

## **Wylfa Newydd Project**

### **6.6.25 ES Volume F - Park and Ride App F9-9 - Dalar Hir Protected and Legally Controlled Species Compliance Report**

PINS Reference Number: EN010007

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Application Reference Number: 6.6.25

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June 2018

Revision 1.0

Regulation Number: 5(2)(a)

Planning Act 2008

Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

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## 1 Introduction

### 1.1 Document purpose

1.1.1 The purpose of this document is to assess the likely risks of the construction of the Park and Ride facility at Dalar Hir (hereafter known as 'the Park and Ride'), described in section 1.5 of this report, contravening the following legislation:

- Conservation of Habitats and Species Regulations 2017;
- Wildlife and Countryside Act 1981 (as amended);
- Protection of Badgers Act 1992;
- The Eels (England and Wales) Regulations 2009 (as amended); and,
- Environmental Protection Act 1990 (in relation to the disposal of controlled plant species only).

1.1.2 This document considers species that are protected or controlled according to the above legislation, but it does not constitute legal advice. It forms one of several reports prepared as part of the planning application for the Proposed Development.

### 1.2 Background

1.2.1 Further detail of the Park and Ride can be found in chapter F1 Proposed development (Application Reference Number: 6.6.1).

## 2 Scope

### 2.1 Scope of the report

- 2.1.1 The offences considered in this report are only those that could occur as a result of the construction of the Park and Ride. Offences relating to cruelty, possession, transport, sale and certain methods for capturing/taking and killing have not been considered as they do not form a defined part of the implementation of the construction and operation of the Park and Ride.
- 2.1.2 *The Hedgerows Regulations 1997* provide a definition as to what constitutes important hedges. Planning authorities must consider the impacts of the removal of hedges that fall under these Regulations where applications are made to do so. However, these regulations do not apply here as the Park and Ride would only be taken forward if a Development Consent Order was granted under the *Planning Act 2008*, meaning any hedgerow removal would be considered to be permitted work under regulation 6(1)(e) of *The Hedgerows Regulations 1997*.
- 2.1.3 In relation to the offence of introducing non-native species to the wild, the disposal of waste from control of species such as Japanese knotweed is covered by the Environmental Protection Act 1990. No other aspects of the Environmental Protection Act 1990 are considered within this report as they are not considered relevant to the receptors present.
- 2.1.4 The relevant legislation and potential offences that could occur as a result of the construction and operation of the Park and Ride are set out in table 2-1.

### 2.2 Licences

- 2.2.1 Within this report, licences have been referred to and, depending on the protected species in question, are defined as set out in the following paragraphs.
- 2.2.2 If an offence is considered likely under the Conservation of Habitats and Species Regulations 2017 (as listed in table 2-1) then it can be derogated via a European Protected Species (EPS) licence. Natural Resources Wales (NRW) issues licences under Regulation 55 to allow the Park and Ride to be implemented within the law.
- 2.2.3 Offences under the Wildlife and Countryside Act 1981 (as amended) (as listed in table 2-1) (also referred to as Schedule 5 offences) are not licensable in the same way and the legal defences are as set out in s10(3)(c), s4(2A)(a) and s14(3). This means that a developer who has planning permission must make a reasonable effort to avoid committing an offence. Unusually, where offences relating to water vole require animals to be moved, NRW can issue a conservation licence to permit the translocation of the animals. However, steps should be made to avoid offences before resorting to animal translocation.
- 2.2.4 Offences under the *Protection of Badgers Act 1992* (as listed in table 2-1) are also licensable if it is necessary to interfere with a badger sett as a result of

construction works. NRW issues licences to interfere with setts, should it be required for the purposes of development.

**Table 2-1 Potential offences under UK legislation**

General descriptor	Conservation of Habitats and Species Regulations 2017	Wildlife and Countryside Act 1981 (as amended)	Protection of Badgers Act 1992	The Eels (England and Wales) Regulations 2009 (as amended)	Salmon and Freshwater Fisheries Act 1975 (as amended).
Capturing, killing and injuring	To deliberately capture, injure or kill any wild animal of an EPS (Reg. 43(1)(a)).	To intentionally kill, injure or take any wild bird (s1(1)). To intentionally kill, injure or take any wild animal included in Schedule 5 (s9(1)).	To wilfully kill, injure or take, or attempt to kill, injure or take a badger (s1(1)).	-	-
Disturbing (affecting ability to survive, breed or rear young)	To deliberately disturb wild animals of an EPS [wherever they are occurring] (Reg. 43(1)(b) and Reg. 43(2)(a)(i)).  For the purposes of Reg. 43(1)(b), disturbance of animals includes in particular any disturbance which is likely to impair their ability to survive, to breed or reproduce, or to rear or nurture their young.	-	-	-	-
Disturbing (impairing ability to migrate or hibernate)	To deliberately disturb wild animals of an EPS [wherever they are occurring] (Reg. 43(1)(b)) Reg. 43(2)(a)(ii).  For the purposes of Reg. 43(1)(b), disturbance of animals includes in particular any disturbance which is likely to impair their ability, in the case of animals of a hibernating or migratory species, to hibernate or migrate.	-	-	To construct, alter or maintain a dam or structure and fail to notify the Agency, i.e. NRW (Part 4, 12 (1), (2)(4)).	-

