

# **M25 junction 28 improvement scheme**

## **TR010029**

### **6.3 Environmental Statement**

#### **Appendix 7.1: Biodiversity legislation**

APFP Regulation 5(2)(a)  
Planning Act 2008

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



## **Infrastructure Planning**

### **Planning Act 2008**

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

### **M25 junction 28 scheme Development Consent Order 202[x ]**

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#### **6.3 ENVIRONMENTAL STATEMENT APPENDIX 7.1: BIODIVERSITY LEGISLATION**

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# **Appendix 7.1**

## **Biodiversity legislation**

## 7. Biodiversity legislation

### 7.1 Summary of relevant ecological legislation in England

Table 7.1: Summary of relevant ecological legislation in England for designated sites

Site Designation	Legislation	Protection	Guidance
<b>Special Area of Conservation (SAC)</b>  <b>Special Protection Area (SPA)</b>  <b>Wetland of International Importance (Ramsar site)</b>	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 National Planning Policy Framework (Department for Communities and Local Government, March 2012), with particular reference to Policy 11. The Government Circular: Biodiversity and Geological Conservation - Statutory Obligations and their Impact within the Planning System (ODPM Circular 6/2005 & Defra Circular 01/2005) (the joint Circular).
<b>Site of Special Scientific Interest (SSSI)</b>	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 National Planning Policy Framework (Department for Communities and Local Government, March 2012), with particular reference to Policy 11, and the joint Circular.
<b>Local Nature Reserve (LNR)</b>	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 National Planning Policy Framework (Department for Communities and Local Government, March 2012), with particular reference to Policy 11, and the joint Circular.
<b>Local Sites (eg Sites of Nature Conservation Interest, Conservation Verges)</b>	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. Guidance documents: The National Planning Policy Framework (Department for Communities and Local Government, March 2012), with particular reference to Policy 11, and the joint Circular.

Table 7.2: Summary of relevant ecological legislation in England for habitats and species

Habitats & Species	Legislation	Guidance
Species and Habitats of Principal Importance for the Conservation of Biodiversity	Natural Environment & Rural Communities Act 2006 S.40	<p>S.40 of the NERC Act 2006 sets out the duty for public authorities to conserve biodiversity in England.</p> <p>Habitats and species of principal importance for the conservation of biodiversity are identified by the Secretary of State for England, in consultation with Natural England, are referred to in S.41 of the NERC Act for England. The list, known as the ‘England Biodiversity List’, of habitats and species can be found on the Natural England web site.</p> <p>The ‘England Biodiversity List’ is used as a guide for decision makers such as public bodies, including local and regional authorities, in implementing their duty under Section 40 of the NERC Act 2006 to have regard to the conservation of biodiversity in England when carrying out their normal functions.</p> <p>Ecological impact assessments should include an assessment of the likely impacts to these habitats and species.</p>
Biodiversity Action Plan (BAP) Habitats & Species	No specific legislation, unless it is also a species or habitat of principal importance as described above.	<p>The Biodiversity Action Plan (BAP) is the UK’s initiative to maintain and enhance biodiversity in response to the Convention on Biological Diversity signed in 1992.</p> <p>The UK BAP was used to draw up the ‘England Biodiversity List’ and has been succeeded by the UK Post-2010 Biodiversity Framework in 2012, due to a change in government strategy by all UK countries, focussing on managing the environment as a whole rather than dealing with different aspects of biodiversity and environment separately. However, the UK BAP list of priority habitats and species continue to be regarded as conservation priorities in the UK Post-2010 Biodiversity Framework (JNCC &amp; Defra 2012).</p>
Water environment	Water Framework Directive (2000/60/EC)	<p>The Water Framework Directive aims to protect and enhance the quality of the water environment. The WFD requires all, natural surface water bodies to achieve both Good Chemical Status and Good Ecological Status. Artificial and Heavily Modified Water Bodies may be prevented from reaching Good Ecological Status due to the modifications necessary to maintain their function, e.g. navigation. They are, however, required to achieve Good Ecological Potential, through the implementation of a series of mitigation measures.</p> <p>The WFD also requires good status (both qualitative and quantitative) to be achieved for all ground water bodies and the prevention of the deterioration in groundwater status. In addition, it requires the achievement of objectives and standards for protected areas; and the reversal of significant and sustained upward trends in pollutant concentrations in groundwater.</p> <p>Status is reported at the water body scale, with individual water bodies forming part of larger river basin districts (RBD), for which river basin management plans (RBMPs) have been developed.</p> <p>This RBMP is designed to protect and improve the quality of the water environment. It includes consideration of the following topics:</p> <ul style="list-style-type: none"><li>• Plans for the protection and improvement of the water environment;</li><li>• Future plans that may affect the infrastructure sector and its obligations;</li><li>• Development proposal considerations regarding the requirements of the plan; and</li><li>• Environmental permit applications</li></ul> <p>The first RBMPs were published in 2009 followed by a Cycle 2 update published in 2016.</p>

Table 7.3: Summary of relevant ecological legislation in England for protected species

Species	Legislation	Offences	Licensing procedures and guidance
<b>Bats</b> (European protected species)	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: <ul style="list-style-type: none"><li>• NE Standing Advice for protected species 2013</li><li>• European Protected Species: Mitigation Licensing- How to get a licence (NE 2013)</li><li>• Bat Mitigation Guidelines (English Nature 2004)</li><li>• Bat Workers Manual (JNCC 2004)</li></ul>
	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.
<b>Great crested newt</b> (European protected species)	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.	Licences issued for development by Natural England. Guidance documents: <ul style="list-style-type: none"><li>• NE Standing Advice for protected species 2013</li><li>• European Protected Species: Mitigation Licensing- How to get a licence (NE 2013)</li><li>• Great Crested Newt Mitigation Guidelines (English Nature 2001)</li></ul>
	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.
<b>Adder</b> <b>Common lizard</b> <b>Grass snake</b> <b>Slow worm</b>	Wildlife and Countryside Act 1981 S.9(1) and S.9(5)	Intentionally kill or injure any common reptile species.	No licence is required. 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: NE Standing Advice for protected species 2013
<b>Hazel dormouse</b> (European protected species)	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: <ul style="list-style-type: none"><li>• NE Standing Advice for protected species 2013</li><li>• European Protected Species: Mitigation Licensing- How to get a licence (NE 2013)</li><li>• Dormouse Conservation Handbook (English Nature 2006)</li></ul>
	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 hazel dormouse in such a place.	Licence issued for survey and conservation by Natural England.
<b>Otter</b> (European protected species)	Conservation of Habitats and Species Regulations 2017 Reg 43	Deliberately <sup>1</sup> capture, injure or kill an otter; deliberate disturbance <sup>2</sup> of otters; or damage or destroy a breeding site or resting place used by an otter.	Licences issued for development by Natural England. Guidance documents: <ul style="list-style-type: none"><li>• NE Standing Advice for protected species 2013</li><li>• European Protected Species: Mitigation Licensing- How to get a licence (NE 2013)</li></ul>
	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> an otter in such a place.	No licence is required for survey in England. However, a licence would be required if the survey methodology involved disturbance.
<b>Water vole</b>	Wildlife and Countryside Act 1981 (as amended) S.9	Intentionally kill, injure or take water voles; intentionally or recklessly damage, destroy or obstruct access to any structure or place used for shelter or protection or disturb a water vole in such a place.	Conservation licences issued for trapping and translocation operations by Natural England. Certain displacement operations can be carried out under a class licence. Guidance documents:

<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.

Species	Legislation	Offences	Licensing procedures and guidance
			<ul style="list-style-type: none"> <li>The Water Vole Conservation Handbook (R. Strachan &amp; T. Moorhouse, Wildlife Conservation Research Unit, 3rd Edition 2011)</li> <li>Water voles and development licensing policy - NE Technical Information Note TIN042 2008</li> <li>NE Standing Advice for protected species 2013</li> <li>The Water Vole Mitigation Handbook (M. Dean, R. Strachan, D. Gow &amp; R. Andrews 2016)</li> </ul>
<b>Birds</b>	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: NE Standing Advice for protected species 2013</p>
<b>Badger</b>	Protection of Badgers Act 1992 (as amended)	<p>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.</p> <p>[It is not illegal to carry out disturbance activities in the vicinity of setts that are not occupied.]</p>	<p>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.</p> <p>Licences are normally not granted from December to June inclusive because cubs may be present within setts.</p> <p>Guidance documents:</p> <ul style="list-style-type: none"> <li>NE Standing Advice for protected species 2013</li> <li>Badgers &amp; Development (NE 2007)</li> </ul>
<b>White-clawed crayfish</b>	Wildlife and Countryside Act 1981 S.9(1) only	Intentionally take from the wild.	<p>Licences issued by Natural England for survey (to take crayfish by hand, by hand net or by crayfish trap). Use of crayfish traps for survey requires Environment Agency consent.</p> <p>Using crayfish traps to remove crayfish for maintenance or development activities in a watercourse requires a conservation licence from Natural England and a permit from the Environment Agency.</p> <p>No licences in respect of development are available.</p> <p>Guidance documents: NE Standing Advice for protected species 2013</p>
<b>Rabbits, foxes and other wild mammals</b>	Wild Mammals (Protection) Act 1996	Intentionally inflict unnecessary suffering to any wild mammal.	<p>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.</p> <p>Lawful and humane pest control of these species is permitted.</p>
<b>Plants</b> (European protected species)	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).	<p>Licences can be issued for science, education and conservation and also in respect of a development if it is of over-riding public interest.</p> <p>Guidance documents:</p> <ul style="list-style-type: none"> <li>NE Standing Advice for protected species 2013</li> <li>European Protected Species: Mitigation Licensing- How to get a licence (NE 2013)</li> <li>Guidance on sampling rare aquatic plants, NE 2009</li> </ul>
<b>Plants</b> (Nationally protected species)	Wildlife and Countryside Act 1981 S.13 (Schedule 8)	Intentionally pick, uproot or destroy any wild plant on Schedule 8	<p>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 &amp; Countryside Act 1981 (as amended).</p> <p>No licence is required for survey in England. Guidance on survey techniques is available from Natural England.</p> <p>Guidance documents: NE Standing Advice for protected species 2013</p>

Species	Legislation	Offences	Licensing procedures and guidance
<b>Plants</b> (Invasive species e.g. Japanese knotweed, hybrid knotweed, giant knotweed, giant hogweed, rhododendron, Himalayan balsam)	Wildlife and Countryside Act 1981 S.14	It is illegal to plant or otherwise cause these species to grow in the wild.	<p>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.</p> <p>Guidance documents:</p> <ul style="list-style-type: none"><li>• The Knotweed Code of Practice (Environment Agency, 2013 version 3)</li><li>• Managing Invasive Non-native Plants (Environment Agency 2010)</li><li>• Guidance on Section 14 of the Wildlife and Countryside Act, 1981 (Defra 2010)</li></ul>

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