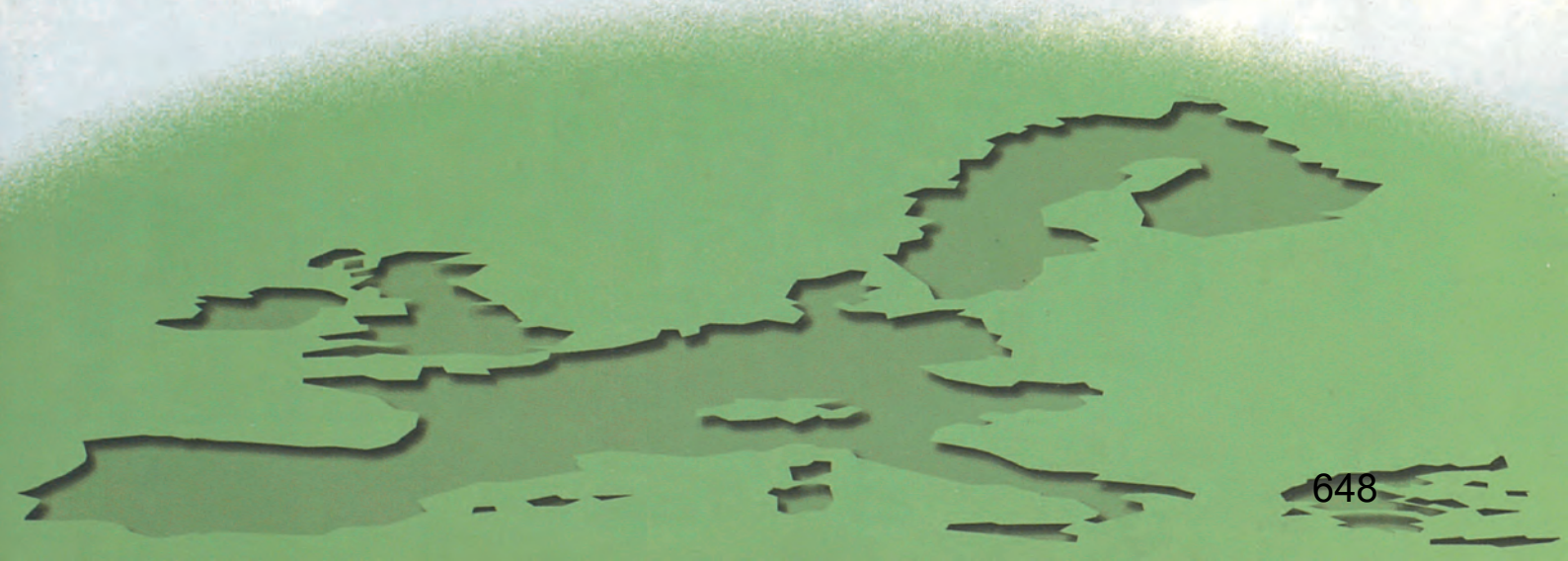
European Commission

MANAGING NATURA 2000 SITES

The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC



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Biodiversity is increasingly recognised as an inestimable element of our common heritage. The last Eurobarometer shows that European citizens take a great interest in the protection of rare and endangered species and habitats. This is the purpose of the Natura 2000 ecological network established by the 'Habitats' directive, which was adopted in 1992. The network, which also embraces areas established under the 'Birds' directive, will provide a strong protection for Europe's finest wildlife areas.

The management of the Natura 2000 sites is essential for their conservation. But to be successful it requires, in the first instance, the active involvement of the people who live in and depend upon these areas. The measures for managing Natura 2000 sites are given in Article 6 of the 'Habitats' directive. However, as this is a concise legal text, many of the key concepts are not easy to understand.

I consider it important that we have a clear and accessible understanding of these key provisions of the directive as this will provide the basis for it to be applied throughout the Community on an equal footing.

This document is therefore intended to facilitate the interpretation of Article 6 by competent authorities in the Member States. I hope it assists them in fully applying it and I would encourage them to further develop guidelines for the different actors concerned.

This important document, which aims at a better understanding of Community legislation by the citizens, should also be seen as part of the openness and transparency policy of the European Commission.

Margot Wallström
Commissioner for the Environment

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Foreword

Why an interpretation guide for Article 6?

Article 6 of the 'Habitats' Directive (92/43/EEC) plays a crucial role in the management of the sites that make up the Natura 2000 network. With the spirit of integration in mind, it indicates the various tasks involved so that the nature conservation interests of the sites can be safeguarded.

Many questions have been raised about the significance of this article by Member States and operators. At first glance it seems to be broad and not well defined, but a thorough analysis, linking it with the other articles of the directive, makes it easier to understand and apply. Nevertheless, Article 6 should not be seen in isolation. In particular, if its application leads to specific requirements, it should be remembered that Article 8 envisages the co-financing of some of the measures necessary to meet the objectives of the directive.

Purpose and target of this document

This document aims at providing guidelines to the Member States on the interpretation of certain key concepts used in Article 6 of the 'Habitats' directive.

