



# Gatwick Airport Northern Runway Project

Environmental Statement

Appendix 9.2.1: Summary of Legislation Ecology and Nature Conservation

**Book 5**

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## 1 Introduction

### 1.1 General

- 1.1.1 This document forms **ES Appendix 9.2.1: Summary of Legislation – Ecology and Nature Conservation** (Doc Ref. 5.3) of the Environmental Statement (ES) prepared on behalf of Gatwick Airport Limited (GAL) for the proposal to make best use of Gatwick Airport’s existing runways and infrastructure (referred to within this report as ‘the Project’).
- 1.1.2 This document provides the relevant legislation for **ES Chapter 9: Ecology and Nature Conservation** (Doc Ref. 5.1).

## 2 Legislation

### 2.1 Relevant Guidance

- 2.1.1 The assessment takes into account the most recent published guidance from the Chartered Institute of Ecology and Environmental Management (CIEEM) (CIEEM, 2019). The guidance aims to promote good practice in the assessment of ecological impacts in terrestrial, freshwater and marine environments in the UK.

### 2.2 The Conservation of Habitats and Species Regulations 2017

- 2.2.1 The Conservation of Habitats and Species Regulations 2017, as amended (‘the Habitats Regulations’) transpose into domestic law the European Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) as well as elements of the Birds Directive (referred to further below). The 2017 legislation supersedes the earlier legislation from 2010 and 1994.
- 2.2.2 The Directive and Regulations require the establishment of a series of protected sites for habitats and species of “Community Interest”. These sites are Special Areas of Conservation (SAC).
- 2.2.3 Some individual species (such as otter *Lutra lutra* and dormouse *Muscardinus avellanarius*) and all native UK bat species receive a high level of protection under the Habitat Regulations.

### 2.3 The Wildlife and Countryside Act 1981

- 2.3.1 The Wildlife and Countryside Act 1981 (as amended) is the principal legislative protection for wildlife within England. It establishes protection for certain species of plants and animals and allows for the protection in law of various designated sites. It also consolidates and amends earlier national legislation to implement the European Directive 2009/147/EC on the conservation of wild birds (The Birds Directive) in the UK. Individual species receive different levels of protection under the act. Special Protection Areas (SPAs) were designated under the Wildlife and Countryside Act 1981 where sites and their habitats support significant numbers of wild birds.

### 2.4 The Countryside and Rights of Way Act 2000

- 2.4.1 The Wildlife and Countryside Act 1981 has been amended and reinforced in England and Wales by the Countryside and Rights of Way Act (CRoW) Act 2000 (as amended). The CRoW Act increases protection for Sites of Special Scientific Interest (SSSIs) as well as strengthening wildlife enforcement legislation.

### 2.5 The Natural Environment and Rural Communities Act 2006

- 2.5.1 The Natural Environment and Rural Communities (NERC) Act 2006 places a duty on all public authorities to have regard to the purpose of conserving biodiversity.
- 2.5.2 Section 40 of the NERC Act 2006 imposes a duty on all public bodies including local and national government to have regard to biodiversity in the exercise of all of their functions, with particular regard to the species of conservation priority. This is often referred to as ‘the biodiversity duty’.
- 2.5.3 In England, Section 41 of the NERC Act lists the species and habitats of highest importance for conserving biodiversity (derived from the original UK Biodiversity Action Plan (BAP) priorities (JNCC 2010). The Section 41 list is a definitive reference for all public bodies in England (statutory and non-statutory) and is a guide for decision-makers when implementing their statutory duties to have regard to the conservation of biodiversity. This ‘biodiversity duty’ includes taking steps to promote the restoration and enhancement of the populations of Section 41 species.
- 2.5.4 Section 41 species include a number of native bat species (including greater horseshoe bat *Rhinolophus ferrumequinum* and lesser horseshoe bat *Rhinolophus hipposideros*, noctule

*Nyctalus noctula*, soprano pipistrelle *Pipistrellus pygmaeus*, brown long-eared bat *Plecotus auritus*), dormouse *Muscardinus avellanarius*, hedgehog *Erinaceus europaeus*, brown hare *Lepus europaeus*, a number of bird species associated with grassland and woodland habitats, slow worm *Anguis fragilis*, and great crested newt *Triturus cristatus* amongst others. All these species are of conservation concern and have suffered long-term population decline.

