the OPI purpose, however this legislation provides a steer on disturbance thresholds under 43(2)(a-b):

- (2) For the purposes of paragraph (1)(b), disturbance of animals includes in particular any disturbance which is likely—*
- a) to impair their ability—*
 - i. to survive, to breed or reproduce, or to rear or nurture their young; or*
 - ii. in the case of animals of a hibernating or migratory species, to hibernate or migrate; or*
 - b) to affect significantly the local distribution or abundance of the species to which they belong*

The WCA does not offer any ‘steer’ on disturbance thresholds but does suggest a lower threshold for disturbance being an offence under the legislation.

The key difference between the two pieces of legislation is that WCA deals with disturbance impacts on individual animals and the Hab Regs tends to be taken as impacts impacting the population persistence. Prior to the Environment Act, Natural England could not grant disturbance only licences under the OPI purpose where the level of disturbance did not meet the Hab Regs threshold.

Current Position

The introduction of the OPI purpose into the WCA via the Environment Act 2021 means that people may apply for mitigation licences to derogate the disturbance offence in Section 9(4)(b) of the WCA. While all ‘highly significant’ disturbance impacts on bats will be expected to require licensing under the Hab Regs, lesser levels of disturbance may be an offence under the WCA. Any WCA disturbance offence would either require a licence or it could be conducted under the ‘incidental result of a lawful operation that could not reasonably have been avoided’ WCA defence detailed in Section 10(3)(c). Under the legislation, persons wishing to rely on the latter must notify Natural England of their intention to rely on the defence, before the impact occurs in accordance with Section 10(5).

The thresholds of significant disturbance will vary depending on the species (and possibly the gender of that species), roost type and each situation (e.g., baseline levels of noise, noise type, duration etc.). Bat habituation to disturbance has historically been very poorly studied and there are significant gaps in scientific understanding of this area. In order to help

rapidly screen out insignificant disturbance, the existing baseline levels (take the appropriate time of day into account) of disturbance at a site can be used as an initial threshold indicator. Disturbance levels comparable to the baseline will be unlikely to result in a disturbance offence. Levels of disturbance beyond the baseline levels of disturbance (both in time and intensity) at a site may have potential to result in bat disturbance offences occurring, provided bats are present at the time of works.

Natural England views the offences, defences and licensing options collectively under the Habs Regs and the WCA meaning that there are now effectively four levels of regulatory approach to bat disturbance. These are:

- Level 1 – no offence is likely as only negligible disturbance is predicted. A threshold of no significant disturbance ‘above what normally occurs onsite’ (baseline levels) can be used to capture such instances. No Notification to, or licence from, Natural England is required in such instances.
- Level 2 – A WCA disturbance offence is likely but only in relation to low level disturbance impacts. NE’s expectation is that persons rely on the ‘Incidental Result Defence’ derogation in Section 10(3)(c) of the WCA; ‘the act was the incidental result of a lawful operation and could not reasonably have been avoided’. Persons must notify Natural England in accordance with Section 10(5) that they intend to rely on the defence in **OR** where a licence is being issued for other licensable impacts (e.g. roost destruction) associated with the disturbance, NE can issue a licence that will cover these WCA-low level disturbance impacts also (to avoid the need for a separate notification to be submitted).
- Level 3 – A WCA disturbance offence is likely and there are higher levels of disturbance impact (e.g. to population level) but the levels of impact fall beneath the established-practice Habitats Regulations threshold (it is likely that this route would only be used in exceptional circumstances due to the very narrow range of cases that will fall under this level). NE’s expectation is that a WCA licence should be obtained due to the higher levels of impact.
- Level 4 – Disturbance which would likely cause an offence under the Habs Regs (and as such the WCA also). Disturbance impacts are likely to be at population level and/or impair the ability of the species to survive, breed or hibernate, at the appropriate scale. NE’s expectation is that a licence should be requested to cover both WCA & Habs Regs for the disturbance offences.