The primary targets of the document are Member State authorities and not individuals. It is however expected that it will also facilitate the understanding of the mechanics of the 'Habitats' directive by the various bodies and groups concerned, especially if it is complemented with more detailed guidance which should be drawn up by the Member States themselves.

Nature and limitations of the document

The document has been drafted by the services of the Environment Directorate-General of the European Commission, following relevant informal discussions held with the nature protection authorities of the Member States (see Annex V for a list). As such, the document reflects only the views of Commission services and is not of a binding nature. It should be stressed that in the last resort it rests with the European Court of Justice to interpret a directive.

The interpretations provided by the Commission services cannot go beyond the directive. This is particularly true for this directive as it enshrines the subsidiarity principle and as such lets a large margin of manoeuvre to the Member States for the practical implementation of specific measures related to the various sites of the Natura 2000 network. In any case, the Member States are free to choose the appropriate way they wish to implement the practical measures, provided the latter serve the general purpose of the directive.

However interpretative, this document is not intended to give absolute answers to site-specific questions. As a matter of fact, such matters should be dealt with on a case-by-case basis, while bearing in mind the orientations provided by the document.

The present version is not meant to be a definitive one; indeed, the document may be revised in the future, according to experience that will arise from the implementation of Article 6 in the Member States and from any future case law. Furthermore, the Commission services have arranged for the prepa-

ration of more specific, methodological guidance on the assessment of plans and projects under Article 6(3) and 6(4); such guidance, once ready, is intended to be complementary to this document.

Structure of the document

After an introductory note on the overall content and logic of Article 6, there follows a detailed presentation of each paragraph (6(1), 6(2), 6(3), 6(4)) according to the same general scheme. This involves an introduction to the article and its scope, and then discussion of the main concepts and issues raised, on the basis of the Commission's knowledge, existing jurisprudence of the European Court of Justice, and other relevant directives.

The key points arising from the Commission's analyses are summarised (in bold characters) at the end of each section, in order to facilitate a quick reading of the relevant conclusions. Full references of Court cases quoted throughout the text are provided as an annex at the end of the document.

1. Introduction

Article 6 in context



1.1. Placed within the overall scheme of Directives 92/43/EEC and 79/409/EEC as well as within a wider context

Before addressing Article 6 in detail, it is worth recalling its place within the overall scheme of Directive 92/43/EEC as well as that of Directive 79/409/EEC ([1]) and its relationship with a wider legal context.

The first chapter of Directive 92/43/EEC, comprising Articles 1 and 2, is entitled 'Definitions'. This chapter sets out the aim of the directive which is to *'contribute towards ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies'* ([2]). It also provides a general orientation, referring to the need for measures taken pursuant to the directive to be designed to maintain or restore certain habitats and species *'at favourable conservation status'* ([3]), while, at the same time, referring to the need for measures taken pursuant to the directive to *'take account of economic, social and cultural requirements and regional and local characteristics'* ([4]).

The main specific requirements of Directive 92/43/EEC are grouped under the two subsequent chapters. The first is entitled 'Conservation of natural habitats and habitats of species' and comprises Articles 3 to 11 inclusive. The second is entitled 'Protection of species' and comprises Articles 12 to 16 inclusive.

The 'Conservation of natural habitats and habitats of species' chapter addresses the most ambitious and far-reaching challenge of the directive — the establishment and conservation of the network of sites known as Natura 2000. Within this chapter, Article 6 sets out provisions which govern the conservation and management of Natura 2000 sites. Seen in this context, Article 6 is one of the most important of the 24 articles of the directive, being the one which most determines the relationship between conservation and land use.

The article has three main sets of provisions. Article 6(1) makes provision for the establishment of the necessary conservation measures, and is focused on positive and proactive interventions. Article 6(2) makes provision for avoidance of habitat deterioration and significant species disturbance. Its emphasis is therefore preventive. Article 6(3) and (4) set out a series of procedural and substantive safeguards governing plans and projects likely to have a significant effect on a Natura 2000 site. Within this structure, it can be seen that there is a distinction between Article 6(1) and (2) which define a general regime and Article 6(3) and (4) which define a procedure applying to specific circumstances.

Considered globally, the provisions of Article 6 reflect the general orientation expressed in the recitals of the directive. This involves the need to promote biodiversity by maintaining or restoring certain habitats and species at 'favourable conservation status' within the context of Natura 2000 sites, while taking into account economic, social, cultural and regional requirements, as a means to achieve sustainable development.

Apart from the place of Article 6 within the overall scheme of Directive 92/43/EEC, it is also relevant to mention its *relationship with the scheme of Directive 79/409/EEC* on the conservation of wild birds.

([1]) OJ L 206, 22.7.1992, p. 7 and OJ L 103, 25.4.1979, p. 1 respectively.

([2]) Article 2(1).

([3]) Article 2(2).

([4]) Article 2(3).

