

Dunoon to Loch Long 132 kV OHL Rebuild
Environmental Impact Assessment
Volume 4 | Technical Appendix

Appendix 7.1 - Biodiversity Legislation



Scottish Hydro Electric Transmission plc
Inveralmond House
200 Dunkeld Road
Perth PH1 3AQ
Tel: +44 (0)1738 456 000
www.ssen-transmission.co.uk

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1. INTRODUCTION

1.1 Project Background

- 1.1.1 This appendix presents biodiversity legislation and planning policy relevant to the proposed 132 kV twin circuit Overhead Line (OHL) running between Loch Long and Dunoon Substation located on the Cowal peninsula, Argyll and Bute, Scotland (hereafter the 'Proposed Development'). It should be read in conjunction with the Proposed Development's Environmental Impact Assessment report for full details of the Proposed Development.
- 1.1.2 Relevant protected species known to occur naturally in Scotland are included in **Table A-1** to the rear of this appendix. The legislation and planning policy relevant to their protection, and other natural resources in Scotland, is as follows.
- 1.1.3 For applicable planning policy, please refer to the Planning Statement document that will accompany this EIA application.

1.2 Legislative Framework

Natural Heritage (Scotland) Act 1991 (as amended)

- 1.2.1 Establishes NatureScot (formerly Scottish Natural Heritage) as the main body responsible for securing and promoting the conservation of Scotland's natural scenery, flora and fauna.

Environment Act 1995 (as amended)

- 1.2.2 Under this act, the Scottish Environment Protection Agency (SEPA) and the Environment Agency are established as the regulatory bodies for contaminated land, control of pollution, conservation and enhancement of the environment and fisheries.

The Planning (Scotland) Act 2019 (as amended)

- 1.2.3 This act sets six outcomes for planning in Scotland, one of which is securing positive effects for biodiversity.

Conservation (Natural Habitats &c.) Regulations 1994 (as amended) (Habitats Regulations)

- 1.2.4 The Habitats Regulations 1994 (as amended in Scotland) provide the protection given to European protected species of animals and plants. For European protected species, it is an offence to deliberately or recklessly:

- Capture, injure or kill such an animal;
- Harass an animal or group of animals;
- Disturb an animal while it is occupying a structure or place used for shelter or protection;
- Disturb an animal while it is rearing or otherwise caring for its young;
- Obstruct access to a breeding site or resting place, or otherwise deny an animal use of a breeding site or resting place;
- Disturb an animal in a manner or in circumstances likely to significantly affect the local distribution or abundance of the species;
- Disturb an animal in a manner or in circumstances likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young;
- Disturb an animal while it is migrating or hibernating;
- Take or destroy its eggs (in Scotland, this is relevant only to the great crested newt *Triturus cristatus* and natterjack toad *Epidalea calamita*); or

- Disturb any cetacean.

1.2.5 It is an offence of strict liability to damage or destroy a breeding site or resting place of such an animal. These sites and places are protected even when the animal isn't present.

1.2.6 All of the above offences apply to all stages of a wild animal's life. Animals bred and lawfully held in captivity are not protected.

Wildlife and Countryside Act 1981 (as amended)

1.2.7 Protected birds, animals and plants are listed in Schedules 1, 5 and 8 respectively of the Wildlife and Countryside Act 1981 (as amended) (WCA).

1.2.8 All wild birds, their nests and eggs (with the exception of species listed under Schedule 2, under conditions outlined in section 2 of the WCA) are protected by the WCA. It is an offence to intentionally kill, injure, or take any wild bird, or take or destroy an egg of any wild bird. It is also an offence to damage or destroy the nest of any wild bird (whilst being built, or in use). 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

1.2.9 Birds listed under Schedule 1 of the WCA are afforded additional protection. It is an offence to disturb any wild bird listed on Schedule 1, whilst it is building a nest or is in, on, or near a nest containing eggs or young, or whilst lekking. Schedule A1 protects nests all year round and Schedule 1A prevents harassment of the species all year; both of which apply in Scotland.

