

# **Great Crested New District Level Licensing Cheshire and Kent**

## **Frequently Asked Questions**

**Version 1.0 March 2019**

### **Great crested new District Level Licensing**

#### ***What is District licencing?***

Great crested newts have seen dramatic declines in their populations over the last 60 years, and are protected under UK and EU law. Despite these protections, the populations of GCN have continued to decrease. District licensing is a new approach to authorising developments affecting great crested newts (GCN), by focusing conservation effort where it will create maximum benefit whilst reducing delays, costs, risks and uncertainty for developers. It shifts investment from site based assessment and mitigation into strategic habitat improvements which can be integrated with Local Plans and biodiversity strategies

#### ***Who can hold a District licence?***

Under the Conservation of Habitats and Species Regulations 2017, Natural England can grant a single *District Organisational Licence* to a third party such as a Local Planning Authority, County Council or other external body. This body will be responsible for granting licence applications and permitting construction once mitigation habitat has been confirmed / produced. They will further be responsible for co-ordinating its long term management and monitoring.

Currently, the 16 Districts across Kent and Medway along with Woking Borough Council hold this type of licence and the Nature Space Partnership has obtained licences across 7 local authorities in the south Midlands and is looking to extend this to other areas.

Where a third party is not available to hold an organisational licence, Natural England will remain the permitting body. Individual licence applications will be submitted to Natural England by the developer, who should the application meet the three licensing tests, be granted an individual licence under the *District Site-based Licensing* scheme. This is the approach currently being applied in Kent and Cheshire.

#### ***Does this new approach replace traditional licensing?***

No, traditional licensing will remain in operation and will still be required in districts which are not covered by District Level Licensing, as well as in the red (avoidance) zones within strategy areas. However, it is estimated that District Level Licensing will replace about 77% of current site-based mitigation and organisational licensing for great crested newts.

#### ***How does this scheme fit into the new licencing policies?***

District Level Licensing relies on the new policies, in particular Policy 1 - Greater flexibility when excluding and relocating European protected species from development sites and Policy 2 - Greater flexibility in the location of newly created habitats that compensate for habitats that will be lost. These new policies aim to deliver more benefit through net gain in

habitat provision and have no effect to Favourable Conservation Status at landscape level. Further information on the new licensing policies can be found at:

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

### ***Will GCN DLL result in the killing of GCN and the destruction of their habitats?***

District Level Licensing may result in the killing of newts on development sites, but emphasis is placed on compensatory habitat creation in more strategic areas to benefit the wider GCN population in the long-term.

Site guidance will be made available to applications to reduce the risk of harm should GCN's be present during development.

### ***How does this Project affect the legislation which protects GCN?***

As with any other protected species application, before a licence is issued, the proposals will be assessed against the three legal tests required under in the Conservation of Habitats and Species Regulations 2017 (the "Habs Regs"), namely:

- Purpose (in this case: imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment);
- That there is no satisfactory alternative;
- That the action authorised will not be detrimental to the maintenance of the species concerned at a favourable conservation status in their natural range.

Under the Habs Regs, Natural England is the competent licensing authority and will ensure that the three licensing tests are assessed objectively.

### ***How does the strategy affect Natural England's standing advice to local authorities?***

Natural England will revise the standing advice to local planning authorities to ensure that where GCN District Level Licensing strategies are in place, LPAs should take account of them in deciding development allocations and in determining planning applications so that development is avoided in the highest (red) risk zones.

### ***Does this scheme present new legal risks to local planning authorities?***

Natural England is confident that this strategic approach will provide net gain to the conservation status of GCN in areas where it is used and therefore that it satisfies the FCS test in Regulation 55 (9) (b) of the 2017 Regulations. Local planning authorities are entitled by law to accept Natural England's advice on this.

### ***How has this scheme been funded?***

Under this scheme, public and private money will finance environmental improvements. Funding for the set-up phase (surveys, mapping, and strategy development) is currently

available through allocations made by the Ministry of Housing, Communities and Local Government (MHCLG) to Natural England. Implementation and running costs are fully funded by developer contributions.

## **Woking pilot scheme, Kent and Cheshire**

### ***Why did the pilot scheme in Woking receive no uptake from developers?***

The District Level Licensing approach was piloted in Woking Borough in 2016. However, there has been little uptake due to the low amount of development actually affecting GCN in the Borough.

### ***Does this mean there will be no uptake in Kent and Cheshire?***

Woking Borough was the first council to be granted a District Level Licence. A modified version of the District Level Licensing approach is now being rolled out in Kent and Cheshire. In both Kent and Cheshire, there are significantly more GCN and much greater levels of housing development pressure than in Woking and therefore many more instances of the need to issue licences.