- In the first place, the scheme of the earlier directive is broadly comparable with that of the latter. In particular, the 'Conservation of natural habitats and habitats of species' chapter of Directive 92/43/EEC has its parallel in Articles 3 and 4 of Directive 79/409/EEC.
- In the second place, there has been an important degree of merger or fusion between the schemes of both directives. First, special protection areas (SPAs) classified under the earlier directive are now an integral part of the Natura 2000 network ([5]). Second, the provisions of Article 6(2), (3) and (4) of Directive 92/43/EEC have been made applicable to SPAs ([6]). In this document, most comments on Article 6 are framed by reference to sites proposed under Directive 92/43/EEC. Generally speaking, these comments will apply, *mutatis mutandis*, to sites classified under Directive 79/409/EEC.

Seen in a wider context — that of the Treaty establishing the European Community — Article 6 can be regarded as a key framework for giving effect to the principle of integration, since it encourages Member States to manage the protected areas in a sustainable way and since it sets the limits of activities which can impact negatively on protected areas while allowing some derogations in specific circumstances.

Seen in an **international context,** Article 6 helps achieve the aims of relevant international nature conservation conventions such as the Berne Convention ([7]) and the Biodiversity Convention ([8]), while at the same time creating a more detailed framework for site conservation and protection than these conventions themselves do.

Article 6 is a key part of the chapter of Directive 92/43/EEC entitled 'Conservation of natural habitats and habitats of species'. It sets out the framework for site conservation and protection, and includes proactive, preventive and procedural requirements. It is relevant to special protection areas under Directive 79/409/EEC as well as to sites based on Directive 92/43/EEC. The framework is a key means of achieving the principle of environmental integration and ultimately sustainable development.

1.2. Relation with protection of species chapter

As mentioned above, the chapter of Directive 92/43/EEC entitled 'Protection of species' covers Articles 12 to 16 inclusive and deals with strictly protected animal and plant species listed in Annex IV of the directive.

Articles 12, 13 and 14, which are applicable from the date of implementation of Directive 92/43/EEC, i.e. 10 June 1994, cover certain plant and animal species which also figure in Annex II of the directive, and which therefore benefit from the provisions of Article 6 within the Natura 2000 sites hosting them.

As a consequence, an action may at the same time fall within the scope of both chapters.

([5]) Article 3(1) of Directive 92/43/EEC provides that 'the Natura 2000 network shall include the special protection areas classified by the Member States pursuant to Directive 79/409/EEC'.

([6]) Article 7 of Directive 92/43/EEC.

([7]) Council Decision 82/72/EEC of 3 December 1981 concerning the conclusion of the Convention on the Conservation of European Wildlife and Natural Habitats (OJ L 38, 10.2.1982, p. 1).

([8]) Council Decision 93/626/EEC of 25 October 1993 concerning the conclusion of the Convention on Biological Diversity (OJ L 309, 13.12.1993, p. 1).

For example, the destruction of a resting place of the brown bear, *Ursus arctos*, may contravene the prohibition of Article 12(1)(d) while also running counter to Article 6 if the resting place is within a Natura 2000 site for the species.

While this may appear to result in duplication, a few points should be noted.

- In the first place, certain species of plant and animal covered by Articles 12, 13 and 14 do not figure within Annex II. Thus, they do not benefit directly from site conservation and protection within Natura 2000.
- In the second place, for species such as *Ursus arctos* which benefit from both the chapter on conservation of natural habitats and habitats of species and the chapter on protection of species, the protection afforded by Article 6 is limited to the Natura 2000 network whereas the protection afforded by the chapter on protection of species is not geographically limited (subject to any restriction mentioned in the annexes to the directive). Thus, Article 6 is concerned with **site** conservation and protection whereas the chapter on protection of species is more narrowly focused on the species (though this will obviously have implications for sites where species occur, in particular the breeding sites and resting places of animals).

While certain plant and animal species benefit from both the chapter on conservation of natural habitats and habitats of species and the chapter on protection of species, the scope and the nature of the relevant provisions are different.

1.3. Putting Article 6 into national law: the duty of transposition

It is important to note that the provisions of Article 6 require transposition into national law (i.e. they need to be the subject of provisions of national law giving effect to their requirements). In this respect, they come within the scope of Article 23 of the directive which states that '*Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this directive within two years of its notification*'. The deadline for transposition was 10 June 1994 (or 1 January 1995 in the case of Austria, Sweden and Finland).

This reflects the type of Community instrument that has been used, namely a directive. A directive is binding as to the result to be achieved, but leaves a Member State some choice as to the form and methods of achieving that result. For most directives, the required result will need national legislation (see Annex I, point 1).

Depending on the Member State concerned, Article 6 needed to be transposed into national law by 10 June 1994 or 1 January 1995.

1.4. Time of application of Article 6: from which date do the obligations of Article 6 apply?

In general, a distinction needs to be made between the deadline for transposition of the provisions of Article 6 into national law and the date from which these provisions apply to individual sites.

As regards individual sites, a distinction needs to be drawn between special protection areas classified under Directive 79/409/EEC and other sites.