General descriptor	Conservation of Habitats and Species Regulations 2017	Wildlife and Countryside Act 1981 (as amended)	Protection of Badgers Act 1992	The Eels (England and Wales) Regulations 2009 (as amended)	Salmon and Freshwater Fisheries Act 1975 (as amended).
Disturbing (affecting local distribution or abundance)	<p>To deliberately disturb wild animals of a European Protected Species (EPS) [wherever they are occurring] (Reg. 43(1)(b) and Reg. 43(2)(b)).</p> <p>For the purposes of Reg. 43(1)(b), disturbance of animals includes in particular any disturbance which is likely to affect significantly the local distribution or abundance of the species to which they belong.</p>	-	-	-	-
Disturbing (whilst occupying a structure or place used for shelter or protection)	-	<p>To intentionally or recklessly disturb any wild bird included in Schedule 1 while it is building a nest or is in, on or near a nest containing eggs or young; or disturb dependent young of such a bird.</p> <p>To intentionally or recklessly disturb any wild Schedule 5 animal while it is occupying a structure or place which it uses for shelter or protection (s9(4)(b)).</p>	<p>To intentionally or recklessly disturb a badger when it is occupying a badger sett (s3(e)).</p>	-	-
Taking eggs	To deliberately take or destroy the eggs of such an EPS animal (Reg. 43(1)(c)).	To take or destroy an egg of any wild bird (p1(1)(c)).	-	-	-

General descriptor	Conservation of Habitats and Species Regulations 2017	Wildlife and Countryside Act 1981 (as amended)	Protection of Badgers Act 1992	The Eels (England and Wales) Regulations 2009 (as amended)	Salmon and Freshwater Fisheries Act 1975 (as amended).
Damage or destruction of a breeding site or resting place	To damage or destroy a breeding site or resting place of a wild animal of an EPS (Reg. 43(1)(d)).	To intentionally take, damage or destroy the nest of any wild bird while that nest is in use or being built.  To intentionally or recklessly damage or destroy any structure or place which any wild animal specified in Schedule 5 uses for shelter or protection (S9(4)(a)).	To intentionally or recklessly damage a badger sett or any part of it or to destroy a badger sett (s3(a)(b)).	-	Knowingly permits to flow, or puts or knowingly permits to be put, into any waters containing fish or into any tributaries of waters containing fish, any liquid or solid matter to such an extent as to cause the waters to be poisonous or injurious to fish or the spawning grounds, spawn or food of fish, shall be guilty of an offence (Part I, 4 (1)).
Introducing new species	-	To plant or otherwise cause to grow in the wild any plant which is included in Part II of Schedule 9 (s14 (2)).  Waste produced from management of some species would be “controlled waste” and managed accordingly under the Environmental Protection Act 1990 (s33 (1a) and (1b)).	-	-	-

### 3 European Protected Species licence tests

3.1.1 An EPS licence can only be granted by NRW if the following three tests can be met:

- test 1: the purpose of the work meets one of those listed (see below) in the Conservation of Habitats and Species Regulations 2017;
- test 2: there is no satisfactory alternative; and
- test 3: the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

3.1.2 Under test 1 the specific set of purposes referred to includes:

- “preserving public health or public safety or other imperative reasons of overriding public interest, including those of a social or economic nature, and beneficial consequences of primary importance for the environment;
- scientific and educational purposes;
- ringing or marking;
- conserving wild animals or wild plants;
- protecting any zoological or botanical collection;
- preventing the spread of disease; and
- preventing serious damage”.

3.1.3 A review of the Park and Ride against the three tests concluded the following:

- test 1: the purpose of the Park and Ride is considered to be “preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment”.
- test 2: there is no satisfactory alternative to the proposed development. The Park and Ride has been subjected to a staged optioneering process which has informed the identification and selection of a final, optimised design solution. Chapter F2 Alternatives and design evolution (Application Reference Number: 6.6.2), provides further information on the need for the Park and Ride, the alternatives considered and the design evolution.
- test 3: this would be met via implementation of the proposed strategy relating to the EPS described in this report.

## 4 Methodology

4.1.1 The legislation under which species are protected or controlled, as set out in table 2-1, has been reviewed to identify the potential for the construction and operation of the Park and Ride to cause offences.

4.1.2 The review took the form of identifying whether or not a protected or controlled species was present within the area affected by the construction of the Park and Ride.

4.1.3 The baseline information is based on a desk-based study which included consultation with North Wales Environmental Information Service (Cofnod) where considered necessary, and field survey work.

4.1.4 Data from Cofnod were requested in June 2017 and are unpublished [RD1]. These comprised a request of all protected and notable species records from within 2.5km of the centre of the Park and Ride. Data from fieldwork are presented in baseline terrestrial ecology survey reports which are referenced throughout and form appendices to the Environmental Statement for the Park and Ride.