Key principles for assessing disturbance thresholds

Whilst this document sets out examples and levels of disturbance, how they are interpreted to an individual situation is the responsibility of the ecologist and persons involved. The ecologist must consider the specifics of that particular project when advising their clients. Decisions on disturbance offences should not be made without the input of ecologists and, if necessary, legal advice. Ecologists involved in the decision process should be suitably experienced and qualified - and have sufficient knowledge of the scheme proposals and local bat population in order to make robust decisions.

It is important that decisions on disturbance are made considering the ecology of the species in question. An appropriate level of survey must therefore be undertaken to determine the likelihood of disturbance based on the species and roost type(s) present, but also the existing baseline conditions of the site must be captured.

The mitigation hierarchy should be used in all incidents and all reasonable mitigation measures should be put in place in order to avoid or minimise disturbance impacts to such an extent that a notification or licence is not required (i.e. an offence is not triggered in the first place). It is important to note that all derogations under the legislation require this:

- The defence under Section 10(3)(c) can only be relied upon if the offence “could not reasonably have been avoided”
- A licence cannot be granted under the WCA or Hab Regs unless there are ‘No Satisfactory Alternatives’

It should be concluded that there is a reasonable chance of a disturbance offence occurring before a licence application or notification is submitted to Natural England. Precautionary applications/notifications should not be made.

Where the defence is being relied upon (level 2 above), activities must not temporarily or permanently damage or destroy any roost (either directly or indirectly) as this would result in additional offences (beyond disturbance-only) that would likely require a licence under the WCA and Habs Regs. Whilst the defence can also be used for the Section 9(4)(c) offence of intentionally or recklessly obstructing a roost access, Natural England consider that obstruction of a roost access at a time when bats could use it would also constitute damage of the associated roost (by preventing or altering how bats access to the roost), and thus require a licence to derogate the Hab Regs offences. The notification process is therefore not intended to address the Section 9(4)(c) offence.

Where the defence is being relied upon, disturbance impacts must not permanently alter a roost’s physical structure or inherent environmental conditions (e.g. temperature / humidity), nor should disturbance (e.g. from noise) be a permanent change. This would otherwise likely constitute damage of a roost and require licensing (as noted in the paragraph above).

Where the defence is being relied upon, disturbance impacts must not reach a threshold at which they would be considered an offence under the Hab Regs. For example, disturbance of a maternity roost during the maternity season or hibernation roost during the hibernation period would require licensing to derogate an offence under the Hab Regs (noting that such a licence application would be unlikely to pass the licensing tests, particularly the no satisfactory alternative test).

Where a licence is required for other licensable impacts (e.g. roost destruction) on the same site and at approximately the same time as other WCA-only level (level 2 above) disturbance impacts then a licence should be applied for. NE can issue a licence that will cover these WCA low-level disturbance impacts to avoid the need for a separate notification to be submitted.

Advice on the disturbance thresholds

Note that the following is Natural England's view on expectations for the different levels of disturbance and how they relate to the differing regulatory routes. It should not be considered definitive or exhaustive, or used outside of this context.

Level 1 – No offence likely under the WCA or Hab Regs

Activities which fall below the threshold of notification (and which are thus not an offence) must follow the following principles:

- Activities do not cause disturbance that is significantly above the normal baseline (background) levels of 'disturbance' including, but not restricted to, diurnal pattern, duration, vibration, frequency and pitch.
- Activities must not damage or destroy the roost (either direct or indirect impacts)
- Activities must not obstruct roost access, directly or indirectly, including commuting routes in and out of the roost.
- The disturbance must not result in any functional change to the roost or its immediate habitat.
- All practical modifications to methodologies have already been put in place to avoid or minimise disturbance (where necessary).
- There is a high degree of confidence that the proposed works will not cause temporary or permanent abandonment of the roost.
- The rationale and justification as to why impacts are considered negligible should be recorded in writing. It should also include what the triggers may be for ceasing work. For example, should disturbance cause bats to fly during the day then works should cease immediately and the ecologist consulted for advice (and potentially a notification or licence application be made to NE). This information must be available to site operatives.

