

Bats and the Law

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In comparison to other wildlife, bats have a low reproductive rate normally bearing only one offspring per year.¹ In addition, bats have undergone severe declines historically with data from roost counts of pipistrelle bats indicating that there was a 60 per cent decline from 1977 to 1999 in England.² As a species, they are particularly vulnerable to a range of various threats.

Therefore in order to protect bats against further population decline and to protect the numbers of bats currently in the UK, all UK bats and their roosts are protected by law.

Legal protection for bats

As a protected species, bats come under the remit of national wildlife legislation³ but also other legislation can be invoked for their protection. As a result of such a decline in numbers, all 18 species of bat present

in Great Britain are included within the European Council Directive 92/43/EEC, (the Habitats Directive).⁴

The Habitats Directive is transposed into UK law by The Conservation of Habitats and Species Regulations 2010 (usually referred to as the Habitats Regulations).⁵

All British bats are protected under various legislation throughout the British Isles including England and Wales;⁶ Northern Ireland;⁷ and Scotland.⁸

In the Republic of Ireland, bats are listed under the Wildlife Act;⁹ and the European Communities (Natural Habitats) Regulations.¹⁰

As previously highlighted, the Conservation of Habitats and Species Regulations 2010 implements the EC directive 92/43/EEC in the UK.¹¹ All UK bats

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are included in Schedule 2 of the Habitats Regulations. As such, there are specific protective provisions under Article 12, which provides this legislation to make it illegal to:

- kill, injure or take bats;¹² damage or destroy a breeding site or resting place (a roost);¹³
- deliberately disturb bats in a way that would impair their ability to survive including ability to hibernate, breed or rear young; or

¹ E.Crichton and P.H.Krutzsch (ed), *Reproductive Biology of Bats*, (Elsevier Ltd 2000) 221-293

² Joint Nature Conservation Committee, 'Mammals of the Wider Countryside (Bats)' (C8, December 2014) <http://jncc.defra.gov.uk/page-4271>

³ Wildlife and Countryside Act 1981; Wild Mammals (Protection) Act 1996 sch 5

⁴ European Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive)

⁵ Conservation of Habitats and Species Regulations 2010

⁶ Wildlife and Countryside Act 1981 (as amended); Countryside and Rights of Way Act 2000; Natural Environment and Rural Communities Act 2006 and

Conservation of Habitats and Species Regulations 2010

⁷ Conservation (Natural Habitats etc.) Regulations (Northern Ireland) 1995 sch 2

⁸ Conservation (Natural Habitats &c) Regulations 1994 (as amended)

⁹ Wildlife Act 1976 sch 5

¹⁰ European Communities (Natural Habitats) Regulations 1997 sch 1

¹¹ Annex IV of the European Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive)

¹² Article 12 (1) (a) Directive 92/43/EEC European Commission *all forms of deliberate capture or killing*

of specimens of these species of specimens in the wild Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC http://ec.europa.eu/environment/nature/.../species/guidance/pdf/guidance_en.p... accessed 01 May 2015

¹³ Article 12 (1) (d) *deterioration or destruction of breeding sites or resting places*

to significantly affect their local distribution or abundance;

- ¹⁴possess or control any live or dead bat or any part of a bat or anything derived from a bat.¹⁵

It is also an offence under the Wildlife and Countryside Act 1981 (as amended) to:

- Intentionally or recklessly obstruct a bat roost (whether bats are present or not)¹⁶;
- and/or intentionally or recklessly disturb a bat while at a roost.¹⁷

The prohibition of any disturbance of bats or the intentional disturbance of bats while they are in the roost is also provided by Directive 92/43/EEC.¹⁸

Although neither Article 12 nor Article 1 of Directive 92/43/EEC actually contains a definition of the term “disturbance”, a more detailed analysis can be found in the Guidance document on the strict protection of animal species of

Community interest under the Habitats Directive.¹⁹ The introduction of the Countryside Rights of Way (CROW) Act in 2000²⁰ also makes it an offence to recklessly harm or disturb bats in their roosting places.²¹

The potential fine for each offence is £5,000. If more than one bat is involved, the fine is £5,000 per bat. In England and Wales an offender can also be imprisoned for six months. The forfeiture of any bat or other thing by the court is mandatory on conviction, and items used to commit the offence – vehicles, for example – may be forfeited.