4.1.5 The baseline data collected have recorded evidence of the following species or groups for which the legislation listed above, applies:

- Protected species:
  - breeding birds (all species);
  - badger (*Meles meles*);
  - otter (*Lutra lutra*); and
  - water vole (*Arvicola amphibius*).
- Controlled species:
  - Canadian pondweed (*Elodea canadensis*);
  - Japanese knotweed (*Fallopia japonica*); and
  - montbretia (*Crocosmia x crocosmiiflora*).
  - freshwater fish, including European eel (*Anguilla anguilla*);

4.1.6 The proposed strategies presented in this report to avoid offences are in addition to those outlined in the chapter F9 terrestrial and freshwater ecology (Application Reference Number: 6.6.9) which seek to minimise likely effects on terrestrial and freshwater ecology, and which would be included within the contractual documentation associated with construction of the Park and Ride.

4.1.7 The following sections provide an assessment of the potential to cause an offence in relation to each species or group, as well as the approach to mitigation to avoid offences being committed, or that are required to secure an EPS licence.

4.1.8 Conclusions are presented for each protected and controlled species in relation to legislative compliance.

## 5 Breeding birds

### 5.1 Relevant legislation

5.1.1 The legislation relevant to the protection of bird species with the potential to be affected during construction of the Park and Ride comprises:

- Wildlife and Countryside Act 1981 (as amended).

### 5.2 Baseline information

5.2.1 The baseline terrestrial ecology survey report (Appendix F9-1 Dalar Hir Extended Phase 1 Habitat Survey and HSI Survey. Application Reference Number: 6.6.17) identified habitats with the potential to support breeding birds within the boundary of the Park and Ride. These included species-poor native hedgerows and interior features of the building to be demolished (Building 12). There is no evidence to suggest that these features support species listed on Schedule 1 of the Wildlife and Countryside Act 1981 (as amended).

### 5.3 Potential to commit an offence

5.3.1 The vegetation clearance phase of the construction of the Park and Ride could result in an offence in relation to breeding birds under the Wildlife and Countryside Act 1981 (as amended). Details are provided in table 5-1.

**Table 5-1 Breeding birds – potential to commit an offence**

Wildlife and Countryside Act 1981 (as amended)	Offence likely in absence of the proposed strategy
To intentionally kill, injure or take any wild bird. (s1(1)).	Yes – to unfledged chicks during vegetation clearance or demolition of Building 12.
To intentionally or recklessly disturb any wild bird included in Schedule 1 while it is building a nest or is in, on or near a nest containing eggs or young; or to disturb dependent young of such a bird. (s1(5)(a)(b)).	No – birds listed on Schedule 1 have not been recorded breeding within the areas where vegetation clearance or building demolition is required.
To take or destroy an egg of any wild bird. (s1(1)(c)).	Yes – during removal of suitable nesting habitat (in vegetation or buildings).
To intentionally take, damage or destroy the nest of a wild bird included in Schedule ZA1.	No offence likely - birds listed in Schedule 1 have not been recorded breeding within the areas where vegetation clearance or building demolition is required.
To intentionally take, damage or destroy the nest of any wild bird while that nest is in use or being built.	Yes – during vegetation clearance and building demolition.

### 5.4 Proposed strategy

5.4.1 The following steps would be taken during construction to ensure legislation protecting birds would not be contravened:

- timing of vegetation clearance;

- supervision of vegetation clearance; and
- protection of retained vegetation.

### **Timing of vegetation clearance**

5.4.2 To avoid destroying an egg or eggs of a wild bird, or damaging or destroying the nest of a wild bird, vegetation suitable for supporting breeding birds would not be cleared during the bird breeding season (March-August, inclusive). Where this was not possible, vegetation would be cleared following pre-clearance checks and under the supervision of an Ecological Clerk of Works (ECoW) should it be determined birds and/or active nests are not present.

### **Supervision of vegetation clearance**

5.4.3 Pre-clearance checks would be carried out within all areas of vegetation clearance to determine the presence of active bird nests. This would involve an ECoW checking vegetation prior to the arrival on site of clearance contractors to avoid the risk of disturbance to birds from excessive movement of vehicles/people or through the noise of the hand tools used during the clearance works. This would also include times outside the main breeding season (March–August, inclusive) in habitats that support species that can breed before and/or after this period, such as barn owls, corvids and pigeons.

5.4.4 The pre-clearance check would firstly involve watching habitats to be cleared for birds frequently visiting the same area. This would indicate the presence of a nest. This stage would last for as long as the ECoW determines it is necessary. The second stage would be more intrusive and involve actively searching areas of thicker vegetation for nests.

5.4.5 If the pre-clearance check does not identify any active nests, then the clearance would be allowed to proceed but only with the continued supervision of the ECoW.

5.4.6 Should an active nest be identified, then works within its vicinity would stop and the ECoW would determine a suitable buffer zone around the nest within which no further clearance or other works would occur. This would be dependent on the type and density of vegetation surrounding the nest and the species present. A minimum buffer zone would be 5m from a nest but may be extended following advice from the ECoW. The buffer zone would be clearly marked using demarcation tape or fencing to ensure no works take place within that area. These would also be marked on an environmental constraints map and displayed in the site office as well as being issued to all contractors on site.