### 2.6 The Hedgerow Regulations 1997

- 2.6.1 The Hedgerow Regulations 1997 protect hedgerows from removal, with particular protection for ‘important’ hedgerows. ‘Important’ hedgerows are defined in the Regulations.
- 2.6.2 The Regulations apply to any hedgerow growing in or adjacent to any common land, protected land (Local Nature Reserves (LNRs) and Sites of Special Scientific Interest (SSSIs)), or land used for agriculture, forestry or the breeding or keeping of horses, ponies or donkeys if it: (a) has a continuous length of, or exceeding, 20 metres; or (b) it has a continuous length of less than 20 metres and, at each end, meets another hedgerow.

### 2.7 Wild Mammals Protection Act 1996

- 2.7.1 The Wild Mammals Protection Act 1996 protects any wild mammal from unnecessary suffering that includes, mutilation, kicking, beating, impaling, stabbing, burning, stoning, crushing, drowning, dragging or asphyxiating.
- 2.7.2 The Act applies to all wild mammals with the exception of killing a mammal as an act of mercy where it can be proven the mammal had been seriously disabled if not injured unlawfully or there is no reasonable chance of its recovery.

### 2.8 The Environment Act 2021

- 2.8.1 The Environment Act 2021 sets clear statutory targets for the recovery of the natural world. This act defines key priority areas: air quality, biodiversity, water, and resource efficiency and waste reduction. One key target of this act is to reverse the decline in species abundance by the end of 2030.
- 2.8.2 The Secretary of State must create an ‘environment improvement plan’ which will aim to significantly improve the natural environment, setting a standard to be achieved, considering species abundances, biodiversity, and pollution. Furthermore the Secretary of State must review the progress that is made towards the improvement plan. The Secretary of State, therefore, must

make arrangements for obtaining such data about the natural environment.

2.8.3 The Environment Act 2021 included provisions applying certain biodiversity net gain (BNG) requirements to the nationally significant infrastructure projects (NSIPs) regime. A BNG requirement will be imposed on NSIP projects from November 2025<sup>1</sup>, with the level of requirement detailed within a BNG statement(s) (subject to prior publication – currently expected to be November 2023, to allow a period of transition) and presently expected to be set at a minimum of 10%. The consultation sets out that projects which have been accepted for examination prior to the November 2025 date would not be required to deliver that minimum BNG target, but could choose to do so voluntarily. In this context, and noting the position remains subject to further confirmation from Government, whilst there is no legal requirement for the Project to deliver BNG, the design has been developed such that the extent of net gain possible has been maximised within the parameters of the Project and the safeguarding requirements associated with an operational airport.

## 2.9 Legal Protection and Conservation Status afforded to specific Species

### Badger

2.9.1 Under the Protection of Badgers Act (PBA) 1992, badgers *Meles meles* are protected from killing, injuring or disturbance while occupying a sett, and their setts are protected from obstruction, damage or destruction.

### Bats

2.9.2 All bats and their breeding and resting sites (roosts) are protected under the Habitats Regulations and the Wildlife and Countryside Act 1981.

2.9.3 Any disturbance of a roost due to development must be licensed. The legislation protects roost sites and consideration needs to be given to circumstances where loss of foraging habitat could indirectly result in the loss of the roost.

### Breeding Birds

2.9.4 Nesting birds are protected under the Wildlife and Countryside Act 1981, which makes it an offence to intentionally kill, injure or take any wild bird or take, damage or destroy its nest whilst in use or being built, or take or destroy its eggs.

