

Prosiect Maen Hir

Solar a Storio Ynni



Preliminary Environmental Information Report Volume III

Appendix 7-1: Ecological Legislative Context and Policy

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Environmental Impact Assessment
Ecological Legislative Context and Policy
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1 EU Legislation

- 1.1.1 The following legislation is relevant to the assessment of the impacts of the Project on biodiversity.
- 1.1.2 European Union and global biodiversity targets are partly delivered through legislative measures which place obligations on Member States to protect biodiversity and the natural environment. In relation to wildlife and nature conservation, three key Directives relevant to the Project have been adopted by the European Union, namely:
- Directive 2009/147/EC on the conservation of wild birds (the codified version of Council Directive 79/409/EEC as amended) (Ref. 7-1.1) (Birds Directive);
 - Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (Ref. 7-1.2) (Habitats Directive); and
 - Regulation (EU) 1143/2014 on the introduction and spread of invasive alien species (Ref. 7-1.3) (IAS), as enacted by The Invasive Alien Species (Enforcement and Permitting) Order 2019 (as amended) (Ref. 7-1.4).
- 1.1.3 These Directives provide for the protection of animal and plant species of European importance and the habitats which support them, particularly through the establishment of a network of protected sites, called Natura 2000 sites.
- 1.1.4 European Union (EU) legislation as it applied to the UK on 31 December 2020 is now a part of UK domestic legislation as 'retained EU legislation'. Changes have been made to parts of the Habitats Regulations 2017 (Ref. 7-1.5) and The Conservation of Offshore Marine Habitats and Species Regulations 2017 (Ref 8.38) so that they effectively continue the legislation which implemented the EU Habitats and Species Directive and parts of the Wild Birds Directive through the provisions of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (Ref. 7-1.6). Most of these changes involve transferring functions from the European Commission to the appropriate authorities. All other processes or terms of the 2017 Regulations remain unchanged.
- 1.1.5 Further relevant legislation includes Directive 2000/60/EC (Water Framework Directive) (Ref. 7-1.7), under which Member States are required to protect and improve their inland and coastal waters. This is transposed by the updated Water

Environment (Water Framework Directive) (England and Wales) Regulations 2017 (Ref. 7-1.8).

- 1.1.6 Ramsar Convention 1971 (Ref. 7-1.9) is an international treaty which includes the designation of wetlands of international importance. Government policy extends the same level of protection to Ramsar wetlands as that afforded to sites that are designated under the Birds Directive (Ref. 7-1.1) and Habitats Directive (Ref. 7-1.2). Internationally designated wetlands 'Ramsar Sites' are protected under the CRoW Act 2000 (Ref. 7-1.10) and are not affected by the exit from the EU.

2 National Legislation, Policy and Guidance

2.1.1 National legislation, policy and guidance relating to Ecology, and pertinent to the Project, comprises:

2.2 Legislation

2.2.1 Regulation 5(2)(b) of the Infrastructure Planning (Environmental Impact Assessment (EIA)) Regulations 2017 (Ref. 7-1.12) requires that the EIA must identify, describe and assess in an appropriate manner, in light of each individual case, the likely significant direct and indirect effects of the Project on biodiversity, with particular attention to species and habitats protected under the Habitats Directive (Ref. 7-1.2) and the Birds Directive (Ref. 7-1.1).

2.2.2 The main relevant legislative instruments relating to nature conservation in Wales are summarised below.

The Conservation of Habitats and Species Regulations 2017

2.2.3 The Conservation of Habitats and Species Regulations 2017 (as amended) (Ref. 7-1.5) (the Habitats Regulations) transposed the requirements of the EC Habitats Directive (Ref. 7-1.2) and Birds Directive (Ref. 7-1.1) into UK law, and provide for the designation and protection of European Sites (and adapt planning and other controls for the protection of these sites). This includes Annex I (habitats) and Annex II (species) for which such European Sites can be designated.