Schedule 5

1.2.10 Within Schedule 5, species can either be fully protected or be partially protected under subsections of Section 9, which makes it unlawful to intentionally:

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

Schedule 8

1.2.11 Section 13 of the WCA 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

1.2.12 In Scotland, legislation pertaining to species listed under Schedule 9 has been amended by the Wildlife and Natural Environment (Scotland) Act 2011 (WANE). The WANE act adopts the internationally recognised approach to dealing with invasive non-native species. New offences are based on a general 'no-release' approach:

- It is an offence to release, allow to escape, or cause any animal to be outwith its native range.
- It is an offence to plant or cause to grow in the wild any plant outwith its native range.
- Scottish Ministers can also specify native animals that will be subject to these offences.

- Other offences relate to the keeping, notification and sale of invasive animals and plants.
- The Non-native Species: Code of Practice¹ is guidance on non-native species which came into effect on 2 July 2012.

The Protection of Badgers Act 1992 (as amended)

1.2.13 Offences under this act include:

- Wilfully taking, injuring or killing a badger *Meles meles*;
- Cruelty to a badger;
- Intentional or reckless interference with a badger sett;
- Sale or possession of a badger; and
- Marking or ringing of a badger.

1.2.14 Interfering with a badger sett includes:

- Damaging or destroying a sett or any part of it;
- Obstructing access to a sett;
- Disturbing a badger while it is in a sett; and
- Causing or allowing a dog to enter a badger sett.

1.2.15 This act defines a badger sett as 'any structure or place, which displays signs indicating the current use by a badger' and NatureScot takes this definition to include, '*the presence of field signs such as bedding, fresh spoil heaps, signs of recent digging, hair, latrines, or footprints in or around the potential sett or evidence of badgers entering or exiting the structure or place in question would indicate current use of the structure/ place by a badger*'².

1.2.16 In Scotland the WANE act has made the following amendments:

- 'Knowingly causes or permits' are added to cover offences relating to taking, injuring, killing, cruelty, sale, possession, marking and ringing.
- Amends the available penalties for offences in the 1992 act. Previously, offences relating to digging for a badger could be dealt with by summary procedure or on indictment. The WANE act allows for other offences relating to taking, injuring, killing and possession to also be dealt with by summary procedure or conviction.

Nature Conservation (Scotland) Act 2004 (as amended)

1.2.17 Under section 1 of this act, it is '*the duty of every public body and office-holder*³, in exercising any functions, to further the conservation of biodiversity so far as is consistent with the proper exercise of those functions.'

1.2.18 This act requires Scottish Ministers to produce a Scottish Biodiversity Strategy, including providing a published list of habitats considered to be of principal importance for the conservation of biodiversity (referred to as the Scottish Biodiversity List). This list is to be used to assist public bodies to meet section 1 of this act.

¹ Scottish Parliament (2012). Non-native species: code of practice [online]. Available at: <https://www.gov.scot/publications/non-native-species-code-practice/> [Accessed July 2022].

² NatureScot (no date). Licensing Guidance. What is a badger sett? [online]. Available at: https://www.nature.scot/sites/default/files/2018-10/Guidance%20-%20Licensing%20-%20Badgers%20-%20What%20is%20a%20Badger%20sett_.pdf [Accessed July 2022].

³ "Public body or office-holder" includes a statutory undertaker and any person exercising functions of a public nature.

Environmental Liability (Scotland) Regulations 2009 (as amended)

1.2.19 Brings into power rules to force polluters to prevent and repair damage to water systems, land quality, species and their habitats and protected sites. The Environmental Liability (Scotland) Regulations 2009 apply in relation to:

- Damage to protected species and natural habitats if:
 - it has significant adverse effects on reaching or maintaining the favourable conservation status of the protected species or natural habitat; and
 - it is caused by an activity listed in Schedule 1 or by the fault or negligence of an operator whilst carrying on any other activity;
- Water damage, caused by an activity listed in Schedule 1, which is:
 - Any damage that significantly adversely affects any or all of the: ecological status; chemical status; quantitative status; ecological potential, of the water environment with the exception of adverse effects where regulations 8 or 9 of the Water Environment (River Basin Management Planning: Further Provision) (Scotland) Regulations 2013 applies; or
 - Any damage that significantly adversely affects the environmental status of marine waters, in so far as particular aspects of the environmental status of the marine environment are not already addressed through Directive 2000/60/EC⁴;
- Land damage, caused by an activity listed in Schedule 1, which is any land contamination that creates a significant risk of human health being adversely affected as a result of the direct or indirect introduction in, on, or under land of substances, preparations, organisms or micro-organisms.