The Planning Policy Framework, released in March 2012,²² acts as a guide to local authorities, in relation to wildlife issues, where developments may affect protected species, and how conservation and any appropriate mitigation measures should be implemented.²³

Licensing Procedures

A license may be granted by Natural England,²⁴ in order to exempt the protection afforded to bats under the Conservation of Habitats and Species Regulations 2010²⁵ for the purpose of allowing any development works to proceed. However, in order for Natural England to issue such a license to permit otherwise prohibited acts; three tests must be satisfied prior to the issue of the license.²⁶

Licences to permit illegal activities relating to bats and their roost sites can be issued for specific purposes and by specific licensing authorities in each country. These are sometimes called 'derogation licences' or 'European Protected Species' licences, and are issued under the Habitats Regulations. It is an offence not to comply with the terms and conditions of a derogation licence. Any person (s) conducting work affecting bats or roosts without a licence, will be breaking the law.

Certain individuals and bodies will need to take particular notice of this legislation if they intend to undertake any work, which may interfere with, or impact upon, bats and bat habitats. These will include property owners/householders who have a bat roost in their property; planning officials and building surveyors; architects; property developers; demolition companies; builders; roofers; woodland owners; arboriculturalists and foresters; and of course pest controllers.

Of course, despite the extent of legislation and guidelines which exist to protect bats and bat habitats, the courts have had to deal with various cases which have involved the issues of disturbance and impact upon bats. Previously, the law may not have been clear on what exactly was expected as regards the responsibility of planning authorities in relation to protected species and their habitats.



¹⁴Article 12 (1) (b) *deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration*

¹⁵Wildlife and Countryside Act 1981, 9 (5) (a) sch 5 “sells, offers or exposes for sale, or has in his possession or transports for the purpose of sale, any live or dead wild animal included in Schedule 5, or any part of, or anything derived from, such an animal”

¹⁶Wildlife and Countryside Act 1981 9 (4) (a) sch 5 “damages or destroys, or obstructs access to, any structure or place which any wild animal included in Schedule 5 uses for shelter or protection”

¹⁷Wildlife and Countryside Act 1981 9 (4) (b) sch 5 “disturbs any such animal while it is occupying a structure or place which it uses for that purpose”

¹⁸Directive 92/43/EEC art 12 (1) (b)

¹⁹Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC, Final Version (February 2007), II.3.2.a) Disturbance: (37) and (38) http://ec.europa.eu/environment/nature/conservation/species/guidance/pdf/guidance_en.pdf

²⁰Countryside and Rights of Way Act 2000

²¹Countryside and Rights of Way Act 2000 sch 2 s 2. (1) (f)

²²<https://www.gov.uk/government/.../national-planning-policy-framework-...>

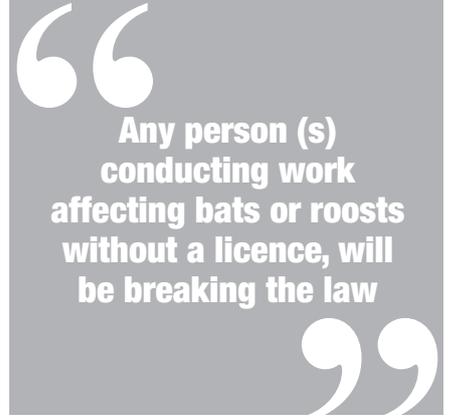
²³Department for Communities and Local Government, National Planning Policy Framework, (March 2012),

¹¹ ‘Conserving and Enhancing the Natural Environment’, 113-119

²⁴Natural England www.gov.uk/government/organisations/natural-england

²⁵Conservation of Habitats and Species Regulations 2010

²⁶Natural England, ‘Natural England Guidance Note: European Protected Species and the Planning Process Natural England’s Application of the ‘Three Tests’ to Licence Applications’ (2010) <http://publications.naturalengland.org.uk/file/8499055> accessed 01 May 2015