This level of disturbance is considered to be insignificant and no contact with Natural England is required. No licence or notification would be needed.

Level 2 – Offence likely under the WCA but suitable for the Defence

Activities which are likely to result in low-moderate disturbance and thus would be an offence under the WCA, but suitable to proceed under the defence in Section 10(3)(c). Activities must be in line with those set out in the defence, and the defence can reasonably be applied to the situation.

- There must be reasonable certainty that disturbance impacts will occur (with appropriate rationale and justification behind this) as informed by appropriate survey effort and understanding of the impacts
- Disturbance to a resting place is within expected occupancy times.
- Disturbance may discourage bats from using the roost and may result in the temporary abandonment of lower conservation value roosts. The disturbance will not affect maternity, satellite, mating, swarming or hibernation roosts during the periods when these roosts are likely to be occupied by breeding or hibernating bats.
- The roosts affected will remain available to bats throughout the works i.e. the roost structure and access will remain intact, unaltered and available to roosting bats.

- Activities must not permanently alter a roost's physical structure or inherent environmental conditions (including temperature, humidity). This would otherwise likely constitute damage of a roost – and be licensable under the Hab Regs.
- All reasonable alternatives to avoid disturbance impacts must have been considered and implemented (such as altering the works and/or timing the works to avoid occupancy times) – and a disturbance impact will occur despite these.
- The disturbance must always be temporary disturbance, lasting a defined period of time. A permanent increase in disturbance at a roost site would constitute a damaging change in conditions within the roost and therefore be separately licensable.
- Disturbance may impact single bats/roosts or multiple bats and multiple roosts; but is unlikely to result in local population level impacts.

This level of disturbance is considered to likely constitute an offence under the WCA, however no Hab Regs offences will be committed. The defence under Section 10(3)(c) can be relied upon provided Natural England are notified in accordance with Section 10(5).

NB. where a licence is being applied for in relation to other impacts on the site, the licence application should include the WCA disturbance impacts in order to avoid the need for a separate notification to NE. If a licence is already in place on a site then a licence modification should be submitted for the WCA disturbance impacts. NE will then licence the disturbance.

Refer to “Notifications and licensing” below for more information.

Level 3 – Offence likely under the WCA but not suitable for the defence

Activities which are likely to result in demonstrable high levels of disturbance but at a local level only or activities highly likely to result in welfare issues for affected bats in the absence of stringent conditions. No Hab Regs offences will be committed. This is likely to only apply in a very limited set of scenarios.

- Disturbance should not affect the ability of the species' local population to breed, reproduce, raise young, hibernate or significantly affect the local distribution or abundance of that species.
- Disturbance is likely to have an impact on high numbers of lower conservation value roosts; and high numbers of individual bats of the species concerned. The numbers of bats affected are likely to represent a significant proportion of the local population.
- The roosts affected will remain available to bats throughout the works i.e. the roost structure and access will remain intact, unaltered and available to roosting bats. Damage to a roost or obstruction of a roost access would constitute damage of a roost – and be licensable under the Hab Regs.
- Activities must not permanently alter a roosts physical structure or inherent environmental conditions (including temperature, humidity). This would otherwise likely constitute damage of a roost – and be licensable under the Hab Regs.
- Licensable activities may involve the temporary obstruction of access to roost sites through disturbance (e.g. severance of critical commuting routes through lighting

impacts) where these impacts cannot be avoided, however the physical access to the roosts will not be blocked - this would constitute damage or destruction of a roost and be separately licensable under the Habs Regs.

- The impacts should be temporary and not result in permanent abandonment of the roost. Where disturbance impacts are so significant they would permanently result in the abandonment of a roost, this would constitute damage or destruction of a roost and be separately licensable under the Habs Regs.
- Disturbance impacts may result in the temporary abandonment of relatively high numbers of lower conservation value roosts; but should not result in the abandonment of maternity or satellite roosts, mating or swarming sites or hibernation roosts.
- All reasonable alternatives to avoid disturbance impacts must have been considered and implemented (such as altering the works and/or timing the works to avoid occupancy times) – and a disturbance impact will occur despite these.