1.4.1. Special protection areas

The protection requirements regarding special protection areas (SPAs) are given in Article 4(4), first sentence of Directive 79/409/EEC which provides that, for those areas, *'... Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article ...'.*

After the entry into force of Directive 92/43/EEC the above obligations are replaced pursuant to Article 7 of Directive 92/43/EEC which provides as follows:

> *'Obligations arising under Article 6(2), (3) and (4) of this directive shall replace any obligations arising under the first sentence of Article 4(4) of Directive 79/409/EEC in respect of areas classified pursuant to Article 4(1) or similarly recognised under Article 4(2) thereof, as from the date of implementation of this directive or the date of classification or recognition by a Member State under Directive 79/409/EEC, where the latter date is later.'*

Thus, the provisions of Article 6(1) do not apply to special protection areas (SPAs). However, analogous provisions apply to SPAs by virtue of Article 4(1) and (2) of Directive 79/409/EEC. The date from which these similar provisions should, in principle, apply to SPAs is the date from which Directive 79/409/EEC became applicable in the Member States (see Annex I, point 2).

As regards the provisions of Article 6(2), (3) and (4), it is clear from the terms of Article 7 that these now apply to already classified SPAs.

However, given the wording of Article 7, a question arises as to whether the provisions of Article 4(4), first sentence of Directive 79/409/EEC remain applicable after the 'date of implementation of this directive' (10 June 1994 for the then Member States and 1 January 1995 for Austria, Finland and Sweden) until such time as a site is classified as an SPA.

In the *Santoña Marshes* case (see Annex I, point 3), the European Court of Justice established that the provisions of Article 4(4) first sentence were applicable to an unclassified site which should have been classified as an SPA from the date of implementation of Directive 79/409/EEC (i.e. 7 April 1981 for the then Member States and the date of accession for later Member States).

The underlying rationale of *Santoña Marshes* is that sites that deserve classification should be treated in the same way regardless of whether or not they are formally classified. The Commission services therefore consider that the provisions of Article 6(2), (3) and (4) are applicable to SPAs, or to sites which should be classified as SPAs, from the date of implementation of Directive 92/43/EEC.

Article 6(1) of Directive 92/43/EEC does not apply to SPAs. However, there are analogous provisions in Article 4(1) and (2) of Directive 79/409/EEC and these apply from the date of implementation of that directive. As regards the date of application of Article 6(2), (3) and (4) of Directive 92/43/EEC to SPAs, it is reasonable to conclude that all sites classified, or qualifying for classification, as SPAs are subject to these provisions from the date of implementation of Directive 92/43/EEC.

1.4.2. Sites based on Directive 92/43/EEC

Article 6(1) applies to special areas of conservation (SACs). According to Article 4(4) of the directive, SACs come into being by way of designation by the Member States. Such designation is only possible after a site has been adopted as a site of Community importance (SCI) in accordance with Article 4(2) of the directive. An SCI must be designated as an SAC *'as soon as possible and within six years at the*

most'. This means that the final deadline for SAC designation — and therefore for compliance with Article 6(1) — is 10 June 2004.

Article 4(5) of Directive 92/43/EEC provides as follows:

> *'As soon as a site is placed on the list referred to in the third subparagraph of paragraph 2 it shall be subject to Article 6(2), (3) and (4).'*

Thus, in contrast to the provisions of Article 6(1) which apply only when an SCI has been designated as an SAC, the provisions of Article 6(2), (3) and (4) become applicable as soon as a site becomes an SCI and before it is designated as an SAC. Member States are also free to choose an earlier date for the implementation of Article 6(2), (3) and (4), and some national legislation already provides for such earlier implementation.

According to Article 4 of Directive 92/43/EEC, Member States ought to have submitted their national lists by 10 June 1995 and the Commission adopted the Community list by 10 June 1998. However, no Community list could be adopted by 10 June 1998 owing to delays in submission of complete national lists.

The text of Directive 92/43/EEC seems to indicate that Member States do not need to pay attention to the provisions of Article 6 before the Community list has been adopted. However, other provisions of Community law as interpreted by the European Court of Justice need to be taken into consideration.

Article 10 (ex Article 5) of the Treaty establishing the European Community provides as follows:

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> *'Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks. They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.'*

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The European Court of Justice has, on several occasions, held that, even in the absence of transposing measures or the implementation of specific obligations resulting from a directive, the national authorities, when interpreting national law, should take all possible measures in order to achieve the results aimed at by a directive.

Furthermore, the European Court of Justice ruled in *Santoña Marshes* that a Member State could not escape from its duty to protect a site which, according to relevant scientific criteria, deserved protection, by not classifying it as a special protection area. It is possible that this principle could be used, by analogy, in questions arising from Directive 92/43/EEC.