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Case Law

Relevant case law on European Protected Species (EPS) which provides some clarity on planning with regard to EPS are the cases of *R (Simon Woolley) v Cheshire East Borough Council and Millennium Estates Limited (the Woolley case)*²⁷ and the Supreme Court decision in *R (Vivienne Morge) v Hampshire County Council (the Morge case)*.²⁸ These two legal decisions have helped to clarify the role and responsibilities of Local Planning Authorities (LPAs) in respect of EPS when they are considering development consent applications. These cases do not create a new obligation or requirement on LPAs but they do provide some clarification of the duties placed on LPAs by the Conservation of Habitats and Species Regulations 2010²⁹ (the Regulations).³⁰

R (Simon Woolley) v Cheshire East Borough Council and Millennium Estates Limited

The claimant applied for judicial review of a decision of the defendant local planning authority granting planning permission to the interested party developer for the demolition of a property and its replacement by a larger property. It was contended, *inter alia*, that in granting planning permission, the Local Authority (LA) had failed to have regard to the requirements of Directive 92/43, as implemented by the Conservation (Natural Habitats, & etc) Regulations 1994. The LA submitted that the only duty imposed by Regulation 3(4) on an authority at the planning stage was to note the existence of the Directive and

Regulations and to note the existence of the relevant bats, and that the applicant for permission needed a licence.

However, clear guidance was set out in para.116 of ODPM Circular 06/05, stating: "*When dealing with cases where a European protected species may be affected, a planning authority...has a statutory duty under Regulation 3(4) to have regard to the requirements of the Habitats Directive in the exercise of its functions.*"³¹

A LA could not discharge its duty simply by making the obtaining of a licence a condition of the grant of permission. The planning officer's report had made no mention of the Directive or the Regulations. It referred to the need to have a condition for the mitigation of disturbance to the bats but that did not amount to consideration by the local authority. In circumstances, the LA had acted in breach of Regulation 3 (4). That breach of the Regulations had to be seen as a substantive breach of European Law and the decision granting planning permission was, accordingly, quashed.

R (Vivienne Morge) v Hampshire County Council

The appellant objector appealed against a decision³² upholding a planning permission granted by the respondent Local Authority (LA) for a bus route along a disused railway line. Morge had objected to the scheme because of its potential impact on European protected species of bats living nearby, with the main grounds for challenge being that the

decision of the LA had breached the requirements of the Habitats Directive (which is transposed into UK law through the Conservation of Habitats and Species Regulations 2010. The issues for determination were:

- i) the level of disturbance required to fall within the prohibition in Directive 92/43 art.12(1)(b);
- ii) the planning committee's obligations under the Conservation (Natural Habitats, &c.) Regulations 1994 reg.3(4), which implemented the Directive. The appeal was quashed by the Supreme Court.

The ruling opened the door for stronger interpretation of certain aspects of the Habitats Directive with the aim of clarifying both the definition of the 'deliberate disturbance' offence and how, and to what extent, that Local Planning Authorities should discharge their legal duty with due regard to the legislation.

In the decision of the Court of Appeal, the interpretation of the 'deliberate disturbance' offence was a rather conservative estimate. However, the decision in the Supreme Court held that "*deliberate disturbance is an intentional act knowing that it will or may have a particular consequence, namely disturbance of the relevant protected species*" (Lord Brown).³³

²⁷[2009] EWHC 1227 Admin

²⁸[2011] UKSC 2

²⁹Previously the Conservation (Habitats etc.) Regulations 1994

³⁰The Regulations transpose the requirements of the Habitats Directive (92/43/EEC) into English law

³¹Office of the Deputy Prime Minister, 'Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and Their Impact within the Planning System' (16 August 2005) para. 116, 36 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/147570.pdf accessed 03 May 2015

³²2010] EWCA Civ 608, [2010] P.T.S.R. 1882)

³³Morge (FC) (Appellant) v Hampshire County Council (Respondent) [2011] UKSC 2 at 8 <https://www.supremecourt.uk/cases/uksc-2010-0120.html>

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Most of the cases brought before the courts concern planning and environmental issues and as such come under the remit of the associated legislation. Bat related crime remains at a level for concern. The building development and maintenance sector once again accounted for the vast majority of the incidents referred for investigation.

