

The Drax Power (Generating Stations) Order

Land at, and in the vicinity of, Drax Power Station, near Selby, North Yorkshire

Environmental Statement

Appendix 9.1 - Biodiversity Legislation and Policy



The Planning Act 2008
The Infrastructure Planning (Applications: Prescribed Forms and Procedure)
Regulations 2009 – Regulation 5(2)(a)

Drax Power Limited

Drax Repower Project

Applicant: DRAX POWER LIMITED
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ENGLAND & WALES LEGISLATION AND POLICY CONTEXT

The Wildlife and Countryside Act 1981, (as amended) (WCA)

Protected birds, animals and plants are listed under Schedules 1, 5, 8 and 9 respectively of the WCA, a description of these Schedules and their meaning is provided below.

Under the WCA (England and Wales) all birds, their nests and eggs (with exception of species listed under Schedule 2) are protected by the WCA. It is an offence to:

- Intentionally kill, injure, or take any wild bird,
- Take or destroy an egg of any wild bird.
- Damage or destroy the nest of any wild bird (whilst being built, or in use). Under the WCA the clearance of vegetation within the survey area boundary, or immediately adjacent to the survey area during the bird nesting season could result in an offence occurring by the disruption or destruction of nest sites. The bird breeding season can be taken to occur between March - August inclusive, although is subject to variations based on species, geographical and seasonal factors.

Schedule 1

Birds listed under Schedule 1 of the WCA¹ are afforded additional protection with regard to intentional or reckless disturbance whilst nest-building, or at a nest containing eggs or young, or disturb the dependent young of such a bird.

Schedule 5

Species listed in Schedule 5 can either be fully protected or be partially protected under Section 9, which makes it unlawful to intentionally:

- Part 1: kill, injure or take;
- Part 2: possess or control (live or dead animal, part or derivative);
- Part 4 (a): damage or destruct any structure used for shelter or protection;
- Part 4 (b): disturb them in a place of shelter or protection;
- Part 4 (c): obstruct access to place of shelter or protection;
- Part 5 (a): sell, offer for sale, possess or transport for the purpose of sale (live or dead animal, part or derivative);
- Part 5 (b): advertise for buying or selling.

Schedule 8

The Act makes it an offence (subject to exceptions) to pick, uproot, trade in, or possess (for the purposes of trade) any wild plant listed in Schedule 8, and prohibits the unauthorised intentional uprooting of such plants.

Schedule 9

Invasive species listed under Schedule 9 are prohibited from release into the wild and the Act prohibits planting or “causing to grow” in the wild of any plant species listed in Schedule 9. It

¹ To view the current list of Schedule 1 listed birds visit:
<http://www.legislation.gov.uk/ukpga/1981/69/schedule/1> [Accessed online 01.03.2017].

should be noted that certain bird species listed on Schedule 1 of the WCA are also listed on Schedule 9 to prevent release of non-native and captive individuals, this includes barn owl, red kite, goshawk and corncrake.

[Countryside Rights of Way Act 2000 \(CRoW Act\)](#)

The CRoW Act has amended the WCA in England and Wales strengthening the protection afforded to Sites of Special Scientific Interest (SSSI) and the legal protection for threatened species. It adds the word 'reckless' to the wording of the offences listed under Section 9(4) of the WCA. This alteration makes it an offence to recklessly commit an offence, where previously an offence had to be intentional to result in a breach of legislation.

[Natural Environment and Rural Communities \(NERC\) Act 2006](#)

Species and Habitats of Principal Importance in England and Wales are listed under Section 41 and Section 42 respectively of the NERC Act. The Section 41 and 42 lists detail species that are of principal importance for the conservation of biodiversity in England and Wales, and should be used to guide decision-makers such as local and regional authorities when implementing their duty to have regard for the conservation of biodiversity in the exercise of their normal functions – as required under Section 40 of the NERC Act 2006.

[The Protection of Badgers Act \(1992\)](#)

It is an offence to wilfully take, kill, injure, possess or ill-treat a badger. Under the Act their setts are protected against intentional or reckless interference. Sett interference includes damaging or destroying a sett, obstructing access to any part of the sett, or disturbance of a badger whilst it is occupying a sett. The Act defines a badger sett as 'any structure or place, which displays signs indicating the current use by a badger' and Natural England (NE) takes this definition to include seasonally used setts that are not occupied but that show sign of recent use by badgers (Natural England, 2009²).

If impacts to badgers or their setts are unavoidable then authorised sett disturbance requires a licence.

[The UK Post-2010 Biodiversity Framework \(2011-2020\) \(JNCC and DEFRA, 2012\)](#)

This Framework lists the UK's most threatened species and habitats and sets out targets and objectives for their management and recovery. The UK Biodiversity Action Plan (BAP) process is delivered nationally, regionally and locally and should be used as a guide for decision-makers to have regards for the targets set by the framework and the goals they aim to achieve. The UK BAP has now been replaced by the UK Post-2010 Biodiversity Framework, however, it contains useful information on how to characterise important species

² Natural England, June 2009, Protection of Badgers Act 1992 (as amended), Guidance on 'Current Use' in the definition of a Badger Sett WMLG17, Natural England, Peterborough.

assemblages and habitats which is still relevant (UK Post-2010 Biodiversity Framework, 2012³).

The Conservation of Habitats and Species Regulations 2017

The Conservation of Habitats and Species Regulations 2017 consolidate the Conservation of Habitats and Species Regulations 2010 with subsequent amendments. The Regulations transpose Council Directive 92/43/EEC, on the conservation of natural habitats and of wild fauna and flora (EC Habitats Directive), into national law. They also transpose elements of the EU Wild Birds Directive in England and Wales. The Regulations came into force on 30th November 2017, and extend to England and Wales (including the adjacent territorial sea) and to a limited extent in Scotland (reserved matters) and Northern Ireland (excepted matters). In Scotland, the Habitats Directive is transposed through a combination of the Habitats Regulations 2010 (in relation to reserved matters) and the Conservation (Natural Habitats &c.) Regulations 1994. The Conservation (Natural Habitats, &c) Regulations (Northern Ireland) 1995 (as amended) transpose the Habitats Directive in relation to Northern Ireland.

All species listed under Annex IV of the Habitats Directive require strict protection and are known as European Protected Species (EPS). Under Regulation 42 of the Habitats Regulations it is unlawful to:

- Deliberately kill, capture or disturb;
- Deliberately take or destroy the eggs of; and
- Damage or destroy the breeding site/resting place of any species protected under this legislation.

If the Ecologist determines that impacts to an EPS are unavoidable then the works may need to be carried out under a site specific mitigation licence from Natural England (NE) or Natural Resources Wales (NRW). Low Impact Class licences are also available in both England and Wales for bats and great crested newts. This enables Registered Low Impact Consultants to undertake certain low impact activities reducing the EPS application paperwork and process length.

Certain EPS are also listed under Annex II of the Habitats Directive and are afforded protection by the establishment of core areas of habitat known as Special Areas of Conservation. This means these species are a relevant consideration in a Habitats Regulations Assessment (HRA).

The Birds Directive seeks to maintain populations of all wild bird species across their natural range (Article 2). All bird species listed under Annex I⁴ of the Birds Directive are rare or

³ JNCC and Defra (on behalf of the Four Countries' Biodiversity Group), July 2012, UK Post-2010 Biodiversity Framework, Available from: http://jncc.defra.gov.uk/pdf/UK_Post2010_Bio-Fwork.pdf [Accessed online 02.03.2017].