This level of disturbance is considered to likely constitute an offence under the WCA, however no Hab Regs offences will be committed. The disturbance is so significant Natural England considers it is more appropriate to rely upon the derogation of a licence rather than the Defence so that appropriate mitigation and compensation can be secured by condition of licence.

Level 4 – Disturbance offences will occur under both the WCA and Hab Regs

All activities above the levels of disturbance set out above should be licenced under a 'Dual' Licence - where impacts are expected to result in significant effects on the local population of the species concerned. The disturbance will be at levels sufficient to significantly affect the species' local population's abundance or distribution; or to impair its ability to survive at population level. This may involve disturbance impacts which:

- Cause temporary roost abandonment of higher conservation value roosts/species (e.g. maternity, mating or hibernation sites).
- Impacts a high proportion of the population for the species concerned, to the extent that the survival, distribution or abundance of the population will be affected
- May affect significant numbers of lower conservation value roosts; to the extent that the distribution of the local population is affected.
- Cause significant disturbance which results in the loss of ecological functionality of a roost network at landscape scale.

This level of disturbance is considered to likely constitute an offence under both the WCA and the Hab Regs. A derogation licence is required to permit the works.

Examples of the disturbance thresholds

Note that the following examples provided are illustrative only.

Level 1 – No offence likely under the WCA or Hab Regs

Renovation work on a building adjacent to another building which contains an active bat day roost. The site is a working farm with continuous daily use of buildings with noise from machinery, workshops and livestock. The works do not directly impact the building where the roost is located, nor the connected habitats. The proposed works will not increase the existing level of illumination on the site. Works will take place within the normal farm working hours using similar vehicles and tools with noise outputs comparable to baseline levels. The proposed works are time limited and will not permanently alter the levels of noise, light or vibration in the vicinity of the roost..

Level 2 – Offence likely under the WCA but suitable for the Defence

Renovation of a school complex where there is a small number of day roosts of a widespread species, in the local context. Sufficient surveying has concluded the likely absence of bats in the remainder of impacted buildings. Planning permission has been granted for the works. The works are to be undertaken whilst the roosts are likely to be occupied as they must be timed to coincide with school holidays. Construction lighting is required to be used 24/7 as essential repair works are being undertaken, this is likely to raise artificial lighting levels in the vicinity of the roosts, even with the use of directional cowls. Drilling will also be required into walls and concrete flooring but not directly impacting the roosts. Even with avoidance and minimisation measures, the impacts are likely to significantly raise noise, vibration and lighting levels above baseline levels for a short period however the roosts will remain available to bats. Works are due to be carried out for 10 consecutive days with no long-term habitat loss or increased disturbance impacts compared to current baseline levels.

Level 3 – Offence likely under the WCA but not suitable for the defence

Renovation of a site where there is an extensive complex of lower conservation roosts associated with multiple buildings and/or structures. There are high numbers of individual less-common bats recorded using the roosts which account for a reasonable proportion of the local population of that species given the lack of other suitable roost locations in the local area. There are no maternity, mating or hibernation sites for the species concerned affected by the proposals. The works involve extensive renovation and minor construction works however all roost sites will be retained throughout. This involves the use of piling machines and jack-hammers, which will create high levels of noise and vibration disturbance far in excess of baseline levels. The high noise and vibration works will last several months but are phased to avoid disturbing any individual roost for more than 5 days, after which noise levels will subside to baseline levels. It is not possible to time the works to avoid impacts due to structural stability issues identified with the buildings and/or structures and, even with mitigation measures, significant disturbance is likely to result on all roosts within the site.