However, there was one case in what is believed to be the first time the Proceeds of Crime Act (2002) has been used against a company or individual following the illegal destruction of a bat habitation.

On 28 April 2014, at Chesterfield Magistrates Court the company ISAR Enterprises Limited in Birmingham were found guilty and convicted of destroying a bat roost.³⁴ The bat roost was in an empty commercial property in 2012 prior to the Managing Director of ISAR Enterprises Limited, Mr Hargurdial Singh Rai, purchasing the premises with the intention of converting it into accommodation. An ecological report which was produced as part of the planning conditions had identified a roost of the brown long-eared species of bat roosting in the loft space. The Magistrates Court had heard that work could only take place on the building if Natural England had issued a licence. However, the developers had made no application for any licence and proceeded with works without any of the requisite surveys and supervision. Redevelopment included replacing the roof and converting the

loft into a room. Subsequently, this work resulted in the destruction of the bat roost. The court heard how an ecologist originally concluded the site was a roost after he had been instructed by an architect acting for ISAR. The ecologist later noticed development work had started on the site and informed police. A wildlife crime officer and police attended and discovered the bat roost had been destroyed. The offences were eventually reported to Derbyshire Police and Wildlife Liaison Officers.³⁵ Together with the National Wildlife Crime Unit, an investigation was conducted and the company was found in breach of the Conservation of Habitats and Species Regulations (2010).

After the conviction, the Crown Prosecutor, Mr Rod Chapman, made an application for a hearing under the Proceeds of Crime Act (POCA). The Magistrates found Mr Rai, and ISAR Enterprises Ltd guilty of destroying the resting place of a protected species between March, 2011, and July, 2012.

In a ground breaking decision the court, instead of imposing a sentence on Mr Rai and Isar Enterprises, referred the case to Derby Crown Court for order that consideration be given to confiscating assets belonging to the offenders equivalent to the amount

saved by not following lawful processes. In addition the Crown Court could impose a penalty for the offences and a POCA hearing was heard on 2 June 2014.

The referral of the case to the Crown Court for consideration of confiscation of assets was a ground-breaking initiative sending a clear message that such crime certainly does not pay.³⁶ This was the first case in which POCA has been applied in a wildlife crime conviction.

"Rural and wildlife crime usually takes place without numerous witnesses but this does not preclude a successful investigation as this case shows."³⁷

In 2013, the Bat Conservation Trust referred 121 allegations of bat crime to the Police, which they state represents a marked decrease on the 134 allegations referred in 2012.³⁸ However, whether this is due to a more increased awareness of the public to bat protection or simply a decreased reporting of incidents is not known.

Bat crimes are criminal offences and as such in order for a conviction to be gained the case must be proven beyond all reasonable doubt. Any question of doubt will normally result in acquittal. The CPS will not prosecute a case unless they are satisfied that there is a reasonable prospect of conviction. Prosecutions will not be taken unless this evidential test is passed and it is also considered to be in the public interest to proceed. One incident in 2013

³⁴UK National Wildlife Crime Unit, 'Businessman convicted of destroying bat roost', <http://www.nwcu.police.uk/news/nwcu-police-press-releases/businessman-convicted-of-destroying-bat-roost/> accessed 05 May 2015

³⁵Derbyshire Constabulary, 'Businessman convicted of destroying bat roost in Matlock' 30 April 2014 <http://www.derbyshire.police.uk/News-and->

[publications/press_releases/derbyshire_businessman_guilty_of_conservation_offence/](http://www.derbyshire.police.uk/News-and-publications/press_releases/derbyshire_businessman_guilty_of_conservation_offence/) accessed 05 May 2015

³⁶Bat Conservation Trust, 'Bat Crime Doesn't Pay' (09 May 2014) http://www.bats.org.uk/news.php/239/bat_crime_doesnat_pay_ accessed 05 May 2015

³⁷Crown Prosecution Service East Midlands http://www.cps.gov.uk/eastmidlands/news_and_

[publications/press_releases/derbyshire_businessman_guilty_of_conservation_offence/](http://www.bats.org.uk/news.php/239/bat_crime_doesnat_pay_) accessed 05 May 2015