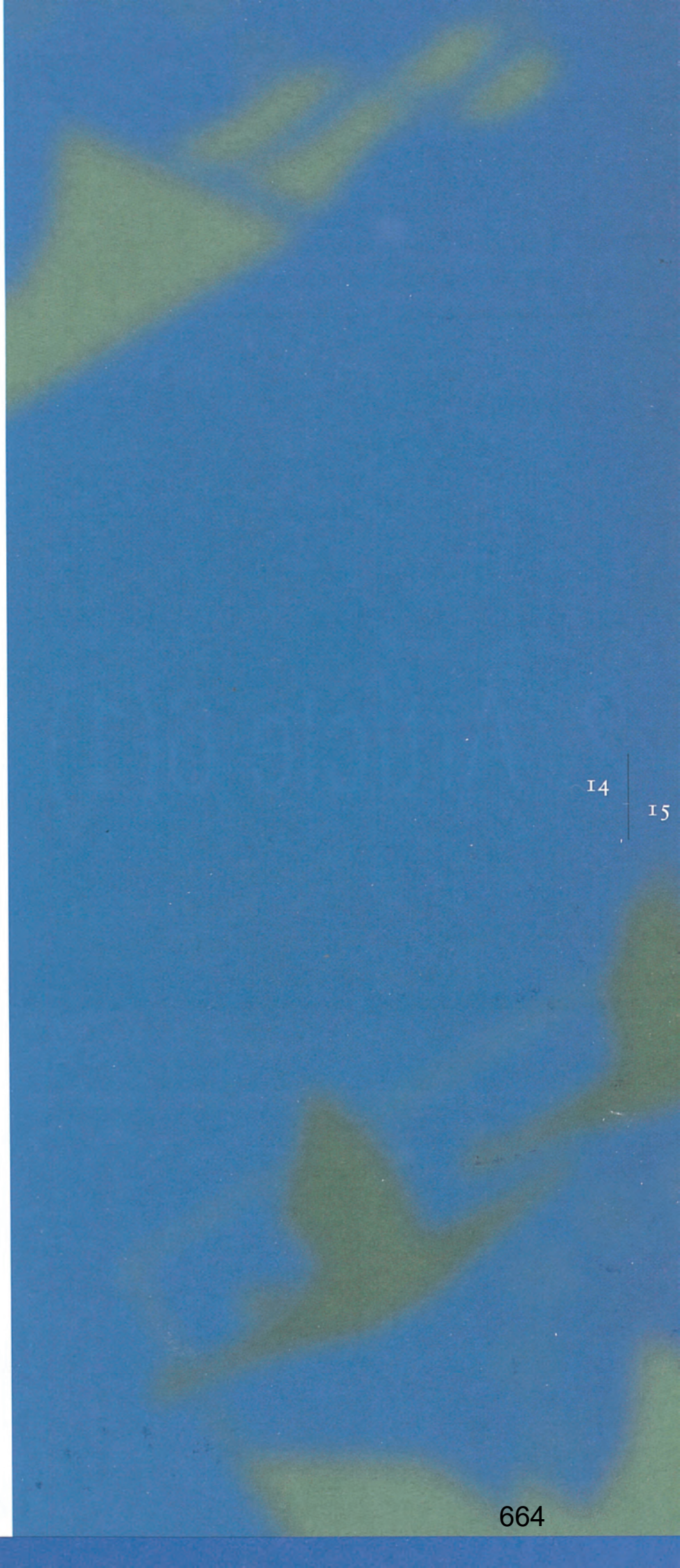
In the light of the foregoing, Member State authorities are advised to ensure that sites on their national list of proposed SCIs are not allowed to deteriorate before the Community list of SCIs is adopted. Where the national list remains incomplete, they are advised to also ensure the non-deterioration of sites that, according to scientific evidence based on the criteria of Annex III of Directive 92/43/EEC, should be on the national list. One practical suggestion is to make correct use of environmental impact assessment (EIA) under Directive 85/337/EEC (impact assessment) in relation to potentially damaging projects. The European Court of Justice has already confirmed the importance which should be attached to sensitive natural sites when deciding whether projects should undergo an EIA under this directive (see Annex I, point 4).

The above considerations can be summarised in the following table:

Site status	pSCI	SCI	SAC
Deadline foreseen by the directive	June 1995	June 1998	June 2004
Applicability of Article 6 provisions	Optional for 6(1), (2), (3) and (4), need for measures to avoid site deterioration	6(2), (3) and (4)	6(1), (2), (3) and (4)

Once the Community list is established, the position will become clear as to what requires site protection under the directive, and the advice on provisional site protection will no longer be applicable.

As regards sites based on Directive 92/43/EEC, it can be argued that Member States, particularly after the date for adoption of the Community list expired on 10 June 1998, have certain obligations to act in a way so as to ensure that the aims of the directive are not jeopardised. Even in the absence of a Community list, Member States' authorities are therefore advised to at least abstain from all activities that may cause a site on the national list to deteriorate. Where a complete national list has not been submitted, the same advice applies to a site which, on the basis of the scientific criteria of the directive, clearly ought to be on the national list.


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2. Article 6(1)

Clarification of the concepts of conservation measures; statutory, administrative or contractual measures; and management plans.

2.1. The text

'For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.'

2.2. Scope

Article 6(1) lays down a general conservation regime which has to be established by the Member States for the special areas of conservation (SAC).