⁴ To view birds listed under Annex I visit: http://ec.europa.eu/environment/nature/conservation/wildbirds/threatened/index_en.htm [accessed online 06042017]

vulnerable and afforded protection by the classification of Special Protection Areas (SPAs), these are also designated under all regularly occurring migratory species, with regard to the protection of wetlands of international importance (Article 4). This means these bird species and communities are a relevant consideration in HRA.

Table A:1: Key Species and National Wildlife Legislation, Policy and Biodiversity Framework Applicable in England & Wales

Species	Legislation, Planning Policy and UK Biodiversity Framework							
	Wildlife and Countryside Act 1981 (as amended), (WCA)				The Conservation of Habitats and Species Regulations 2010 (as amended) (Habitats Regulations) - Regulation 41	Natural Environment and Rural Communities (NERC) Act 2006 / The Environment(Wales) Act (2016)	The Protection of Badgers Act 1992	The UK Post-2010 Biodiversity Framework 2011-2020 (JNCC and DEFRA, 2012)
	Schedule 1	Schedule 5	Schedule 8	Schedule 9	European Protected Species (Annex IV of the EC Habitats Directive),			
Badger							☐	

Table A:1: Key Species and National Wildlife Legislation, Policy and Biodiversity Framework Applicable in England & Wales

Species	Legislation, Planning Policy and UK Biodiversity Framework							
Bats		<input type="checkbox"/> ⁵ (part)			<input type="checkbox"/> ⁶	<input type="checkbox"/> ⁷		<input type="checkbox"/> ⁸
Hazel Dormouse		<input type="checkbox"/> 5(part)			<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Otter		<input type="checkbox"/> 5(part)			<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Water vole		<input type="checkbox"/> ⁹ (full)				<input type="checkbox"/>		<input type="checkbox"/>
Birds	<input type="checkbox"/>			<input type="checkbox"/> ¹⁰		<input type="checkbox"/> ¹¹		<input type="checkbox"/> ¹²

⁵ These species are partially protected under section 9(4)(b), (4)(c) and (5).

⁶ Only Barbastelle (*Barbastella barbastellus*), Bechstein’s bat (*Myotis bechsteinii*), greater horseshoe bat (*Rhinolophus ferrumequinum*) and lesser horseshoe bat (*Rhinolophus hipposideros*) are listed on Annex II of the Habitats Directive.

⁷ Greater horseshoe bat, lesser horseshoe bat, Bechstein’s bat, noctule (*Nyctalus noctula*), soprano pipistrelle (*Pipistrellus pygmaeus*), brown long-eared bat (*Plecotus auritus*) and barbastelle are listed as Species of Principal Importance in England with the addition of common pipistrelle (*Pipistrellus pipistrellus*) in Wales listed under

Section 7 of the Environment (Wales) Act (2016) <http://www.legislation.gov.uk/ukpga/2006/16/contents>.

⁸ Barbastelle bat, Bechstein’s bat, noctule, soprano pipistrelle, brown long-eared bat, greater horseshoe bat, lesser horseshoe bat are listed as UK BAP species of bat.

⁹ Class Licences are available to Registered Consultants to intentionally disturb, damage or destroy water vole burrows or to displace water voles from their burrows in relation to a development proposal where the licensed action provides a conservation benefit for water voles. Certain displacement operations may be carried out under a Class licence by a registered person in England, however in Wales all displacement operations must be carried out under a site specific licence.

¹⁰ To view plants and animals listed on Schedule 9 Part 1 visit <http://www.legislation.gov.uk/ukpga/1981/69/schedule/9> [accessed 6 April 2017]

¹¹ There are 49 species of birds listed as Species of Principal Importance in England in Section 41 of the NERC Act 2006 and 51 species in Wales under Section 7 of the Environment (Wales) Act (2016) <http://www.legislation.gov.uk/ukpga/2006/16/contents>.