³⁸National Bat Conservation Trust, Bat Crime Annual Report 2013

resulted in papers being submitted to prosecutors for a decision as to whether to take a case further. In that instance prosecutors directed against further action on the basis that there was insufficient evidence to secure a conviction.³⁹

Bats and Churches

Historically, bats are known to roost in churches and this has not always been a satisfactory situation for either the church or the bats. In the eighteenth and early nineteenth centuries, a church in Bedfordshire actually placed a bounty of 6d per dozen on the heads of the animals.⁴⁰ In more recent times, concerns regarding bats in churches have been raised in ministerial debates and comprised both positive and negative opinions.

A minister in the Department for Communities and Local Government had stated:

“In fact historic buildings, especially churches, play an important role in helping to protect the conservation status of native bats. In a changing landscape, churches can represent one of the few remaining constant resources for bats, thus giving them a disproportionate significance for the maintenance of bat populations at a favourable conservation status.”

(Lord Ahmad)⁴¹ David Woolley QC has argued that bats are wild animals, and belong in the wild, not in buildings designed and used for purposes other than as bat sanctuaries.⁴² However, this rather misses the point. The reality is that an increasing number of wildlife, including bats, are rapidly losing

their natural habitats in the wild as more land is being built upon. It is no longer unusual to find bats, along with foxes, in our inner cities. As humans encroach ever more upon otherwise natural habitats, (the ‘wild’), unfortunately, the animals that would normally reside there are beginning to move into our habitats and take refuge in buildings regardless of what the design and purposes of those buildings were originally for. Therefore it can only be reasonable to afford such wildlife the appropriate protection in view of the literally changing landscape of our modern world.

In spite of this, recently proposed legislation in the new Bat Habitats Regulation Bill,⁴³ sponsored by Christopher Chope MP, which had the first part of its second reading in January 2015, was aimed at making provision to enhance the protection available for bat habitats in the non-built environment but also to limit the protection for bat habitats in the built environment. This premise was based upon the opinion that in the built environment it was felt that the presence of bats have a significant

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adverse impact upon the users of buildings.

This Bill was presented to Parliament on 7 July 2014. The second reading began on 16 January 2015, but was then adjourned. The 2014-2015 session of Parliament prorogued and subsequently this Bill will make no further progress.

What specific implications the new Bat Habitats Bill would have upon bat roosts in traditional places of worship, not to mention other buildings, were not clear. The new proposed Bill had stated that it aimed to ‘*limit the protection for bat habitats in the built environment where the presence of bats has a significant adverse impact upon the users of buildings*’. The key words are: *significant adverse impact*. How significant or adverse any impact is considered could be open to question, dependent upon the users of the buildings and the potential or perceived challenges which may face them by the existence of bats within their building.

The Bill sought to exclude places of worship, such as churches, which would effectively mean that bats would be excluded from the current legislation that protects them, in particular the protection afforded to bats under the Habitats Regulations and the Wildlife and Countryside Act 1981.⁴⁴ Yet an estimated 60% of medieval churches are used by bats at some time during the year.

Understandably, this has caused a dimension of opinion. As natural

the built environment: *‘Notwithstanding the European Communities Act 1972, the provisions of the Habitats Regulations and the Wildlife and Countryside Act 1981 shall not apply to bats or bat roosts located inside a building used for public worship unless it has been established that the presence of such bats or bat roosts has no significant adverse impact upon the users of the building.’* <http://services.parliament.uk/bills/2014-15/bathabitatsregulation/documents.html>

³⁹National Bat Conservation Trust, Bat Crime Annual Report 2013

⁴⁰David Woolley QC, ‘Bats in Belfries (And Naves and Chancels)’, *Ecclesiastical Law Journal*, 17, pp 41-46 doi:10.1017/S0956618X14000891

⁴¹Lord Ahmad of Wimbledon, HL Deb 12 June 2014, col 575

⁴²David Woolley QC, ‘Bats in Belfries (And Naves and Chancels)’, *Ecclesiastical Law Journal*, 17, p 46 doi:10.1017/S0956618X14000891

⁴³Bat Habitats Regulation Bill 2014-2015 (HC Bill No.55) <http://services.parliament.uk/bills/2014-15/bathabitatsregulation/documents.html>

⁴⁴Bat Habitats Regulation Bill 2014-2015 (HC Bill No.55) 2, Limiting the protection for bat habitats in

roosts and foraging sites have been, and are increasingly being, lost, bats are becoming ever more reliant on built structures.