Article 6(1):

- provides for **positive** measures, involving management plans and statutory, administrative or contractual measures, which aim to achieve the general objective of the directive. In that regard, Article 6(1) is distinguished from the three other paragraphs of Article 6 which provide for preventive measures to avoid deterioration, disturbance and significant effects in the Natura 2000 sites;
- has a value of **reference** for the logic and the overall comprehension of Article 6; the structured reading and the comprehension of the three other paragraphs of Article 6 require a preliminary reading and comprehension of paragraph 1;
- establishes a general conservation regime which applies to **all** SACs of the Natura 2000 network without exception and to **all** the natural habitat types of Annex I and the species of Annex II present on the sites, except those identified as non-significant in the Natura 2000 standard data form (see Section 4.5.3);
- concerns the **SACs specifically**: Article 6(1) does not apply to the special protection areas (SPAs), unlike Article 6(2), (3) and (4). In this way, the legislator established:
  - — a regime laying down special conservation measures for the **SPAs** classified under the 'Birds' directive, according to its Article 4(1) and (2);
  - — a regime laying down conservation measures for the **SACs** designated under the 'Habitats' directive, according to its Article 6(1);
- relates to Article 2(3) which specifies that *'the measures ... take account of economic, social and cultural requirements and regional and local characteristics'.*

For all the SACs, Member States are required to draw up conservation measures. These are positive and apply to all the natural habitat types of Annex I and the species of Annex II present on the sites, except those whose presence is non-significant according to the Natura 2000 standard data form.

2.3. What should be the content of the 'necessary conservation measures'?

2.3.1. The conservation concept

The conservation concept appears in the sixth recital of the directive which reads: *'Whereas, in order to ensure the restoration or maintenance of natural habitats and species of Community interest at a favourable conservation status, it is necessary to designate special areas of conservation in order to create a coherent European ecological network according to a specified timetable';* and in its eighth recital: *'whereas it is appropriate, in each area designated, to implement the necessary measures having regard to the conservation objectives pursued'.*

It is then defined in Article 1, point (a) of the directive: *'(a) conservation means a series of measures required to maintain or restore the natural habitats and the populations of species of wild fauna and flora at a favourable status as defined in (e) and (i);'.*

Member States have to adopt the conservation measures necessary to achieve the general aim of the directive as set out in its Article 2(1): *'The aim of this directive shall be to contribute towards ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies'.* There is therefore a **result obligation.**

Article 2(2), in particular, specifies the objective of the measures to be taken under the terms of this directive: *'Measures taken ... shall be designed to maintain or to restore, at a favourable conservation status, natural habitats and species of wild fauna and flora of Community interest'.* These measures have, according to Article 2(3), to *'take account of economic, social and cultural requirements and regional and local characteristics'.*

Article 3 specifies that it is the Natura 2000 network *'composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II'* which has to ensure the objective pursued by Article 2(2).

The necessary conservation measures have therefore to aim at maintaining or restoring the favourable conservation status of the natural habitat types and the species of Community interest. They are connected with the general objective of the directive which applies to the Natura 2000 network, as defined in Article 3.

The fulfilment of the aim laid down in Article 2(1) largely depends on conservation measures that the Member States have to take in order to maintain or restore the natural habitat types and species at a favourable conservation status. These measures are implemented through the Natura 2000 network defined in Article 3(1), taking into account economic, social and cultural requirements and regional and local characteristics.

2.3.2. The conservation status

The conservation status is defined in Article 1 of the directive:

- For a **natural habitat**, Article 1(e) specifies that it is: *'the sum of the influences acting on a natural habitat and its typical species that may affect its long-term natural distribution, structure and functions as well as the long-term survival of its typical species ...'.*
- For a **species**, Article 1(i) specifies that it is: *'the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its population ...'.*

The Member State has therefore to take into account all the influences of the environment (air, water, soil, territory) which act on the habitats and species present on the site.

The **favourable conservation status** is also defined by Article 1(e) for natural habitats and Article 1(i) for species.

- For a **natural habitat**, it occurs when:
  - *— 'its natural range and areas it covers within that range are stable or increasing;*
  - *— the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future;*
  - *— the conservation status of its typical species is favourable'.*

- For a **species**, it occurs when:
  - *'the population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats;*
  - *the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future;*
  - *there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis'.*

The favourable conservation status of a natural habitat or species has to be considered across its natural range, according to Articles 1(e) and 1(i), i.e. at biogeographical and, hence, Natura 2000 network level. Since, however, the ecological coherence of the network will depend on the contribution of each individual site to it and, hence, on the conservation status of the habitat types and species it hosts, the assessment of the favourable conservation status at site level will always be necessary.

The conservation status of natural habitat types and species present on a site is assessed according to a number of criteria established by Article 1 of the directive. This assessment is done both at site and network level.

2.3.3. The ecological requirements

Article 6(1) specifies that the necessary conservation measures have to correspond *'to the ecological requirements of the natural habitat types of Annex I and the species in Annex II present on the sites'.* It is therefore in relation to the ecological requirements of the natural habitat types and the species that Member States have to determine the conservation measures.