¹² To view the current list of UK BAP priority birds visit: <http://jncc.defra.gov.uk/page-5163>

Table A:1: Key Species and National Wildlife Legislation, Policy and Biodiversity Framework Applicable in England & Wales

Species	Legislation, Planning Policy and UK Biodiversity Framework						
Reptiles	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Amphibians	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
White-clawed Crayfish	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

¹³ The four common reptile species, Adder (*Vipera berus*), Grass snake (*Natrix natrix*), Common lizard (*Zootoca vivipara*) and Slow worm (*Anguis fragilis*) are offered partial protection under section 9(5). The rarer UK reptile species (Smooth snake (*Coronella austriaca*) and Sand lizard (*Lacerta agilis*)) are partially protected under section 9(4)(b) and (c) and (5).

¹⁴ Smooth snake (*Coronella austriaca*) and Sand lizard (*Lacerta agilis*) are the only reptiles to be designated as European Protected Species.

¹⁵ All 6 reptile species are listed as Species of Principal Importance in England listed under Section 41 of the NERC Act 2006 and 5 species, excluding smooth snake, listed under Section 7 of the Environment (Wales) Act (2016) <http://www.legislation.gov.uk/ukpga/2006/16/contents>.

¹⁶ To view the current list of UK BAP priority herptile species visit: <http://jncc.defra.gov.uk/page-5166>.

¹⁷ The four common reptile species, Adder (*Vipera berus*), Grass snake (*Natrix natrix*), Common lizard (*Zootoca vivipara*) and Slow worm (*Anguis fragilis*) are offered partial protection under section 9(5). The rarer UK reptile species (Smooth snake (*Coronella austriaca*) and Sand lizard (*Lacerta agilis*)) are partially protected under section 9(4)(b) and (c) and (5).

¹⁸ Common frog (*Rana temporaria*), Common toad (*Bufo bufo*), Smooth newt (*Lissotriton vulgaris*) and Palmate newt (*Lissotriton helveticus*) are offered partial protection under section 9(5). Great crested newt (*Triturus cristatus*) and Natterjack toad (*Epidalea calamita*) are offered partial protection under section 9(4)(b) and (c) and (5). Pool frog (*Pelophylax lessonae*) is offered partial protection under section 9(4)(b) and (c)(1) only and with respect to England only.

¹⁹ Great crested newt, Natterjack toad and Pool frog are the only amphibians to be designated European Protected Species.

²⁰ Great crested newt is the only amphibian listed on Annex II of the Habitats Directive.

²¹ Great crested newt, Natterjack toad and Common toad are listed as Species of Principal Importance in England in Section 41 of the NERC Act 2006 and under Section 7 of the Environment (Wales) Act (2016) <http://www.legislation.gov.uk/ukpga/2006/16/contents>.

²³ White clawed crayfish are listed under Annex II and V of the Habitats Directive.

Table A:1: Key Species and National Wildlife Legislation, Policy and Biodiversity Framework Applicable in England & Wales

Species	Legislation, Planning Policy and UK Biodiversity Framework							
		22(partial)						
Invertebrates		<input type="checkbox"/> 24(full/part)		<input type="checkbox"/>	<input type="checkbox"/> 25, 26	<input type="checkbox"/> 27		<input type="checkbox"/> 28

²² Under the Wildlife and Countryside Act it is illegal to take or sell white clawed crayfish under the WCA. A licence is required to survey (hand net or trap) for the species. To undertake work within WCC inhabited rivers a Class Licence maybe issued by the relevant authority to move WCC away from harm prior to works. Although WCC are not protected from killing or injury Natural England state in their Class licence that due to declining numbers all efforts should be made to conserve the species.

²⁴ To view the current list of invertebrates that are protected under this Act either in part or full visit:

<http://www.legislation.gov.uk/ukpga/1981/69/schedule/5>.

²⁵ The Large blue butterfly (*Maculinea arion*), Fisher’s estuarine moth (*Gortyna borelii lunata*) and Lesser whirlpool ram’s-horn snail (*Anisus vorticulus*) are the only invertebrates to be designated European Protected Species.