In view of this, issues of bat roosts in religious buildings such as churches had been vigorously highlighted and the subject of much debate.

Positive Incentives and Initiatives

Despite the presence of bats in churches often dividing opinion, there are ways to manage them positively with a view to their wellbeing and conservation while at the same time mitigating any negative impact the bats may place upon the church.⁴⁵

Some churches have responded very positively to their bat ‘problems’ and adapted accordingly, with a variety of novel ideas. Specific case studies have been compiled by the Bat Conservation Trust as part of a partnership project funded by Natural England. The Bats, Churches and Communities project provides service information gaps while supporting the needs of church communities aiming to build partnerships between church communities and bat conservation workers.⁴⁶

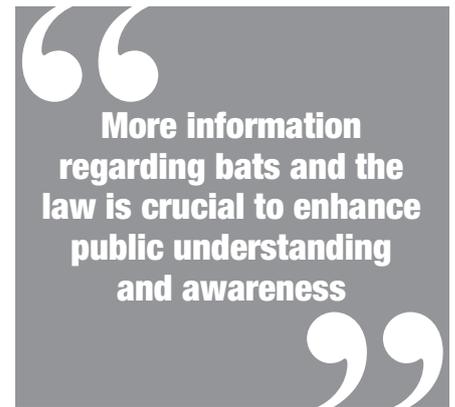
One particular church, Holy Trinity Church of Tattershall in the Diocese of Lincoln, displays information boards about bats near the church entrance. The information boards, entitled ‘Nature Matters’, provides information about the species of bats which roost in the church including

hosting ‘Bat Evenings’. Natural England considered the possibility of assigning Holy Trinity as a Site of Special Scientific Interest (SSSI) due to the importance of the church to the bats which are residing in it. Such accreditation was a positive step and a bonus as not only could it assist the congregation to raise potential funds towards the maintenance of their church building to be more bat-friendly, it also allowed the church to be used as it currently is, i.e. a church, as well as raising public awareness about bats in general.⁴⁷

Conclusion

The Bat Habitats Regulation Act 2015 has now been dropped due to the absence of a motion to carry it over to the next session of Parliament after the General Election.⁴⁸ Its enactment would have seen the current legislative protection of bats seriously undermined with specific risks to bat roosts in buildings such as churches. The failure of this proposed Bill is undoubtedly good news for bats and those who wish to protect and conserve them. Some aspects of legislation pertaining to the protection of bats have been rather vague in recent years, prompting a couple of court cases to attempt to clarify the legal position with specific reference to Local Authorities and their legal responsibilities in relation to bat conservation.

More information regarding bats and the law is crucial to enhance public understanding and awareness of one of Britain’s wildlife species whose



habitats have come under attack in recent years. The positive approach by some church communities concerning their own bat roosts is certainly a step forward in the right direction.

However, bats still remain a threatened species at high risk and the persecution of bats remains one of the six current UK wildlife crime priorities.⁴⁹

⁴⁵ChurchCare, Cathedrals and Church Buildings Division, Archbishops’ Council, ‘Bats and Churches’ <http://www.churchcare.co.uk/about-us/campaigns/our-campaigns/bats>

⁴⁶Bat Conservation Trust, ‘Bats, Churches and Communities’ http://www.bats.org.uk/pages/churches_and_communities.html

⁴⁷Bat Case Study No. 1, Holy Trinity of Tattershall, Diocese of Lincoln, www.bats.org.uk/data/files/Case_study_1_Holy_Trinity_Tattershall.pdf

⁴⁸UK Parliament <http://services.parliament.uk/bills/2014-15/bathabitatsregulation.html>

⁴⁹National Wildlife Crime Unit, <http://www.nwcu.police.uk/what-are-priorities-and-intelligence-requirements/priorities/>