1.2.20 The significance of any damage must be assessed by reference to certain criteria set out in these regulations and the significance of any effects has to be assessed with reference to the baseline condition with significant adverse changes thereto being determined by means of measurable data; in accordance with criteria set out in these regulations.

The Alien and Locally Absent Species in Aquaculture (Scotland) Regulations 2015 (as amended)

1.2.21 The Alien and Locally Absent Species in Aquaculture (Scotland) Regulations 2015 safeguard against the potential for adverse environmental effects associated with the introduction and movement of alien and locally absent species in aquaculture. These regulations primarily consist of mitigation measures to provide these safeguards. Aquaculture operators must apply for permission, as required by the regulations, if they intend to undertake the introduction of alien species or the translocation of a locally absent species.

Deer (Scotland) Act 1996 (as amended)

1.2.22 The Deer (Scotland) Act 1996 sets out NatureScot's role to further the conservation of deer native to Scotland, and perform functions as set out by this act. It makes provisions for the conservation, control and sustainable management of deer; details what constitutes an offence in relation to deer; sets out details of enforcement of the act, and miscellaneous provisions of this act. It consolidates legislation in respect of deer in Scotland.

Wild Mammals (Protection) Act 1996 (as amended)

1.2.23 Under The Wild Mammals (Protection) Act 1996, it is illegal to: mutilate; kick; beat; nail; impale; stab; burn; stone; crush; drag; drown; or asphyxiate any wild animal with intent to inflict unnecessary suffering .

⁴ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.

Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 (as amended)

1.2.24 The Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 increased the maximum penalty for the most serious animal welfare and wildlife crimes in Scotland to five years imprisonment and unlimited fines. This includes penalties under:

- Conservation (Natural Habitats, etc.) Regulations 1994;
- The Wildlife and Countryside Act 1981;
- The Protection of Badgers Act 1992;
- The Wild Mammals (Protection) Act 1996;
- The Deer (Scotland) Act 1996; and
- Other animal welfare related legislation in Scotland.

1.2.25 These include the offence of unnecessary suffering and animal fighting. This act also creates new powers (by way of future secondary legislation) to impose fixed penalty notices for less serious offences. Further, this act restricts licensing for the killing of seals and provides mountain hares with general protection from killing.

Table A-1: Relevant protected species known to occur naturally in Scotland and their protection⁵