2.2.4 The Habitats Regulations (Ref. 7-1.5) also provide protection for certain European Protected Species (EPS) that are listed on Schedule 2 (animals) or Schedule 4 (plants). Provision is made for the granting of licences that permit certain acts as lawful, providing the appropriate authority is satisfied that the permitted activities will be carried out for specified reasons or purposes, that there is no satisfactory alternative, and that the activities will not be detrimental to the maintenance of the species concerned at the favourable conservation status in their natural range.

2.2.5 The latest 2019 amendment to the Habitats Regulations (Ref. 7-1.5) means that Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) in the UK no longer form part of the EU's Natura 2000 ecological network, following the UK's exit from the EU. The 2019 Regulations amendment (Ref. 7-1.5) have

instead created a national site network on land and at sea, including both the inshore and offshore marine areas in the UK. The national site network includes:

- Existing SACs and SPAs; and
- Proposed/ new SACs and SPAs designated under these Regulations.

2.2.6 The presence of European Sites and their relationship to the Project will be considered in the Ecology Chapter of the Environmental Statement (ES) and assessed in the Habitats Regulations Assessment (HRA). The presence or possible presence of Annex I habitats and Annex II species, and of any EPS, will be considered within the Ecology Chapter of the ES. Consideration will also be given in the assessment of the Project to the presence of any Ramsar wetlands.

The Environment Act

2.2.7 The Environment Act 2021 (Ref. 7-1.13) provides a post-Brexit legal framework for environmental governance and makes provision for improvements to the natural environment. This has limited relevance to Wales.

2.2.8 The Environment Act 2021 requires the Secretary of State to set long-term targets (15-year minimum) for biodiversity, however this is secured elsewhere for Wales.

The Environment (Wales) Act 2016

2.2.9 The Environment (Wales) Act 2016 (Ref. 7-1.14) puts into place the necessary legislation to enable the planning and management of the natural resources of Wales in a more sustainable, pro-active and joined-up way.

2.2.10 Section 6, Part 1 of the Act puts a duty onto public bodies and local authorities to '*maintain and enhance biodiversity*' in a manner consistent with the exercising of their normal roles and functions. Whilst doing this, public authorities are also obliged to '*promote the resilience of ecosystems*'.

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

2.2.11 The Wildlife and Countryside Act (WCA) 1981 (as amended) (Ref. 7-1.15) is a primary piece of UK wildlife legislation, protecting birds, other animals and plants (including vascular plants, bryophytes, lichens and fungi) and providing for the designation of protected areas including Sites of Special Scientific Interest (SSSIs). The WCA also defines a list of invasive non-native species, making it

illegal to release or allow to escape into the wild any invasive non-native animals; or to cause to grow in in the wild any invasive non-native plants.

- 2.2.12 Designated sites, protected flora and fauna, and invasive species covered by the WCA (Ref. 7-1.15) that could potentially be affected by the Project will be considered in the assessment.

The Countryside and Rights of Way Act 2000

- 2.2.13 The Countryside and Rights of Way (CRoW) Act 2000 (Ref. 7-1.10) extends powers relating to the protection and management of SSSIs. This includes powers for entering management agreements, placing a duty on public bodies to further the conservation and enhancement of SSSIs, increasing penalties for conviction, and appeal processes for the notification, management and protection of SSSIs. It also introduced the offence of 'reckless' disturbance of threatened species.

- 2.2.14 The legislative provisions covered by CRoW relating to designated sites and flora and fauna affected by the Project will be considered in the assessment.

The Protection of Badgers Act 1992

- 2.2.15 The Protection of Badgers Act 1992 (Ref. 7-1.16) provides specific legislation to protect badgers *Meles meles* and their setts from harm. The protection of badgers and their setts through best working practices, including the legal requirement for licences from Natural Resources Wales (where required), will be considered as part of the assessment of the Project.

The Hedgerows Regulations 1997

- 2.2.16 The Hedgerow Regulations 1997 (Ref. 7-1.17) introduced protection for countryside hedgerows that are defined as 'important' because they meet specific wildlife or landscape criteria. The assessment will be evaluated hedgerows affected by the Project by way of field survey, to determine whether any qualify as important under the ecological criteria.