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Although the directive does not contain any definition of the 'ecological requirements', the purpose and context of Article 6(1) indicate that these involve all the ecological needs of abiotic and biotic factors necessary to ensure the favourable conservation status of the habitat types and species, including their relations with the environment (air, water, soil, vegetation, etc.).

These requirements rest on scientific knowledge and can only be defined on a case-by-case basis, according to the natural habitat types of Annex I, the species of Annex II, as well as the sites which host them. Such knowledge is essential to make it possible to draw up the conservation measures, on a case-by-case basis.

The ecological requirements can vary from one species to another but also for the same species from one site to another.

Thus, for the bats included in Annex II of the directive, the ecological requirements differ between the period of hibernation (when they rest in underground environments, in hollow shafts or in dwellings) and the active period, from spring onwards (during which they leave their winter quarters and resume their activities of insect hunting).

For the Annex II amphibian *Triturus cristatus*, the ecological requirements vary during its life cycle. The species hibernates in the ground (cavities, fissures), then lays its eggs in spring and at the beginning of the summer in ponds. It then leaves the aquatic environment and lives on land during the summer and autumn. For the same species, the ecological requirements can therefore vary according to the sites (aquatic or land).

The identification of the ecological requirements of the natural habitat types of Annex I and the species of Annex II present on the sites is the **responsibility of the Member States.** The latter may wish to exchange their knowledge in this field, with the support of the European Commission and the European Environment Agency — European Topic Centre for Nature Conservation.

The conservation measures have to correspond to the ecological requirements of the natural habitat types in Annex I and of the species in Annex II present on the site. The ecological requirements of those natural habitat types and species involve all the ecological needs necessary to ensure their favourable conservation status. They can only be defined on a case-by-case basis and on the basis of scientific knowledge.

2.4. What form can the necessary conservation measures take?

The conservation measures can take at least two forms: the form of *'appropriate statutory, administrative or contractual measures...'* and *'if need be'*, the form of *'appropriate management plans'.*

2.4.1. Management plans

The necessary conservation measures can involve *'if need be, appropriate management plans specifically designed for the sites or integrated into other development plans'.* Such management plans should address all foreseen activities, unforeseen new activities being dealt with by Article 6(3) and (4).

The words 'if need be' indicate that management plans may not always be necessary. If management plans are chosen by a Member State, it will often make sense to establish them before concluding the other measures mentioned in Article 6(1), particularly the contractual measures. Contractual measures will often involve a relationship between the competent authorities and individual landowners and will be limited to individual land-holdings which are normally smaller than the site. In such circumstances, a management plan focused on the site will provide a wider framework, and its contents will provide a useful starting point for the specific details of contractual measures.

The management plans must be *'appropriate and specifically designed for the sites'*, therefore be targeted at the sites of the Natura 2000 network, **or** *'integrated into other development plans'.* The latter provision is in conformity with the principle of integration of the environment in the other Community policies. This integration has to contribute to the coherence of the network mentioned in Article 3(1). In any case, it may be necessary to apply Article 6(3) to those aspects of the management plan which are not connected to conservation management (see commentary on Article 6(3) under Section 4.3.3).

While no indication of the specific contents of management plans can be given, Annex II at the end of this document provides a number of important considerations that can be made in view of the preparation of such plans. Furthermore, Annex IIa provides an indicative list of LIFE-Nature projects which have produced management plans or other statutory, administrative or contractual measures (see below) aiming at site conservation.

Member States can establish management plans which superimpose themselves on the other categories of measures. They are not always necessary but, if they are used, they should take into account the characteristics specific to each site and all foreseen activities. They may be stand-alone documents or incorporated into other development plans when those exist.

2.4.2. Statutory, administrative or contractual measures

The phrase *'if need be'* refers only to the management plans and not to the statutory, administrative or contractual measures. Thus, even if a Member State considers that a management plan is unnecessary, it will nonetheless have to take such measures.

The division into these three categories of measures has to be considered in a broad sense. A variety of measures may be considered as appropriate to achieve the aim of the directive. In principle, this involves measures having a **positive effect** but, in some exceptional cases, it can also involve measures requiring **no action**. On the other hand, these measures are not necessarily new measures, since existing measures can be considered sufficient if they are appropriate.

Among measures involving positive action, *agri-environmental* or *sylvi-environmental* measures serve as a good example to illustrate how socioeconomic requirements can be taken into account according to Article 2(3).

1. *Agri-environmental measures:* for certain man-made, semi-natural Annex I habitat types (meadows, pastures) and Annex II species hosted in these habitats, agreements with farmers within the new rural development regulation (9) will be in most cases a sufficient contractual measure aiming at maintaining a favourable conservation status of habitat types and species.
2. *Sylvi-environmental measures:* appropriate measures might be an initiative by a forest company within the framework of a certain certification scheme provided that this initiative ensures that favourable conservation status is maintained.