Taxon	Current taxon name	Common name	Legislation giving protection	Schedule or Annex listing
Amphibian	<i>Rana temporaria</i>	Common frog	WCA 1981	Schedule 5 ⁴
Amphibian	<i>Bufo bufo</i>	Common toad	WCA 1981	Schedule 5 ⁴
Amphibian	<i>Triturus cristatus</i>	Great crested newt	HR 1994	Schedule 2: European protected species
Amphibian	<i>Triturus helveticus</i>	Palmate newt	WCA 1981	Schedule 5 ⁴
Amphibian	<i>Triturus vulgaris</i>	Smooth newt	WCA 1981	Schedule 5 ⁴
Bird	<i>Tyto alba</i>	Barn owl	WCA 1981	Schedule 1 (Part I); Schedule 3 (Part I)
Bird	<i>Accipiter gentilis</i>	Goshawk	WCA 1981	Schedule 1 (Part I); Schedule 4
Bird	<i>Anser anser</i>	Greylag goose	WCA 1981	Schedule 1 (Part I in Outer Hebrides, Caithness & Sutherland and Wester Ross only); Schedule 1 (Part II in Outer Hebrides, Caithness & Sutherland and Wester Ross only); Schedule 2
Bird	<i>Circus cyaneus</i>	Hen harrier	WCA 1981	Schedule 1 (Part I); Schedule 1A
Bird	<i>Alcedo atthis</i>	Kingfisher	WCA 1981	Schedule 1 (Part I)
Bird	<i>Circus aeruginosus</i>	Marsh harrier	WCA 1981	Schedule 1 (Part I); Schedule 4
Bird	<i>Falco columbarius</i>	Merlin	WCA 1981	Schedule 1 (Part I); Schedule 4
Bird	<i>Pandion haliaetus</i>	Osprey	WCA 1981	Schedule 1 (Part I); Schedule 4
Bird	<i>Falco peregrinus</i>	Peregrine falcon	WCA 1981	Schedule 1 (Part I); Schedule 4
Bird	<i>Anser brachyrhynchus</i>	Pink-footed goose	WCA 1981	Schedule 2
Bird	<i>Milvus milvus</i>	Red kite	WCA 1981	Schedule 1 (Part I); Schedule 1A
Bird	<i>Haliaeetus albicilla</i>	White-tailed eagle	WCA 1981	Schedule 1 (Part I); Schedule 1A; Schedule 4; Schedule A1
Bird	<i>Cygnus cygnus</i>	Whooper swan	WCA 1981	Schedule 1 (Part I)
Butterfly	<i>Carterocephalus palaemon</i>	Chequered skipper	WCA 1981	Schedule 5 ⁴
Butterfly	<i>Hamearis lucina</i>	Duke of Burgundy fritillary	WCA 1981	Schedule 5 ⁴
Butterfly	<i>Coenonympha tullia</i>	Large heath	WCA 1981	Schedule 5 ⁴
Butterfly	<i>Euphydryas aurinia</i>	Marsh fritillary	WCA 1981	Schedule 5
Butterfly	<i>Erebia epiphron</i>	Mountain ringlet	WCA 1981	Schedule 5 ⁴
Butterfly	<i>Aricia artaxerxes</i>	Northern brown argus	WCA 1981	Schedule 5 ⁴
Butterfly	<i>Boloria euphrosyne</i>	Pearl-bordered fritillary	WCA 1981	Schedule 5 ⁴

⁵ NatureScot (2021). Table of all Scotland's Protected Species. Available at: <https://www.nature.scot/table-all-scotlands-protected-species> [Accessed July 2022].

Taxon	Current taxon name	Common name	Legislation giving protection	Schedule or Annex listing
Butterfly	<i>Cupido minimus</i>	Small blue	WCA 1981	Schedule 5 ⁴
Fish	<i>Salmo salar</i> (only in fresh water)	Atlantic salmon	HR 1994	Schedule 3
Fish	<i>Lampetra fluviatilis</i>	River lamprey	HR 1994	Schedule 3
Mammal	<i>Meles meles</i>	Badger	PBA 1992	not applicable
Mammal	<i>Meles meles</i>	Badger	WCA 1981	Schedule 6
Mammal	<i>Plecotus auritus</i>	Bat - Brown long-eared	HR 1994	Schedule 2: European protected species
Mammal	<i>Pipistrellus pipistrellus</i>	Bat - Common pipistrelle	HR 1994	Schedule 2: European protected species
Mammal	<i>Myotis daubentonii</i>	Bat - Daubenton's	HR 1994	Schedule 2: European protected species
Mammal	<i>Nyctalus leisleri</i>	Bat - Leisler's	HR 1994	Schedule 2: European protected species
Mammal	<i>Pipistrellus nathusii</i>	Bat - Nathusius' pipistrelle	HR 1994	Schedule 2: European protected species
Mammal	<i>Myotis nattereri</i>	Bat - Natterer's	HR 1994	Schedule 2: European protected species
Mammal	<i>Nyctalus noctula</i>	Bat - Noctule	HR 1994	Schedule 2: European protected species
Mammal	<i>Pipistrellus pygmaeus</i>	Bat - Soprano pipistrelle	HR 1994	Schedule 2: European protected species
Mammal	<i>Myotis mystacinus</i>	Bat - Whiskered	HR 1994	Schedule 2: European protected species
Mammal	<i>Castor fiber</i>	European beaver	HR 1994	Schedule 2
Mammal	<i>Erinaceus europaeus</i>	Hedgehog	WCA 1981	Schedule 6
Mammal	<i>Lutra lutra</i>	Otter	HR 1994	Schedule 2: European protected species
Mammal	<i>Martes martes</i>	Pine marten	HR 1994	Schedule 3
Mammal	<i>Martes martes</i>	Pine marten	WCA 1981	Schedule 5
Mammal	<i>Mustela putorius</i> (otherwise known as <i>Putorius putorius</i>)	Polecat	HR 1994	Schedule 3
Mammal	<i>Sciurus vulgaris</i>	Red squirrel	WCA 1981	Schedule 5; Schedule 6
Mammal	<i>Sorex</i> spp.	Shrews (all species)	WCA 1981	Schedule 6
Mammal	<i>Arvicola amphibius</i>	Water vole	WCA 1981	Schedule 5 ³
Mammal	<i>Felis silvestris</i>	Wildcat	HR 1994	Schedule 2: European protected species
Mollusc	<i>Margaritifera margaritifera</i>	Freshwater pearl mussel	WCA 1981	Schedule 5 ⁵