2.9.5 In addition to this, for some rarer species (listed on Schedule 1 of the Act), it is an offence to intentionally or recklessly disturb them while they are nest building or at or near a nest with eggs or young, or to disturb the dependent young of such a bird.

### Dormouse

2.9.6 Dormice are protected under Schedule 5 of the Wildlife and Countryside Act 1981. Dormice are also included on Schedule 2 of the Habitat Regulations 2017 as European Protected Species (EPS). They are also included in the list prepared under Section 41 of the NERC Act 2006.

### Amphibians

2.9.7 The great crested newt is a EPS and, as such, is afforded protection under the Habitat Regulations. It is also protected under the Wildlife and Countryside Act 1981 which makes it an offence to intentionally kill, injure or take great crested newts or to damage, destroy or obstruct access to any structure or place used by the species for shelter or protection.

2.9.8 In addition to this, it is an offence to intentionally or recklessly disturb them while they are occupying a structure or place used for that purpose.

2.9.9 Other common amphibians, such as common frog *Rana temporaria*, toad *Bufo bufo*, smooth newt *Lissotriton vulgaris* and palmate newt *Lissotriton helveticus* are protected against sale only under the Wildlife and Countryside Act 1981 (as amended).

### Otter

2.9.10 Otters are listed as protected under Schedule 5 of the Wildlife and Countryside Act 1981 and Section 41 of the NERC Act 2006.

### Reptiles

2.9.11 All native British species of reptiles are protected under the Wildlife and Countryside Act 1981. The four most widespread reptile species (grass snake *Natrix natrix*, slow worm, common lizard *Zootoca vivipara* and adder *Vipera berus*) are protected from intentional killing or injury.

### Water Vole

2.9.12 Water voles are listed in Schedule 5 of the Wildlife and Countryside Act 1981 (as amended), which affords them special protection under Section 9, as amended by the CRoW Act 2000.

2.9.13 The water vole is listed as being a Species of Principal Importance in England in the list prepared under Section 41 of the NERC Act 2006.

## 3 References

### 3.1 Guidance

British Standards Institution (2013) Biodiversity – Code of Practice for Planning and Development: BS 42020:2013.

Chartered Institute of Ecology and Environmental Management (2017) Guidelines for Preliminary Ecological Appraisal.

Chartered Institute of Ecology and Environmental Management (2019) Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine.

Institute of Environmental Assessment (1995) Guidelines for Baseline Ecological Assessment.

Ministry of Housing, Communities and Local Government (2019) Planning Practice Guidance: Natural Environment – Biodiversity, Ecosystems and Green Infrastructure.

<sup>1</sup> The [Consultation on Biodiversity Net Gain Regulations and Implementation; Consultation outcome Government response and summary of responses](https://www.gov.uk/government/consultations/biodiversity-net-gain-regulations-and-implementation). Updated 21 February 2023 ([defra.gov.uk](https://www.defra.gov.uk)).

### 3.2 Legislation

Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

Directive 2009/147/EC of 30 November 2009 on the conservation of wild birds.

The Conservation of Habitats and Species Regulations 2017.

The Countryside and Rights of Way Act 2000.

The Hedgerow Regulations 1997.

The Natural Environment and Rural Communities Act 2006.

The Protection of Badgers Act 1992.

The Wildlife and Countryside Act 1981.

The Wild Mammals (Protection) Act 1996.

## 4 Glossary

**Table 4.1.1: Glossary of Terms**

Term	Description
BAP	Biodiversity Action Plan
CIEEM	Chartered Institute of Ecology and Environmental Management
CROW	Countryside and Rights of Way Act
EIA	Environmental Impact Assessment
EPS	European Protected Species
GAL	Gatwick Airport Limited
LNR	Local Nature Reserve
NERC	Natural Environment and Rural Communities
PBA	Protection of Badgers Act
SAC	Special Area of Conservation
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest