

# M2 Junction 5 Improvements Environmental Statement Volume 2 - Appendix D Biodiversity June 2019

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## Reviewer List

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# Appendix D (Biodiversity)

# Appendix D. Biodiversity

## D.1 Summary of Relevant Ecological Legislation in England

- D.1.1 The information in this report has been prepared by an environmental specialist and does not purport to provide legal advice. You may wish to take separate legal advice.

**Table D.1: Biodiversity Legislation – Species**

Species	Legislation	Offences	Licensing procedures and guidance
Bats <i>European protected species</i>	Conservation of Habitats and Species Regulations 2017 Reg 43	Deliberately <sup>1</sup> capture, injure or kill a bat; deliberate disturbance <sup>2</sup> of bats; or damage or destroy a breeding site or resting place used by a bat.  [The protection of bat roosts is considered to apply regardless of whether bats are present.]	A Natural England (NE) licence in respect of development is required. Guidance documents: <i>NE Standing Advice for protected species 2013</i> <i>European Protected Species: Mitigation Licensing- How to get a licence</i> (NE 2013) <i>Bat Mitigation Guidelines</i> (English Nature 2004) <i>Bat Workers Manual</i> (JNCC 2004)
	Wildlife and Countryside Act 1981 (as amended) S.9	Intentionally or recklessly obstruct access to any structure or place used for shelter or protection or disturb <sup>3</sup> a bat in such a place.	Licence from NE is required for surveys (scientific purposes) that would involve disturbance of bats or entering a known or suspected roost site.
Badger	Protection of Badgers Act 1992 (as amended)	Wilfully kill, injure or take a badger; or intentionally or recklessly damage, destroy or obstruct access to a badger sett or disturb a badger in its sett.  [It is not illegal to carry out disturbance activities in the vicinity of setts that are not occupied.]	Where required, licences for development activities involving disturbance or sett interference or closure are issued by Natural England (NE). Licences for activities involving watercourse maintenance, drainage works or flood defences are issued under a separate process.  Licences are normally not granted from December to June inclusive because cubs may be present within setts. Guidance documents: <i>NE Standing Advice for protected species 2013</i> <i>Badgers &amp; Development</i> (NE 2007)
Hazel dormouse <i>European protected species</i>	Conservation of Habitats and Species Regulations 2017 Reg 43	Deliberately <sup>1</sup> capture, injure or kill a hazel dormouse; deliberate disturbance <sup>2</sup> of a hazel dormouse; or damage or destroy a breeding site or resting place used by a hazel dormouse.	A Natural England licence in respect of development is required. Guidance documents: <i>NE Standing Advice for protected species 2013</i> <i>European Protected Species: Mitigation Licensing- How to get a licence</i> (NE 2013) <i>Dormouse Conservation Handbook</i> (English Nature 2006)
	Wildlife and Countryside Act 1981 (as amended) S.9	Intentionally or recklessly obstruct access to any structure or place used for shelter or protection or	Licence issued for survey and conservation by Natural England.

Species	Legislation	Offences	Licensing procedures and guidance
		disturb <sup>3</sup> a hazel dormouse in such a place.	
Birds	Wildlife and Countryside Act 1981 (as amended) S.1	<p>Intentionally kill, injure or take any wild bird; intentionally take, damage or destroy the nest of any wild bird while that nest is in use or being built; intentionally take or destroy the nest or eggs of any wild bird.</p> <p>Intentionally or recklessly disturb a Schedule 1 species while it is building a nest or is in, on or near a nest containing eggs or young; intentionally or recklessly disturb dependent young of such a species [e.g. most birds of prey, kingfisher, barn owl, black redstart, little ringed plover].</p>	<p>No licences are available to disturb any birds in regard to development.</p> <p>Licences are available in certain circumstances to damage or destroy nests, but these only apply to the list of licensable activities in the Act and do not cover development.</p> <p>General licences are available in respect of 'pest species' but only for certain very specific purposes e.g. public health, public safety, air safety.</p> <p>Guidance documents:  <i>NE Standing Advice for protected species 2013</i></p>
Great crested newt <i>European protected species</i>	Conservation of Habitats and Species Regulations 2017 Reg 43	Deliberately <sup>1</sup> capture, injure or kill a great crested newt; deliberate disturbance <sup>2</sup> of a great crested newt; deliberately take or destroy its eggs; or damage or destroy a breeding site or resting place used by a great crested newt.	<p>Licences issued for development by Natural England.</p> <p>Guidance documents:  <i>NE Standing Advice for protected species 2013</i>  <i>European Protected Species: Mitigation Licensing- How to get a licence</i> (NE 2013)  <i>Great Crested Newt Mitigation Guidelines</i> (English Nature 2001)</p>
	Wildlife and Countryside Act 1981 (as amended) S.9	Intentionally or recklessly obstruct access to any structure or place used for shelter or protection or disturb <sup>3</sup> a great crested newt in such a place.	Licences issued for science (survey), education and conservation by Natural England.
Adder Common lizard	Wildlife and Countryside Act 1981 S.9(1) and S.9(5)	Intentionally kill or injure any common reptile species.	No licence is required.

Species	Legislation	Offences	Licensing procedures and guidance
Grass snake Slow worm			However an assessment for the potential of a site to support reptiles should be undertaken prior to any development works which have potential to affect these animals. Guidance documents: <i>NE Standing Advice for protected species 2013</i>
Rabbits, foxes and other wild mammals	Wild Mammals (Protection) Act 1996	Intentionally inflict unnecessary suffering to any wild mammal.	Natural England provides guidance in relation to rabbits, foxes (which are also protected under the Wildlife and Countryside Act 1981 from live baits and decoys) and other wild mammals, on their website. Lawful and humane pest control of these species is permitted.
Plants <i>European protected species</i>	Conservation of Habitats and Species Regulations 2017 Reg 47	Deliberately pick, collect, cut, uproot or destroy a wild plant of a European protected species (Schedule 5).	Licences can be issued for science, education and conservation and also in respect of a development if it is of over-riding public interest. Guidance documents: <i>NE Standing Advice for protected species 2013</i> <i>European Protected Species: Mitigation Licensing- How to get a licence (NE 2013)</i> <i>Guidance on sampling rare aquatic plants, NE 2009</i>
Plants <i>Nationally protected species</i>	Wildlife and Countryside Act 1981 S.13 (Schedule 8)	Intentionally pick, uproot or destroy any wild plant on Schedule 8	Licences can be issued by Natural England for specific purposes only, such as science and education or conservation purposes. There is no provision for licensing the above actions for development operations under the Wildlife & Countryside Act 1981 (as amended). No licence is required for survey in England. Guidance on survey techniques is available from Natural England. Guidance documents: <i>NE Standing Advice for protected species 2013</i>
Plants <i>Invasive species e.g. Japanese knotweed, hybrid knotweed, giant knotweed, giant hogweed,</i>	Wildlife and Countryside Act 1981 S.14	It is illegal to plant or otherwise cause these species to grow in the wild.	Any contaminated soil or plant material is classified as controlled waste and should be disposed of in a suitably licensed landfill site, accompanied by appropriate Waste Transfer documentation, and must comply with section 34 of the Environmental Protection Act 1990. Guidance documents: <i>The Knotweed Code of Practice (Environment Agency, 2013 version 3)</i> <i>Managing Invasive Non-native Plants (Environment Agency 2010)</i> <i>Guidance on Section 14 of the Wildlife and Countryside Act, 1981 (Defra 2010)</i>

Species	Legislation	Offences	Licensing procedures and guidance
rhododendron, Himalayan balsam			

<sup>1</sup>Deliberate capture or killing is taken to include “accepting the possibility” of such capture or killing

<sup>2</sup>Deliberate 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 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.

<sup>3</sup>Lower levels of disturbance not covered by the Conservation of Habitats and Species Regulations 2017 remain an offence under the Wildlife and Countryside Act 1981 although a defence is available where such actions are the incidental result of a lawful activity that could not reasonably be avoided.

**Table D.2: Biodiversity Legislation – Site Designation**

Site Designation	Legislation	Protection	Guidance
Special Area of Conservation (SAC) Special Protection Area (SPA) Wetland of International Importance (Ramsar site)	Conservation of Habitats and Species Regulations 2017 EC Directive on the conservation of natural habitats and of wild fauna and flora (92/42/EEC). EC Directive on the conservation of wild birds (79/409/EEC). Convention on Wetlands of International Importance especially as Waterfowl Habitat 1971 (the Ramsar Convention).	Assessment of the implications of plans and projects is effected through Part 6 of the Conservation of Habitats and Species Regulations 2017 (in particular Regs 61 – 69). The legislation for the Site of Special Scientific Interest which will underpin each designation also applies. These sites are given protection through policies in the Local Development Plan.	Formal Appropriate Assessment is required to be undertaken by the competent authority before undertaking, or giving consent, permission or other authorisation for a plan or project which is likely to have a significant effect on such a site.  Guidance documents: The <i>National Planning Policy Framework</i> (Ministry of Housing, Communities and Local Government, July 2018), with particular reference to Chapter 15. The Government Circular: <i>Biodiversity and Geological Conservation - Statutory Obligations and their Impact within the Planning System</i> (ODPM Circular 6/2005 & Defra Circular 01/2005) (the joint Circular).

Site Designation	Legislation	Protection	Guidance
Site of Special Scientific Interest (SSSI)	Wildlife and Countryside Act 1981 (as amended)	It is an offence to carry out or permit to be carried out any potentially damaging operation. SSSIs are given protection through policies in the Local Development Plan.	Owners, occupiers, public bodies and statutory undertakers must give notice and obtain the appropriate consent under S.28 before undertaking operations likely to damage a SSSI. S.28G places a duty on all public bodies to further the conservation and enhancement of SSSIs. Guidance documents: The <i>National Planning Policy Framework</i> (Ministry of Housing, Communities and Local Government, July 2018), with particular reference to Chapter 15, and the joint Circular.
Natural Nature Reserve (NNR)	Wildlife and Countryside Act 1981 (as amended) S35 National Parks and Access to the Countryside Act 1949 S.16-29	Most NNRs are underpinned by SSSIs and are therefore protected by the measures detailed above. For NNRs not underpinned by SSSIs it is still an offence to carry out or permit to be carried out any potentially damaging operation. NNRs are given protection through policies in the Local Development Plan.	NNRs are generally owned and managed by the designating body (e.g. Natural England). Development proposals that would potentially affect a NNR would need to provide a detailed justification for the work, an assessment of likely impacts, together with proposals for mitigation and restoration of habitats lost or damaged. Guidance documents: The <i>National Planning Policy Framework</i> (Ministry of Housing, Communities and Local Government, July 2018), with particular reference to Chapter 15, and the joint Circular.
Local Nature Reserve (LNR)	National Parks and Access to the Countryside Act 1949 S.21	LNRs are given protection through policies in the Local Development Plan.	LNRs are generally owned and managed by local authorities. Development proposals that would potentially affect a LNR would need to provide a detailed justification for the work, an assessment of likely impacts, together with proposals for mitigation and restoration of habitats lost or damaged. Guidance documents: The <i>National Planning Policy Framework</i> (Ministry of Housing, Communities and Local Government, July 2018), with particular reference to Chapter 15, and the joint Circular.
Local Sites (eg Local Wildlife Sites, Roadside Nature Reserves)	There is no statutory designation for local sites.	Local sites are given protection through policies in the Local Development Plan.	Development proposals that would potentially affect a local site would need to provide a detailed justification for the work, an assessment of likely impacts, together with proposals for mitigation and restoration of habitats lost or damaged.

Site Designation	Legislation	Protection	Guidance
			Guidance documents: The <i>National Planning Policy Framework</i> (Ministry of Housing, Communities and Local Government, July 2018), with particular reference to Chapter 15, and the joint Circular.

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