5.4.7 The ECoW would monitor activity at each nest to determine when it is no longer active so that works could continue. Once the ECoW determined that the nest is no longer active, the contractor would be allowed to proceed with vegetation clearance. The ECoW would be available on site should any further input/assistance be required.

### **Protection of retained vegetation**

5.4.8 Areas of retained vegetation within the Park and Ride would be clearly demarcated to ensure no accidental incursion of construction work.

## **5.5 Conclusion**

5.5.1 The Park and Ride could result in the contravention of the legislation with respect to birds as set out in paragraph 5.1.1. This would be from killing or injuring wild birds, destroying eggs and damaging or destroying nests. The strategy set out above would result in these offences being avoided.

## 6 Badger

### 6.1 Relevant legislation

6.1.1 The legislation relevant to the protection of badger with the potential to be affected during construction of the Park and Ride comprises:

- The Protection of Badgers Act 1992.

### 6.2 Baseline information

6.2.1 The badger baseline surveys undertaken in 2014 (appendix F9-4 Dalar Hir Badger Report. Application Reference Number: 6.6.20) identified one active outlier sett in a hedge bank on the northern boundary of the Park and Ride. Two possible outlier setts were also found in hedge banks both comprising single holes. However, these were outside of the boundary of the Park and Ride and were a sufficient distance away to not be affected during works.

### 6.3 Potential to commit an offence

6.3.1 A review of the potential for the development to result in an offence is detailed in table 6-1. This is based on the Park and Ride design avoiding all areas within 30m of the sett on the northern boundary of the Park and Ride.

**Table 6-1 Badger – potential to commit an offence**

<b>Protection of Badgers Act 1992</b>	<b>Offence likely in absence of the proposed strategy</b>
To wilfully kill, injure or take, or attempt to kill, injure or take a badger (s1(1)).	Yes – if badger are injured or killed by falling into and becoming trapped in excavations within the construction site.
To intentionally or recklessly disturb a badger when it is occupying a badger sett (s3(e)).	No – setts will be protected by a 30m works exclusion buffer zone.
To intentionally or recklessly obstruct access to, or any entrance of, a badger sett (s3(c)).	No – setts will be protected by a 30m works exclusion buffer zone.
To intentionally or recklessly damage a badger sett or any part of it or to destroy a badger sett (s3(a)(b)).	No – setts will be protected by a 30m works exclusion buffer zone.

### 6.4 Proposed strategy

6.4.1 The design of the Park and Ride includes work exclusion buffer zones around the badger sett. This would protect it from being affected by construction works and eliminate any potential for breaches in the legislation protecting it.

6.4.2 In summary, the following steps would be taken prior to construction to ensure legislation set out in paragraph 6.1.1 would not be contravened:

- pre-construction surveys;

- avoiding disturbance / damage (should badgers be confirmed present and affected by the works); and
- sett closure, under licence (should the sett be confirmed as active and affected by the works).

### ***Pre-construction surveys***

6.4.3 A pre-construction survey of the Park and Ride would be carried out prior to the start of construction, in order to identify whether any active badger setts were present and could be affected by the works. The survey timing would allow sufficient time to be available to allow for a licence application and sett closure before any activities which could contravene the legislation described in paragraph 6.1.1 were scheduled to commence.

### ***Avoiding killing or injury***

6.4.4 Badgers may enter construction areas and would therefore be at risk of injury or mortality from being trapped in excavations. This would be prevented by the following means:

- construction fencing would be installed and would deter badgers from entering the construction site;
- excavations with the potential to trap badgers would be covered at night if possible;
- the sides of excavations would either be gently sloped or a ramp would be installed to allow badgers to escape;
- excavations and materials stored on site would be checked daily for the presence of trapped animals by the ECoW; and
- if any badgers were found trapped during works then works would cease in that area, and an appropriate wildlife rescue organisation contacted for advice, whose details would be kept on site in contractors' compounds.

### ***Avoiding disturbance and damage***

6.4.5 If an active sett was recorded in close proximity to the construction works and did not need to be destroyed, it may be possible to alter working methods in that location. By reducing machinery sizes or working with hand tools, disturbance and damage could be adequately mitigated.

## ***Licensing***

6.4.6 If an active badger sett was discovered in close proximity to an area that is required for construction during the pre-construction survey or the construction period, work would cease in that area until a licence to interfere with a sett was obtained from NRW.

6.4.7 The most common form of mitigation associated with such a licence, if required, is sett exclusion. Badger licences are normally only granted for sett exclusions between July and November, which would be incorporated into the work schedule. However, depending on the nature of the work, its proximity to a sett and the type of sett, it may be possible to alter working methods to minimise disturbance to badgers or avoid damage to a sett.

6.4.8 An example methodology for both avoiding damage/disturbance and sett exclusion is set out in the following paragraphs.

## ***Sett exclusion***

6.4.9 The following methods could be used if a badger sett required exclusion under licence to interfere with a sett.

- All active sett entrances would be fitted with badger gates.
- After a bedding-in period, the gates would be set to one-way to effect exclusion, and would be monitored for 21 days. Once it had been confirmed that badgers were no longer using the sett, it would be excavated under the supervision of a licensed ecologist.

6.4.10 The excavation would be conducted to avoid collapsing any chambers within the sett because of the possibility of badgers remaining undetected. If any badgers were disturbed, all work would cease and they would be allowed to leave the area without interference.

6.4.11 Given that the risk of a main sett needing to be closed is extremely low, a replacement sett is unlikely to be required. If a replacement sett is required, sufficient land is considered to be available to allow an appropriate location to be found.

## **6.5 Conclusion**

6.5.1 There would be no direct effect on badger setts during the construction of the Park and Ride through the provision of work exclusion buffer zones embedded within the design. The potential for contravening the legislation afforded to badger would therefore be limited to injuring or killing, as a result of badger entering the construction site. By employment of the measures described above, it is considered unlikely that any breaches of the legislation protecting badgers described in paragraph 6.1.1 would occur.

## 7 Otter

### 7.1 Relevant legislation

7.1.1 The legislation relevant to the protection of otter with the potential to be affected during construction of the Park and Ride comprises:

- Wildlife and Countryside Act 1981 (as amended) – Schedule 5 species; and
- Conservation of Habitats and Species Regulations 2017 – Schedule 2 species.

### 7.2 Baseline information

7.2.1 There are 23 records of otter from within 2.5km of the boundary of the Park and Ride [RD1]. The nearest record is from 120m south of the Park and Ride in the Nant Dalar Hir, from 2007.

7.2.2 Surveys of the study area did not find any evidence of otter, although the Nant Dalar Hir and other ditches did have the potential for otter to use them, albeit probably only for foraging (Appendix F9-1. Application Reference Number: 6.6.17 and Appendix F9-5 Dalar Hir Water Vole Report. Application Reference Number 6.6.21). This is supported by the Wales Otter Report 2009-10 [RD3] showing records nearby and suggesting that Anglesey has an expanding otter population.

### 7.3 Potential to commit an offence

7.3.1 Otters use a number of watercourses in proximity to the Park and Ride, so there is a risk that a breeding site or resting place could be created in an affected area prior to construction of the Park and Ride, which could lead to an offence if it was damaged or destroyed. Details of potential offences under the legislation described in paragraph 7.1.1 are provided in table 7-1.

**Table 7-1 Otter – potential to commit an offence**

Conservation of Habitats and Species Regulations 2017	Wildlife and Countryside Act 1981 (as amended)	Offence likely in absence of the proposed strategy
To deliberately capture, injure or kill any wild animal of an EPS (Reg. 43(1)(a)).	-	No offence likely – mobile species would avoid construction works.
To deliberately disturb wild animals of an EPS [wherever they are occurring] (Reg. 43(1)(b)). Reg. 43(2)(a)(i) For the purposes of Reg. 43(1)(b), disturbance of animals includes in particular any disturbance which is likely to impair their ability to survive, to breed or reproduce, or to rear or nurture their young.	-	No offence likely – no hauls recorded and the limited nature of the works would not be considered to disturb at this scale.

Conservation of Habitats and Species Regulations 2017	Wildlife and Countryside Act 1981 (as amended)	Offence likely in absence of the proposed strategy
To deliberately disturb wild animals of an EPS [wherever they are occurring] (Reg. 43(1)(b)).  Reg. 43(2)(a)(ii) For the purposes of Reg. 43(1)(b), disturbance of animals includes in particular any disturbance which is likely to impair their ability, in the case of animals of a hibernating or migratory species, to hibernate or migrate.	-	No offence likely – no holts recorded and the limited nature of the works would not be considered to disturb at this scale.
To deliberately disturb wild animals of an EPS [wherever they are occurring] (Reg. 43(1)(b)).  Reg. 43(2)(b) For the purposes of Reg. 43(1)(b), disturbance of animals includes in particular any disturbance which is likely to affect significantly the local distribution or abundance of the species to which they belong.	-	No offence likely – no holts recorded and the limited nature of the works would not be considered to disturb at this scale.
To damage or destroy a breeding site or resting place of a wild animal of an EPS (Reg. 43(1)(d)).	-	No offence likely – no holts recorded and the limited nature of the works would not be considered to disturb at this scale.
-	To intentionally or recklessly disturb any wild animal listed on schedule 5 while it is occupying a structure or place which it uses for shelter or protection (s9(4)(b)).	No offence likely – no holts or resting places have been recorded in the proposed scheme footprint.
-	To intentionally or recklessly obstruct access to any structure or place which any Schedule 5 animal uses for shelter or protection (s9(4)(c)).	No offence likely – no holts or resting places have been recorded in the proposed scheme footprint.

## 7.4 Proposed strategy

7.4.1 No offences are considered likely to occur as no otter holts or resting places have been recorded within the Park and Ride site. However, there is a minor risk that otters could create a holt in the intervening period before construction commences. The following steps would be taken during construction to ensure legislation protecting otter would not be contravened:

- pre-construction surveys; and
- supervision of works by an ECoW.

### ***Pre-construction survey***

- 7.4.2 A pre-construction survey would be completed before any works to ditches or works in close proximity to the Nant Dalar Hir commence. This would survey for evidence of holts and laying-up sites that could be affected, and would include areas up to 50m from the boundary of the Park and Ride, as these could be affected by indirect effects e.g. noise and vibration.
- 7.4.3 This pre-construction survey may extend in duration should features be found where their usage is unclear. This would include burrows or holes, and could involve the use of camera traps, for a period of time determined by the ECoW.
- 7.4.4 In the unlikely event that a holt or lay-up site is identified, any work which could affect it and lead to contravention of the legislation described in paragraph 7.1.1 would be put on hold. NRW would be consulted with regard to the need to obtain an EPSML to allow works to continue. Details on licensing requirements are given in section 3.

### ***Supervision of works***

- 7.4.5 Supervision of works would only be required in the event that a feature that could be a holt or lay-up site is found where reasonable effort has shown that risk of otter presence is negligible, but a residual risk remains. Supervision would be undertaken by an ECoW who would establish whether features were being used by otter and whether they were present.
- 7.4.6 In the unlikely event that a holt or lay-up site is identified, further work that could lead to contravention of the legislation described in paragraph 7.1.1 would be put on hold. NRW would then need to be consulted with regard to the need to obtain an EPSML to allow works to continue.

## **7.5 Conclusion**

- 7.5.1 Although otters are present within the wider catchment, it is considered that there is currently a low risk that the legislation set out in paragraph 7.1.1 would be contravened. The proposed strategy provides measures to ensure that the risks are managed throughout construction.

## 8 Water vole

### 8.1 Relevant legislation

8.1.1 The legislation relevant to the protection of water vole with the potential to be affected during construction of the Park and Ride comprises:

- Wildlife and Countryside Act 1981 (as amended) – Schedule 5 species.

### 8.2 Baseline information

8.2.1 There are more than 40 records of water vole within 2.5km of the boundary of the Park and Ride site [RD1]. The nearest record is 230m west of the Park and Ride, recorded in 2007.

8.2.2 The baseline terrestrial ecology survey report (appendix F9-5 Application Reference Number: 6.6.21) found evidence of water vole on the Nant Dalar Hir within the boundary of the Park and Ride site. No evidence of water vole was found within Ditch 7, which is likely to be affected by the construction of the Park and Ride.

### 8.3 Potential to commit an offence

8.3.1 As a result of the Park and Ride, there is a risk that water vole could be disturbed, injured or killed, that use of their protection or sheltering structures could be obstructed, or that their protection or sheltering structures could be damaged or destroyed, as detailed in table 8-1.

**Table 8-1 Water vole – potential to commit an offence**

Wildlife and Countryside Act 1981 (as amended)	Offence likely in absence of the proposed strategy
To intentionally kill, injure or take any wild animal included in Schedule 5 (s9(1)).	Yes – if water vole were present within the construction extent of the Park and Ride.
To intentionally or recklessly disturb any wild Schedule 5 animal while it is occupying a structure or place which it uses for shelter or protection (s9(4)(b)).	Yes – water vole have been recorded within the boundary of the Park and Ride.
To intentionally or recklessly obstruct access to any structure or place which any Schedule 5 animal uses for shelter or protection (s9(4)(c)).	Yes – if water vole burrows were present within the construction extent of the Park and Ride.
To intentionally or recklessly damage or destroy any structure or place which any wild animal specified in Schedule 5 uses for shelter or protection (s9(4)(a)).	Yes – if water vole burrows were present within the construction extent of the Park and Ride.

## 8.4 Proposed strategy

8.4.1 The following paragraphs set out the steps that would be taken prior to the construction of the Park and Ride to ensure the legislation protecting water vole, detailed in paragraph 8.1.1, was not contravened. In summary it will take the following form:

- avoidance of impacts to habitats with the potential to support water vole;
- pre-construction survey to update water vole activity in watercourses affected by the Park and Ride; and
- displacement and destructive searching under a conservation licence issued by NRW.

### ***Avoidance of habitats***

8.4.2 Mitigation through avoidance is the primary method by which effects on water vole would be addressed.

8.4.3 As described in volume F, chapter 1 to the Environmental Statement, the design for the Park and Ride avoids impacts to the Nant Dalar Hir, with the exception of small scale drainage infrastructure installation, and the provision of a clear-span bridge as the means of providing the necessary watercourse crossing.

8.4.4 This will minimise the impacts to bankside vegetation and associated water vole burrows which may be present.

8.4.5 Whilst the use of a clear-span bridge reduces effects, works could still result in breaches of legislation affecting water vole. Pre-construction surveys, supervision and licensing may therefore still be required in line with the methods outlined below.

### ***Pre-construction surveys***

8.4.6 A pre-construction survey would be completed before any works in close proximity to the Nant Dalar Hir would take place. This would look for evidence of water vole, including burrows, latrines and feeding remains, and would include areas up to 50m from the locations of working near the Nant Dalar Hir, as these could be affected by indirect effects e.g. noise and vibration.

8.4.7 The pre-construction survey may extend in duration and delay construction works starting should features be found where their origins are unclear. This would include burrows or holes, and could involve the use of camera traps to establish usage.

8.4.8 In the unlikely event that evidence of water vole presence is identified, any work which could lead to contravention of the legislation described in paragraph 8.1.1 would be put on hold. NRW would then need to be consulted with regard to the need to obtain a conservation licence to allow works to continue. Details on licensing requirements are given in section 2.2.

### ***Displacement and destructive searching***

- 8.4.9 As described above, should the pre-construction survey identify water vole burrows in the areas of habitat directly affected by works to watercourses, then a conservation licence from NRW would need to be obtained. This would not only define the exact details of how water vole would be protected but also identify how enhancements for water vole would be provided.
- 8.4.10 Displacement of water vole through habitat manipulation may be appropriate if the area affected was less than 50m in length, which is likely to be the case for the installation of drainage and the construction of a clear-span bridge. Displacement involves the deliberate removal of vegetation around water vole burrows by strimming, making the habitat unsuitable and therefore encouraging the water vole to relocate to adjacent unaffected habitat. This technique can be used in a specific timeframe only: 15 February to 14 April, inclusive [RD4].
- 8.4.11 A destructive search would follow displacement of water vole. Should a small number of burrows be affected, they would be excavated by hand and animals caught would be released into adjacent areas of habitat either up or downstream of the affected area.
- 8.4.12 If large numbers of burrows were found, fencing followed by trapping and translocation would be undertaken (permitted 1 March to 15 April and 15 September to 30 November, inclusive). Trapping details and duration would be detailed in the conservation licence and would be dependent on the number of burrows, and the predicted number of water vole present. Fencing would remain in place for the duration of the construction period in each trapped area, and would be removed as soon as possible.
- 8.4.13 The installation of a 15m buffer zone either side of the Nant Dalar Hir within the Park and Ride would remove grazing pressure and allow dense and species-rich riparian vegetation to develop. This would lead to an increase in habitat quality for water vole.

## **8.5 Conclusion**

- 8.5.1 Water vole are known to be present within the Nant Dalar Hir and there is a risk that the legislation protecting the species, detailed in paragraph 8.1.1, could be contravened as a result of construction of the Park and Ride. This would be avoided by a pre-construction survey and, if required, displacement through habitat clearance, trapping and translocation. These measures would be completed under a conservation licence issued by NRW.

## 9 Schedule 9 Invasive Species

### 9.1 Relevant legislation

9.1.1 The legislation relevant to the control of invasive species of plant are:

- Wildlife and Countryside Act 1981 (as amended) – Schedule 9 species; and
- Environmental Protection Act 1990 (see section 2.1.3).

### 9.2 Baseline information

9.2.1 Japanese knotweed, montbretia and Canadian pondweed were recorded at various locations within the proposed site during the extended Phase 1 survey (appendix F9-1 Application Reference Number: 6.6.17).

### 9.3 Potential to commit an offence

9.3.1 The greatest risk of contravening the legislation relating to Schedule 9 species is during the vegetation clearance phase of the works.

9.3.2 In relation to the offence of introducing non-native species to the wild, the disposal of waste from controlled species such as Japanese knotweed comes under the Environmental Protection Act 1990. No other aspects of this legislation are considered. These are summarised in table 9-1 below.

**Table 9-1 Invasive non-native species – potential to commit an offence**

Wildlife and Countryside Act 1981 (as amended)	Environmental Protection Act 1990	Offence likely in absence of the proposed strategy
To plant or otherwise cause to grow in the wild any plant which is included in Part II of Schedule 9 (s14 (2)).	-	Yes – through the spread of Schedule 9 plants from existing plants within the Park and Ride site boundary as a result of construction works or importation of plants from outside the Park and Ride site.
-	Section 33 (1a) and (1b) set out offences dealing with the deposit, treating, keeping or disposing of controlled waste without a permit. Section 33 (1)(c) makes it an offence to keep, treat or dispose of controlled waste in a manner likely to cause pollution of the environment.	Yes – by management and disposal of existing plants cleared from site.

## 9.4 Proposed strategy

9.4.1 The following steps would be taken prior to construction to ensure legislation relating to Schedule 9 species would not be contravened:

- pre-construction surveys;
- provision and implementation of a sub-Code of Construction Practice (sub-CoCP); and
- environmental permitting from NRW, if required.

### ***Pre-construction surveys***

9.4.2 Pre-construction surveys would be undertaken to record the location and extent of Schedule 9 species within the Park and Ride. An updated assessment of control measures required, including waste disposal, would then be made and incorporated into a sub-CoCP.

### ***Sub-Code of Construction Practice***

9.4.3 The Park and Ride sub-CoCP details control and, if necessary, eradication methods for the invasive species present, using best practice guidance publications e.g. [RD5]. Other measures to avoid accidental incursion into invasive species areas could include the following.

- Fencing and/or clear demarcation with hazard warning tape.
- Clear demarcation of haulage routes in areas of invasive species. If haulage routes are required to pass through exclusion zones, appropriate methods to prevent contact with the soil would be implemented, such as the installation of tracking.
- Implementation of biosecurity measures to include prevention of introduction or transfer of invasive non-native species across construction working areas by machinery or personnel and the suitable procurement and screening of planting stock to prevent accidental introduction of invasive species.
- Obtaining an environmental permit from NRW to remove any soil contaminated with Japanese knotweed. This would mean that disposal of the soil would only be permitted at landfill sites that are licensed to receive hazardous waste of this type or buried on site under a method statement agreed with NRW.

### ***Environmental permit***

- An environmental permit from NRW would need to be secured to remove any soil contaminated with Japanese knotweed. Disposal of the soil would only be permitted at landfill sites that are licensed to receive hazardous waste of this type, or it could be buried on site under a method statement agreed with NRW.

## **9.5 Conclusion**

9.5.1 The approach outlined provides actions and commitments which would minimise the risk that an offence was committed under the legislation set out in paragraph 9.1.1.

## 10 Fish

### 10.1 Relevant legislation

10.1.1 The legislation relevant to the protection of fish with the potential to be affected during construction of the Park and Ride comprises:

- The Eels (England and Wales) Regulations 2009 (as amended).

### 10.2 Baseline information

10.2.1 Electric-fishing surveys were conducted within the Park and Ride and a 500m buffer to identify the presence of fish and identify species. These included surveys of three sites, with incidental sightings recorded for a further five sites ([RD2] and appendix F9-10 Dalar Hir Freshwater Ecology Report. Application Reference Number: 6.6.26).

10.2.2 European eel, three-spined stickleback (*Gasterosteus aculeatus*) and nine-spined stickleback (*Pungitius pungitius*) were all identified in the Nant Dalar Hir. Ditch 7 ([RD2] and appendix F9-10 Application Reference Number: 6.6.26), which would be culverted, was not found to be suitable to support fish.

### 10.3 Potential to commit an offence

10.3.1 Works to install culverting and drainage infrastructure could result in an offence in relation to the legislation as detailed in table 10-1.

**Table 10-1 Fish – potential to commit an offence**

<i>The Eels (England and Wales) Regulations 2009 (as amended).</i>	<i>Salmon and Freshwater Fisheries Act 1975 (as amended)</i>	<i>Offence likely in absence of mitigation</i>
To construct, alter or maintain a dam or structure and failing to notify the Agency (NRW) first will be guilty of an offence (Part 4, 12 (1), (2).(4).)	-	No offence likely - there are no new culverts/structures proposed that would cause obstruction.
	To cause or knowingly permit to flow, or put or knowingly permit to be put, into any waters containing fish or into any tributaries of waters containing fish, any liquid or solid matter to such an extent as to cause the waters to be poisonous or injurious to fish or the spawning grounds, spawn or food of fish, shall be guilty of an offence. (Part I, 4 (1)).	No offence likely - the Park and Ride would be constructed using good practice mitigation measures, as set out in the chapter F8, Volume F of the Environmental Statement, in relation to pollution prevention.

## 10.4 Proposed strategy

10.4.1 The proposed strategy to avoid contravening legislation includes the following.

- appropriate environmental management of construction working areas and the construction compounds; and,
- the use of good practice industry standards during construction such as those set out within chapter F8 to prevent pollution of watercourses.

## 10.5 Conclusion

10.5.1 The implementation of mitigation measures set out above means that no offences would be likely with regard to the legislation set out in paragraph 10.1.1.

## 11 References

ID	Reference
RD1	Cofnod. 2017. <i>Data search of protected species within 2km of the Park and Ride (National Grid Reference SH 32809 78383)</i> . Unpublished data provided by Cofnod to Horizon.
RD2	Jacobs. 2017. <i>Consultancy Report: Dalar Hir Freshwater Surveys</i> . Unpublished report on behalf Horizon Nuclear Power Wylfa Ltd. Ref. No. WN03.01.01-S5-PAC-REP-00019.
RD3	Strachan, R. 2010. <i>Wales Otter Report 2009-10</i> . Natural Resources Wales: Cardiff.
RD4	Dean, M., Strachan, R., Gow, D. and Andrews, R. 2016. <i>The Water Vole Mitigation Handbook (The Mammal Society Mitigation Guidance Series)</i> . The Mammal Society: London.
RD5	Natural England, Department for Environment, Food & Rural Affairs, and Environment Agency. 2016. <i>Guidance: Prevent harmful weeds and invasive non-native plants spreading</i> . [Online] [Accessed: June 2017] Available from <a href="https://www.gov.uk/guidance/prevent-the-spread-of-harmful-invasive-and-non-native-plants">https://www.gov.uk/guidance/prevent-the-spread-of-harmful-invasive-and-non-native-plants</a> .