Taxon	Current taxon name	Common name	Legislation giving protection	Schedule or Annex listing
Moss	<i>Hamatocaulis (Drepanocladus) vernicosus</i>	Slender green feather-moss	WCA 1981	Schedule 8
Reptile	<i>Vipera berus</i>	Adder	WCA 1981	Schedule 5 ^{1,4}
Reptile	<i>Anguis fragilis</i>	Slow worm	WCA 1981	Schedule 5 ^{1,4}
Reptile	<i>Zootoca vivipara</i>	Common lizard	WCA 1981	Schedule 5 ^{1,4}
Vascular Plant	<i>Hyacinthoides non-scripta</i>	Bluebell	WCA 1981	Schedule 8 ⁴
Key				
<p>WCA 1981 <i>Wildlife & Countryside Act 1981 (as amended in Scotland)</i></p> <p>Schedule 1 (Part I) <i>Birds protected by special penalties</i></p> <p>Schedule 1 (Part II) <i>Birds protected by special penalties during the closed season</i></p> <p>Schedule 1A <i>Birds that may not be intentionally or recklessly harassed at any time</i></p> <p>Schedule A1 <i>Birds whose habitually used nests may not be intentionally or recklessly taken, damaged, destroyed or otherwise interfered with when not in use</i></p> <p>Schedule 2 <i>Birds which may be killed or taken outside the closed season</i></p> <p>Schedule 3 (Part I) <i>Birds which may be sold at all times if ringed and kept in captivity</i></p> <p>Schedule 3 (Part II) <i>Birds that may be sold dead at all times</i></p> <p>Schedule 3 (Part III) <i>Birds that may be sold dead from 1 September to 28 February</i></p> <p>Schedule 4 <i>Birds that must be registered and ringed if kept in captivity</i></p> <p>Schedule 5 <i>Protected animals</i></p> <p>Schedule 6 <i>Animals protected from prohibited methods of capture</i></p> <p>Schedule 8 <i>Protected plants</i></p> <p>HR 1994 <i>Habitats Regulations 1994 (as amended in Scotland)</i></p> <p>Schedule 2 <i>European protected fauna</i></p> <p>Schedule 3 <i>Animals listed on Annex V of the Habitats and Species Directive whose natural range includes Great Britain</i></p> <p>Schedule 4 <i>European protected plant species</i></p> <p>PBA 1992 <i>Protection of Badgers Act 1992</i></p> <p>¹ <i>Protected against intentional killing and injuring</i></p> <p>² <i>Protected against intentional or reckless taking</i></p> <p>³ <i>Protected against intentional or reckless damage to, destruction of, obstruction of access to any structure or place used for shelter or protection and disturbance to animal whilst occupying such structures</i></p> <p>^{3a} <i>Protected against intentional or reckless damage to, destruction of, obstruction of access to any structure or place used for shelter or protection</i></p> <p>⁴ <i>Protected against selling, offering or advertising for sale, possessing or transporting for the purpose of sale</i></p> <p>⁵ <i>Protected against possession or control (live or dead animal, part or derivative)</i></p> <p># <i>Protected in England & Wales only (a species believed to have been introduced to Scotland)</i></p>				