The Invasive Alien Species (Enforcement and Permitting) Order 2019 (as amended)

- 2.2.17 The Invasive Alien Species (Enforcement and Permitting) Order 2019 (Ref. 7-1.4) came into effect on 1 December 2019. This implemented the EU Invasive Alien Species Regulation 1143/2014 on the prevention and management of invasive

alien plant and animal species in England and Wales, including the relevant licences, permits and rules for keeping invasive alien species.

- 2.2.18 If it is not a species of special concern, then the WCA; Section 14, Schedule 9 (Ref. 7-1.15) still applies.

Animal Welfare Act 2006

- 2.2.19 The Animal Welfare Act 2006 (Ref. 7-1.18) protects vertebrate animals from harm and extends to domesticated animals and those under the control of people.

- 2.2.20 The provisions of the Animal Welfare Act 2006 (Ref. 7-1.18) will be taken into account within the assessment by ensuring the welfare of any animals potentially affected by the Project are considered.

Salmon and Freshwater Fisheries Act 1975

- 2.2.21 The Salmon and Freshwater Fisheries Act 1975 (Ref. 7-1.19) (as amended) relates to the protection of freshwater fish, with a focus on salmon *Salmo salar* and trout *Salmo* sp. species.

- 2.2.22 The assessment will consider the provisions of the Salmon and Freshwater Fisheries Act 1975 (Ref. 7-1.19) in relation to the risk of mortality, migration barriers, pollution and the degradation of habitats potentially resulting from the Project.

Eels (England and Wales) Regulations 2009

- 2.2.23 The Eels (England and Wales) Regulations 2009 (the Eel Regulations) (Ref. 7-1.20) came into force on 15 January 2010 to support the UK in implementing EC Council Regulation (1100/2007) (the EC Eel Regulation) (Ref. 7-1.21) which aimed to halt and reverse the decline in the European eel *Anguilla anguilla* stock, aiming to meet mature adult eel biomass escapement targets to sea of 40% relative to that expected in the absence of anthropogenic impacts.

- 2.2.24 The assessment will consider the provisions of the Eel Regulations (Ref. 7-1.20) in relation to safe and unobstructed passage for eel, and consideration regarding channel alterations, river crossings and culverting.

The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017

- 2.2.25 The Water Framework Directive (WFD) (Ref. 7-1.8) aims to protect and enhance the quality of the water environment across all European Union (EU) member states. The WFD was transposed into law by the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. The WFD follows a holistic approach to the sustainable management of water by considering the interactions between surface water (including transitional and coastal waters, rivers, streams and lakes), groundwater and water-dependent ecosystems.
- 2.2.26 The assessment will consider the provisions of the Water Environment (WFD) (England and Wales) Regulations 2017 (Ref. 7-1.8) in relation to avoiding deterioration of a waterbody from its current status or potential and / or not preventing future attainment of good status or potential where not already achieved.

Environmental Improvement Plan 2023

- 2.2.27 In 2023, the UK Government published its Environmental Improvement Plan (Ref. 1-22), the first revision of the 25 Year Environment Plan (Ref. 7-1.23) to set out how the UK Government will work with landowners, communities and businesses to deliver each of its goals for the natural environment. This document continues to use the 10 goals set out within the 25 Year Environment Plan with the Apex goal being to achieve ‘thriving plants and wildlife’. The plan recognises the wider value of the environment and its contribution, such as food, clean water and air, wildlife, energy, wood, recreation and protection from hazards, and sets interim targets pursuant to the long-term targets set under the Environment Act 2021.

The Nature Recovery Action Plan for Wales 2020-2021

- 2.2.28 The national Nature Recovery Action Plan (NRAP) (Ref. 7-1.24) was first published in 2015 and consists of Part I (Our Strategy for Nature), Part II (Our Action Plan) and Part III: The Nature Recovery Framework. It sets out how Wales will address the Convention on Biological Diversity's Strategic Plan for Biodiversity and the associated Aichi biodiversity targets in Wales, with the ambition “*To reverse the decline in biodiversity, for its intrinsic value, and to ensure lasting benefits to society*” and six objectives.