Level 4 – Disturbance offences will occur under both the WCA and Hab Regs

Renovation of a building complex where there is a small number of lower conservation roosts and two maternity roosts associated with the buildings. There are high numbers of individual bats recorded using the roosts which account for a reasonable proportion of the local population of that species and are known to use the maternity roost each year. The works involve extensive renovation and minor construction works involving the use of piling machines and jack-hammers which will create high levels of noise and vibration disturbance. The high noise and vibration works will only last 5 days after which noise levels will subside to baseline levels. It is not possible to time the works to avoid impacts within the maternity season due to structural stability issues and, even with mitigation measures, significant disturbance may result on the maternity roost.

How to notify Natural England under Section 10(5) of the WCA

The notification form that accompanies this advice note should only be completed following advice from by a suitably experienced ecologist with sufficient knowledge of bat ecology and wildlife legislation to be able to advise the Notifier. It is the responsibility of the notifier and the ecologist to ensure that all activities undertaken are covered by the Defence.

The completed notification form should be submitted to Bat.Notifications@naturalengland.org.uk along with a map showing the extent of the notification. You will receive an auto-acknowledgment that the notification form has been submitted, however this auto-acknowledgement should not be taken as confirmation that Natural England have been notified in accordance with Section 10(5). Natural England will review the notification form and you should receive separate confirmation that we have been notified within 10 working days. You should not undertake any works which rely upon the Defence until this confirmation has been received.

The notification process does not require that Natural England assess whether a site/situation is appropriate for reliance upon the Defence. The notification form includes several declarations where you will confirm that you meet the requirements necessary to rely upon the Defence. Natural England will review these declarations and will refuse the notification if you have made declarations that indicate that the Defence would not avoid offences being committed. However, it is the responsibility of the notifier and the ecologist to ensure that the declarations are accurate.

Natural England do not provide site specific advice on whether or not a licence is needed. If there are any activities that take place on site that would not be covered by the Defence, or if works are undertaken in a manner that is not consistent with the wording of the Defence, then you are not entitled to rely upon the Defence even if you have notified Natural England and received confirmation of this. The notification form provides reminders of this and it is strongly recommended that you keep a separate record detailing how you can be confident all activities are covered by the Defence.

Notifications and licensing

As noted above, if a mitigation licence is required for any aspect of the works on site then all disturbance-only impacts should be included in a mitigation licence application even if these are the only impacts to certain roosts. The notification process should only be used if these are the only impacts on a site. For example, if the proposed works will result in the destruction of one roost and the disturbance of another then both should be included in a licence application and the notification process is not needed.

An exception to this would be if this will be if the licensable actions will take place a reasonable time after the disturbance impacts. For example, if WCA-only disturbance is required as part of investigative works, to inform a licence application at a later date, then it would be appropriate to undertake the initial investigative works under the Defence and subsequent works under a separate licence application. If this is the case then please ensure it is clearly detailed in the licence application that previous works were undertaken following the Defence.

The notification process should not be used to permit disturbance of roosts that are subject to an ongoing licence application or bat mitigation class licence/bat earned recognition site registration request.

If there is an active bat mitigation licence or bat mitigation class licence/bat earned recognition site registration on a site and additional disturbance impacts are now proposed since the most recent licence was granted then you should do the following:

- If the disturbance will affect the same species and/or roosts as are included on the licence then the notification system should not be used. You should submit a licence modification to address the additional impacts. This ensures Natural England can consider cumulative impacts as part of the licence.
- If the disturbance will affect different species and roosts to those included on the licence then the notification system can be used. You should ensure you are satisfied that the disturbance will not affect species or roosts that are subject to the licence.

The other exception to the above only applies to the bat mitigation class licence. The bat mitigation class licence only permits licensable impacts to up to three roosts on site. If the roost subject to WCA disturbance will bring the total number of roosts being impacted above three in total then you should use the notification system for the additional roosts. This is ecologically acceptable as the additional impacts from WCA disturbance will have a negligible impact on FCS. It should be noted that this is the only situation where works impacting more than three roosts would be permitted under the bat mitigation class licence.

Version control

Issue	Amendment Detail	Date
V1.0	Original	08/05/2024