Both Cheshire West and Chester Local Authority, and Cheshire Wildlife Trust on behalf of Cheshire East Local Authority have already begun successfully working with landowners to restore and create ponds for GCN in advance of development commencing. Up to 26 restored and created ponds are now in place. These compensation ponds will therefore be in place in advance of the impacts of development by applicants who wish to use the new licensing approach.

### ***Why was the District Level Licensing in Kent and Cheshire delayed?***

The original aim was to launch District Level Licensing in Kent and Cheshire in the summer of 2018, this was delayed till early 2019 for several reasons:

- The Natural England team strengthened the methodology to ensure it would result in a significant increase in provision of suitable aquatic habitat for great crested newts
- The scheme was redesigned to ensure it could function where Local Authorities or other partners weren't interested in holding the licence themselves.

## **Ecology**

### ***What about other protected species on site?***

District Level Licensing for GCN does not remove the need to survey and assess impacts from proposed development in relation to other protected and priority species and habitats, which may still require mitigation.

It is anticipated that the project will enable habitat creation which will be of benefit to a wide range of other species. It does not, however, change the requirements on development in relation to any wildlife or habitats except for GCN.

Developers who participate in the project must therefore make the same provision for impact assessment and safeguarding measures for other wildlife as they would if they were not

participating in the project.

***Will this approach reduce disease risk?***

The current site-based licensing approach involves translocating animals which can increase the rate of disease spread. With District Level Licensing, there will be much less artificial movement of individuals which is expected to reduce the spread of disease. The focus will be on supporting the growth of large populations with greater genetic diversity which will be more resilient to disease outbreaks.

***Will this strategic licencing approach be applied to other EPS?***

Natural England is actively considering the possibility of similar strategic approaches for other protected species. We are keen to explore proactive approaches which protect and improve the Favourable Conservation Status of protected species in a more strategic way, whilst also streamlining the development process where possible.

In the development of any such strategic scheme, we will ensure that the approach adopted is suitable for the species in question and their particular distribution. These will also be informed by lessons learnt over time through this GCN project. We will keep stakeholders informed as plans progress.

***What will this new approach mean for protected species licence holders?***

Ecologists will not be required to be 'named ecologists' under the District Level Licensing approach. Ecologists will still be required to obtain or hold survey licences in situations where GCN surveys are necessary. The traditional licensing system, including class licences, will still be in operation and may be more suitable in some circumstances.

***How do we understand implications for GCN populations where their distribution crosses local authority boundaries?***

Our sampling strategies and models predict newt populations 1,500m beyond the district boundaries to identify any potential meta-population fragmentation within GCN dispersal range (assumed as 1,000m).

***How will the most important GCN populations be protected?***

Areas which already designate special protection for GCN, such as European Sites and SSSIs where GCN are a recognised feature, along with other identified stronghold populations, will be encompassed by red zones where District Level Licensing will not be available.

There will be a presumption against development in these avoidance zones, although it is recognised that the need for development will sometimes outweigh the needs for GCN. This means that Planning Authorities will be able to take important populations of GCN into account at an earlier stage of their planning policy.

***What can I do with GCN which I capture during works on site?***

Natural England anticipates that in most cases some suitable habitat will remain on site. Such habitat may resemble the area where a captured newt was found, or may be rank grassland, scrub, hedge or woodland edge. In such cases captured newts should be released on-site in areas of these sorts and in places where they can quickly hide. If there is no such habitat remaining on site, then newts should be relocated to the safest possible location on-site, away from active works. As a last resort, GCN may be moved to areas of rank grassland, scrub, hedge or woodland, preferably near a pond, up to 2km from the development site, at the licensee's discretion.

***What is the position on the protection for GCN under the Wildlife and Countryside Act?***

The position in the Wildlife and Countryside Act 1981, as amended, ("WCA") does not change as a result of district level licensing. Of most relevance for GCN in terms of district level licensing are the protections under s. 9(4)(b) and (c) WCA for specific forms of disturbance. Although they do not directly align with the disturbance offence in the Conservation of Habitats and Species Regulations 2010, as amended, (the "Habitats Regulations"), there is some duplication.

The WCA does not allow licences to be granted by Natural England for development purposes in order to derogate from the offences. As they do currently, developers will need to consider, and if necessary take advice, on whether the offences in the WCA will be engaged and whether a statutory defence, particularly s.10(3)(c) WCA, is available depending on the circumstances.

***I have data on great crested newt populations, how can I ensure that this is taken into account?***

Natural England is keen to receive local data from stakeholders during the modelling stage. Natural England will inform stakeholders of a deadline for when this information will need to be received by, in order to be fed into our modelling. Unfortunately Natural England will not be able to re-run the models to account for data received after the cut-off date.

***How will we ensure that GCN have the best chances of colonising new compensation ponds?***

To ensure compensation ponds have the potential to be colonised by GCN within a year, a minimum of 25% of compensation ponds will be sited in core areas, which are defined as having optimal GCN terrestrial habitat, pond density of 2+ and no further than 250m from an existing waterbody. This relies on the species distribution model accurately predicting GCN presence, therefore this percentage will change relative to the accuracy score of the model; the lower the score the more ponds are sited in the core areas. This accounts for potential over-estimation of GCN presence in some areas.

## **Strategy**

***What is a species distribution model and does it provide an adequate evidence base to form a GCN strategy?***

Distribution models (or habitat suitability models) are a widely used tool that uses species records and environmental data to accurately predict the distribution of a species across a landscape. They have been developed by academics and have been used in numerous peer reviewed studies.

The model gives a probability of presence of a species within an area, using our knowledge of their ecology. The data within the model is validated to determine its accuracy (i.e. it is able to predict the core range but cannot predict outliers), the models usually achieve a high level of accuracy. It is then used to define risk zones where development is more or less likely to affect GCNs, and to indicate strategic opportunity areas (SOAs) where GCN habitat is best created or restored to provide net gain.

Each strategy uses an 'ensemble model', as this provides greater confidence in the collective ensemble model over a single model. Like all evidence, the model requires interpretation and expert opinion to be turned into a workable strategy.

### ***How can Natural England be confident that the data used to inform the species distribution model are adequate?***

The data used to inform the model will be derived from available existing data and through an eDNA sampling strategy. The sampling strategy will ensure surveys are taken throughout the district so the model has a wide variety of sampling points it requires to build an accurate distribution model for GCN. This is matched with available data from, herpetological groups and experts, other NGOs, licence returns and past planning applications where surveys have been carried out.

### ***How are the risk zones defined?***

Information on development allocations and predictions of windfall development is collected by Natural England from local authorities. Local knowledge and expertise is taken into account alongside the surveys carried out by Natural England and an assessment of the impact of likely development on the species distribution model is indicated by risk zones. These zones influence the Conservation Payment and increase the multiplier based on the level of risk. There are four categories:

- Red zones are sites where GCN are a designated feature, or other identified and evidenced stronghold populations, which are both excluded from the strategy.
- Amber zones indicate regions where GCN are expected to be present.
- Green zones indicate regions where there is a low likelihood that GCN
- White zones are areas where there is a very strong likelihood that GCN are absent, i.e. outside of their natural range or at high elevations.

### ***How will conservation efforts be focused?***

Strategic Opportunity Areas (SOAs) are determined based on the ability for ponds to be colonised, the presence of suitable habitat to aid colonisation and support a population, and the ability for new ponds to support Favourable Conservation Status (FCS). To achieve this, there are two classifications for SOAs, referred to as "Core" and "Fringe" areas. Both areas

deliver ponds in favourable habitat where colonisation can occur, but contribute to FCS in different ways. Core areas concentrate on existing areas of suitable habitat and seek to increase GCN populations in terms of the number of occupied ponds. Fringe areas focus on the peripheral area of existing GCN habitat where pond density is lower and therefore deliver FCS benefits by increasing the natural range/ distribution of the species.

SOAs are defined by the use of a weighted sum approach, which assigns scores (positive or negative) to each of the predictive variables (e.g. pond density, river distance, etc.) used in the species distribution model. A general threshold for positive or negative effects of each variable is then established, to determine how it influences predicted GCN presence. The model indicates that a greater density of ponds increases the likelihood of GCN and so these areas are targeted for new habitat as core areas, whereas areas with a lower score may present opportunities for range expansion as fringe areas.

### ***How does the conservation payment work?***

The contribution required from developers will be designed to cover all the costs of implementing the scheme, including pond creation and restoration, maintenance, monitoring, reviewing and updating the strategy, administering the licence, authorisation of developments and any other overheads. The costs will depend on the scale of habitat creation/restoration required to mitigate the expected development in any given local authority area, so that will be calculated during the development of the strategy. The conservation payment is based on the number of ponds functionally lost or affected by offsite impacts and variables such as the risk zone and a confirmation of GCN presence, act as multipliers.

The cost of pond creation, restoration and maintenance may also vary between locations, depending on the availability of land and its physical characteristics; again this will be investigated through the development of the strategy. Natural England will work with local stakeholders to look at the opportunities for developing partnership approaches to delivering habitat.

### ***How will off-site compensation balance out on-site impacts?***

We will provide four compensation ponds for every pond that is lost where GCN are present (4:1 ratio). This is twice the existing metric (2:1 ratio) under traditional mitigation licensing. This ratio is applied to the orange zone, where the species distribution model predicts GCN presence. However, without survey information, we instead need to base this on the rate of GCN occupancy in ponds. To be precautionary, we chose the highest known percentage of presence from our eDNA surveys undertaken thus far, which is 47.29% from our 2018 eDNA surveys in Essex. This percentage of presence would require a 1.89 multiplier to meet the 4:1 ratio. For simplicity and to account for any margin of error, we have rounded this up to 2. Therefore, to ensure there are sufficient funds for a 4:1 ratio, there is a 2x multiplier applied to the conservation payment in an orange zone.

### ***What Monitoring will be carried out?***

Every compensation pond delivered will be subject to four eDNA and HSI surveys over consecutive years from the time of creation/restoration, to check whether the pond has been

colonised. A random subset of equal numbers of compensation and extant ponds will be subject to population count surveys twice over a 25 year period. In addition, a portion of the monitoring budget will be allocated to the great crested newt national surveillance programme, so that the GCN occupancy rates of compensation ponds can be compared with broader GCN occupancy trends. This allows differentiation between background changes in GCN abundance and distribution, and changes associated with DLL.

## **District Site-based Licensing (Kent and Cheshire)**

***Will I need to let the LPA know the location of the compensatory habitat I am using or will be using as offset once it has been created?***

Applicants will not be required to inform the LPA of the location of the compensatory habitat being used to offset the impacts from their proposed scheme. The Applicant will be required to submit their signed and dated Impact Assessment and Conservation Payment Certificate to the LPA to show they are using the District Level Licensing Scheme and have had due regard to GCN on their proposed development site.

***My Client's development is complete; however, they do not wish to carry on with the post development management and monitoring. They would like to switch to the SSbLS and pay to remove the need for the above, can they do this?***

Post development management and monitoring is a condition required to satisfy the FCS test under each licence application. The District Level Licensing (DLL) scheme uses the conservation payment to provide both compensation and funds for long term management and monitoring. These costs cannot be separated out, and in this instance the Applicant should continue with the active EPSM licence rather than attempt to switch to DLL.

***I have a site with no ponds on it, or one pond, which is being retained. If I am not impacting upon any ponds off site why do I have to pay anything?***

The required financial sum will be dependent upon the impacts, including impacts on and off site. As such, even if there are no ponds on site, habitat is being lost within a 250m radius from offsite ponds, which must be compensated for. This approach has not changed from the current licensing system.

Under the District Level Licensing scheme all ponds within a red line boundary of a proposed development are considered to be lost. Given development is no longer constrained by the presence of great crested newts and therefore the footprint may encroach upon suitable habitats. As such, there is a risk that interference with aquatic habitats, even if they are retained, is likely. Therefore, compensation will be required even if these ponds on site are retained.

Within the Impact Assessment and Compensation Payment Certificate the full breakdown for the required financial sum will be detailed.



## EU Exit

### ***Will the protection of GCN be affected post-Brexit?***

There will be no changes to either the protection of GCN, or other European Protected Species (EPS) immediately following EU Exit. This is because they are covered under the Conservation of Habitats and Species Regulations 2017, which is EU legislation transposed into UK law.

### ***How will the Conservation of Habitats and Species Regulation 2017 be enforced post-Brexit?***

In December 2018, we published the draft clauses of our flagship Environmental Bill. Within this, we set out how we will create a pioneering new system of green governance, placing our 25 Year Environment Plan on a statutory footing. The draft clauses establish a new, independent environment body called the Office for Environment Protection (OEP), with the power to bring legal proceedings against the government and create a statutory framework for environmental principles. Within this, we have set out our vision for a Green Brexit in which environmental standards are not only maintained but enhanced.

Under the EU (Withdrawal) Act we will ensure existing EU environmental law continues to have effect in UK law after the UK leaves the EU. We will work to ensure that the new body is in place as soon as possible in a no deal scenario with the necessary powers to review and, if necessary, take enforcement action in respect of ongoing breaches of environmental law from when the jurisdiction of the Court of Justice of the European Union has ended. This will mean that the Government will be held accountable under existing EU law from the day we leave the EU.

Any interim measures that may be necessary under a no deal scenario before the new body is established will be brought forward in due course. Once established, the OEP will be able to take retrospective action dating back to 29 March 2019 - ensuring there is no period of time during which government actions cannot be held to account by an enforcement agency (whether the Commission or the OEP).