2.2.29 The Nature Recovery Action Plan links to and complements the Environment Act (Wales) 2016 (Ref. 7-1.14).

Well-being of Future Generations (Wales) Act 2015

2.2.30 The Well-being of Future Generations Act requires public bodies in Wales to think about the long-term impact of their decisions, to work better with people, communities and each other, and to prevent persistent problems such as poverty, health inequalities and climate change.

2.2.31 The Act gives a legally-binding common purpose – the 7 well-being goals – for national government, local government, local health boards and other specified public bodies. It details the ways in which specified public bodies must work and work together to improve the well-being of Wales. (Ref. 7-1.25).

2.3 National Policy

National Policy Statements

2.3.1 The following National Policy Statements (NPS) are considered to be matters that will be important and relevant to the Secretary of State's decision as to whether to grant a Development Consent Order (DCO) for the Project:

- Overarching National Policy Statement for Energy (EN-1) (Ref. 7-1.26);
- National Policy Statement for Renewable Energy Infrastructure (EN-3) (Ref. 7-1.27); and
- National Policy Statement for Electricity Networks Infrastructure (EN-5) (Ref. 7-1.28).

2.3.2 EN-1 (Ref. 7-1.26), is considered important and of relevance to the Project with particular reference to paragraphs 4.2.2 and 4.2.3, which provide national policy on what an ES for a Nationally Significant Infrastructure Project (NSIP) project should contain; paragraph 4.3.1 which states what the Secretary of State must, under the Conservation of Habitats and Species Regulations 2017 consider when granting a DCO; and Part 5 section 5.3 which sets out guidance on generic impacts relating to biodiversity for the applicant's assessment and decision-making on the application.

- 2.3.3 The Overarching National Policy Statement EN-1 (Ref. 7-1.26), Section 5.4, paragraph 5.4.17 states that *“any effects on internationally, nationally, and locally designated sites of ecological or geological conservation importance (including those outside England), on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity, including irreplaceable habitats.”* Paragraph 5.4.25 states what the Secretary of State must, under the Conservation of Habitats and Species Regulations 2017, consider when granting a Development Consent Order¹; and paragraphs 5.4.50 – 5.4.56 (inclusive) which set out guidance on generic impacts relating to biodiversity for the applicant’s assessment and decision-making on the application. The Overarching National Policy Statement for Energy (EN-1) (Ref. 7-1.26) includes guidance for biodiversity net gains in paragraphs 4.5.1 to 4.5.3.
- 2.3.4 The National Policy Statement for Renewable Infrastructure EN-3 (Ref. 7-1.27) includes Section 2.10 which sets out policy requirements specific to solar generation.
- 2.3.5 Part 2.7 of the National Policy Statement for Electricity Networks Infrastructure (EN-5) (Ref. 7-1.28) sets out generic impacts concerning biodiversity, although these are more relevant to considerations for birds, their feeding and hunting grounds, migration corridors and breeding grounds, and potential implications on the above in light of the development proposals. This is also the same of Part 2.50.1 to 2.50.12 of EN-3 (Ref. 7-1.27). However, paragraph 2.8.9 of EN-5 details biodiversity considerations when choosing an underground electricity line.
- 2.3.6 Part 2.9 of the National Policy Statement for Electricity Networks Infrastructure (EN-5) (Ref. 7-1.28) sets out generic impacts concerning biodiversity, although these are more relevant to considerations for birds, their feeding and hunting grounds, migration corridors and breeding grounds, and potential implications on the above in light of the development proposals. This is also the same as Part

¹ The government’s “Nature Recovery Green Paper: Protected Sites and Species”, available at https://consult.defra.gov.uk/nature-recovery-green-paper/nature-recovery-green-paper/supporting_documents/Nature%20Recovery%20Green%20Paper%20Consultation%20%20Protected%20Sites%20and%20Species.pdf consulted on changes to the Habitats Regulation Assessment (HRA) process. If changes are made, relevant plans and projects would have to comply with such relevant regulations. Until a new process is implemented, current legislation continues to apply.