²⁶ There are currently twelve invertebrates listed in Annex II of the Habitats Directive; White-clawed crayfish (*Austropotamobius pallipes*), Southern damselfly (**Coenagrion mercuriale**), Marsh fritillary butterfly (**Eurodryas aurinia**), Violet click beetle (**Limonicus violaceus**), Stag beetle (**Lucanus cervus**), Freshwater pearl mussel (**Margaritifera margaritifera**), Narrow-mouthed whorl snail (**Vertigo angustior**), Round-mouthed whorl snail (**Vertigo genesii**), Geyer’s whorl snail (**Vertigo geyeri**), Desmoulin’s whorl snail (**Vertigo moulinsiana**), Lesser whirlpool ram’s-horn snail (*Anisus vorticulus*) and Fisher’s estuarine moth (*Gortyna borelii lunata*).

²⁷ There are currently 379 invertebrate species (not including marine species) listed as Species of Principal Importance in England

http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0ahUKEwivvu7J9trSAhXiCsAKHX4TBGcQFggvMAM&url=http%3A%2F%2Fpublications.naturalengland.org.uk%2Ffile%2F6518755878240256&usq=AFQjCNEpiUWYuOqhVcfSDvi_3iK2TJytfQ and 188 species in Wales http://www.eryri-npa.gov.uk/_data/assets/pdf_file/0003/486156/SpeciesList.pdf listed under Section 41 of the NERC Act 2006 and listed under Section 7 of the of the Environment (Wales) Act 2016.

²⁸ To view the current list of UK BAP priority invertebrates visit: <http://jncc.defra.gov.uk/page-5169>

Table A:1: Key Species and National Wildlife Legislation, Policy and Biodiversity Framework Applicable in England & Wales

Species	Legislation, Planning Policy and UK Biodiversity Framework							
Fish		<input type="checkbox"/> ²⁹ (full/part)		<input type="checkbox"/> ⁹	<input type="checkbox"/> 30 31	<input type="checkbox"/> ³²		<input type="checkbox"/> ³³
Plants			<input type="checkbox"/> ³⁴	<input type="checkbox"/> ⁹	<input type="checkbox"/> 35 36	<input type="checkbox"/> 37		<input type="checkbox"/> 38

²⁹ To view the current list of fish either part or fully protected under the Act visit: <http://www.legislation.gov.uk/ukpga/1981/69/schedule/5>

³⁰ Sturgeon (*Acipenser sturio*) is the only fish to be designated a European Protected Species.

³¹ There are eight fish species listed on Annex II of the Habitats Directive. To view the current list visit: <http://jncc.defra.gov.uk/page-1523>

³² There are 35 species of fish listed as Species of Principal Importance in England listed under Section 41 of the NERC Act 2006 and 10 species in Wales listed under Section 7 of the Environment (Wales) Act 2016.

³³ To view the current list of UK BAP priority fish visit: <http://jncc.defra.gov.uk/page-5164>

³⁴ To view the current list of Schedule 8 listed plants visit: <http://www.legislation.gov.uk/ukpga/1981/69/schedule/8>

³⁵ There are nine plant species designated as European Protected Species. To view the current list visit: <http://www.legislation.gov.uk/uksi/2010/490/schedule/5/made> .

³⁶ To view the current list of plant species on Annex II of the Habitats Directive visit: <http://jncc.defra.gov.uk/page-1523>.

³⁷ There are currently 152 vascular plants listed as Species of Principal Importance in England listed under Section 41 of the NERC Act 2006 and 77 species in Wales listed under Section 7 of the Environment (Wales) Act 2016.³¹ To view the current list of UK BAP priority plants visit: <http://jncc.defra.gov.uk/page-5171> and <http://jncc.defra.gov.uk/page-5168>.

³⁸ To view the current list of UK BAP priority plants visit: <http://jncc.defra.gov.uk/page-5171> and <http://jncc.defra.gov.uk/page-5168>.