3.10.66 to 3.10.83 of EN-3 (Ref. 7-1.27). However, paragraph 2.9.25 of EN-5 (2023) details biodiversity considerations when choosing an underground electricity line. This includes the environmental consequences as underground cables can disturb sensitive habitats.

Planning Policy Wales

2.3.7 Planning Policy Wales (PPW) (Ref. 7-1.29), adopted edition 12 in February 2024, sets out how the planning system at a national, regional, and local level can assist in delivering these requirements through Strategic Development Plans (SDPs) and Local Development Plans (LDPs). Chapter 6, Recognising the Special Characteristics of Places, outlines the Welsh Government's objectives for the environment, including Biodiversity and Ecological Networks. The policy encourages developments to take a proactive approach to facilitate biodiversity and demonstrate that they have sought to fulfil the duties and requirements of Section 6 of the Environment Act. The PPW states in paragraph 6.4.21 *'Planning authorities must follow a step-wise approach to maintain and enhance biodiversity and build resilient ecological networks by ensuring that any adverse environmental effects are firstly avoided, then minimized, mitigated, and as a last resort compensated for; enhancement must be secured wherever possible.'* (Ref. 7-1.29). Edition 12 comprised changes including stronger emphasis on taking a proactive approach to green infrastructure, further clarity on net benefit for biodiversity through the application of the stepwise approach and recognising the importance of strategic collaboration, strengthened approach to the protection of SSSIs, and closer alignment with the stepwise approach for trees and woodlands, along with promoting new planting within development based on the right tree in the right place.

Technical Advice Note 5: Nature Conservation and Planning (TAN 5)

2.3.8 The PPW is supplemented by a series of Technical Advice Notes (TANs). Chapter 5 of Planning Policy Wales (Ref. 7-1.29) and TAN 5 (Ref. 7-1.30) set out clear national development management policies and guidance in respect of statutory designations, reflecting the greater environmental significance of international and national statutory designations, compared to statutory and non-statutory local designations. It provides advice on areas including the key principles of positive

planning for nature conservation, nature conservation in LDPs and development management procedures. It also provides advice on development affecting designated sites and habitats, in addition to protected or priority habitats and species.

2.4 National Guidance

2.4.1 Other guidance documents relevant to the assessment of the impacts of the Project on biodiversity are included below.

Future Wales – the National Plan 2040

2.4.2 Future Wales (Ref. 7-1.31) is the Welsh Government's national development framework which sets out the direction for development in Wales to 2040. It is a development plan with a strategy for addressing key national priorities through the planning system, including sustaining and developing a vibrant economy, achieving decarbonisation and climate-resilience, developing strong ecosystems and improving the health and well-being of communities. Matters of relevance to the ecological assessment include Policy 9 – Resilient Ecological Networks and Green Infrastructure and Policy 15 – National Forest.

Cyfoeth Naturiol Cymru/ Natural Resources Wales (NRW) Protected Species Licensing

2.4.3 Any work that affects a protected species in Wales will require a licence from NRW. This includes:

- disturbing, trapping or handling protected species; and/ or
- damaging their habitats.

2.4.4 NRW provides advice on when, and when not, a licence is required (Ref. 7-1.32). The ES will set out the assessment of effects of the Project on protected species where appropriate.

Birds of Conservation Concern (BoCC)

2.4.5 The Birds of Conservation Concern (BoCC) (Ref. 7-1.33) is an assessment of the conservation status of all regularly occurring British birds. The lists (Red, Amber and Green), that indicate the level of conservation importance for each species, are derived from quantitative assessments from standardised criteria. The assessment is based on the most up-to-date evidence available, and criteria

include conservation status at global and European levels and, within the UK: historical decline, trends in population and range, rarity, localised distribution and international importance. The lists are drawn together by the UKs leading bird conservation organisations, including the Royal Society for the Protection of Birds (RSPB) and British Trust for Ornithology (BTO).

2.4.6 Wales has its own BoCC list, which was last updated and published in December 2022; Birds of Conservation Concern Wales (BoCCW) 4 (Ref. 7-1.34). Conservation concern for BoCC and BoCCW is categorised in the same way, resulting in Red, Amber and Green Lists.

2.4.7 The ES will set out the assessment of effects of the Project on BoCC, which are to be included as part of the breeding and non-breeding bird surveys.

The International Union for Conservation of Nature Red List of Threatened Species

2.4.8 Established in 1964, the International Union for Conservation of Nature's (IUCN) Red List of Threatened Species (Ref. 7-1.35) is a source of information on the global extinction risk status of animal, fungus and plant species that is reviewed and updated. The IUCN Red List Categories and Criteria are intended to be an easily and widely understood system for classifying species at high risk of global extinction. It divides species into nine categories: Not Evaluated, Data Deficient, Least Concern, Near Threatened, Vulnerable, Endangered, Critically Endangered, Extinct in the Wild and Extinct. The ES will set out the assessment of effects of the Project on red list species where appropriate.

3 Local Policy

3.1 Policy

3.1.1 Local planning policies that are relevant to the Project and ecology and biodiversity are:

- Anglesey and Gwynedd Joint Local Development Plan 2011 - 2026 (2017) (Ref. 7-1.36) is a land use development strategy focussing on sustainable development for the period. Key relevant policies include Policy PS 19: Conserving and where Appropriate Enhancing the Natural Environment; Policy AMG 5: Local Biodiversity Conservation and Policy AMG 6: Protecting Sites of Regional or Local Significance.
- Emerging Anglesey and Gwynedd Joint Local Development Plan Review Report, dated March 2022 which seeks to review the adopted plan and identify the need for any changes as part of the future replacement plan.

3.1.2 Local planning policies identify the need to consider and, where appropriate, mitigate effects associated with new development. New development should seek to maintain and enhance biodiversity. Any application that may have a detrimental impact on protected/ notable habitats and/ or species must be supported by an Ecological Assessment.

3.2 Corporate Biodiversity Plan 2021-2022 - Isle of Anglesey County Council

3.2.1 The aim of the Plan is to ensure the County Council maintains and enhances the Island's varied and notable biodiversity in the exercise of its statutory duties and discretionary activities and, in so doing, promote the resilience of ecosystems. The Plan has been developed to ensure that environmental benefits arise from the way in which the County Council operates and makes decisions in ensuring compliance with the requirements of section 6 (s6) of the Environment (Wales) Act 2016, namely maintaining and enhancing biodiversity and, in doing so, promoting the resilience of ecosystems, in undertaking its day-to day activities. The aim of Plan is to help maintain and enhance Anglesey's unique Biodiversity features, setting out clear and concise objectives that will be achieved by the Council between 2021 and 2022.

3.3 Anglesey Local Biodiversity Action Plan 2002

- 3.3.1 The Convention on Biological Diversity was signed at the Rio summit in 1992. In response to this agreement, the UK produced the UK Biodiversity Action Plan. Local Biodiversity Action Plans (LBAP) were adopted at the county level to facilitate on the ground action to achieve UK targets.
- 3.3.2 This action plan was written to help secure partnership work between local people and organisations to ensure these local resources are valued and looked after in the future. The action plan sets out work to help important habitats and species.

4 References

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- Ref. 7-1.12. HMSO (2017) Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. Available at: <https://www.legislation.gov.uk/uksi/2017/572/contents> [Accessed 30 July 2024]
- Ref. 7-1.13. HMSO (2021) The Environment Act 2021. Available at: <https://www.legislation.gov.uk/ukpga/2021/30/contents/enacted> [Accessed 09 July 2024].
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