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In this perspective, all suitable EU funds (e.g. LIFE, rural development and regional funds) should be considered as a means for implementing these measures.

The choice between statutory, administrative or contractual measures, or even of the management plans, is left to the Member States. This is in conformity with the principle of subsidiarity. However, Member States must choose at least one of the three categories, i.e. statutory, administrative, contractual.

There is no hierarchy between these three categories. Thus Member States have the choice to use, on a Natura 2000 site, just one category of measures (e.g. only contractual measures) or combined measures (e.g. combination of statutory and contractual measures according to the conservation issues of the natural habitat types in Annex I and the species in Annex II present on the site). Moreover, in addition to the selected obligatory measures, Member States can establish and implement management plans.

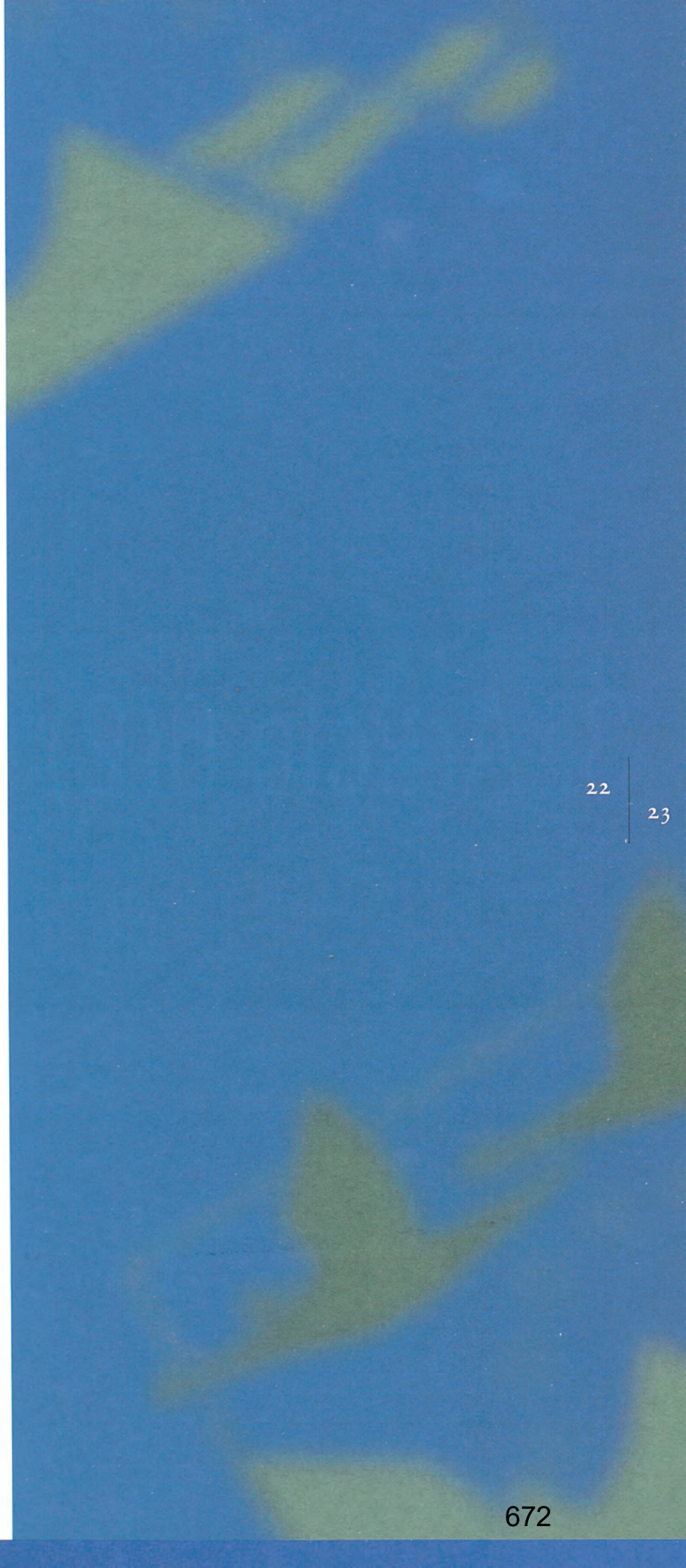
The three categories of measures are qualified as 'appropriate'. This qualifier is not defined in the directive. However, in the case of Article 6(1), the statutory, administrative or contractual measures are embraced within the concept of conservation measures. The qualifier 'appropriate' has no other objective than to recall that whatever the type of measure chosen by the Member States, there is an obligation to respect the general objectives of the directive.

Thus, if a Member State chooses the contractual measures, it always has the obligation to establish in a permanent way the necessary conservation measures which correspond to *'the ecological requirements*

(9) Council Regulation (EC) No 1257/1999 of 17 May 1999, OJ L 160, 26.6.1999, p. 80.

of the habitats of Annex I and the species of Annex II present on the sites' and respect the general aim of the directive defined in Article 2(1).

For SACs, Member States are required to use the appropriate statutory, administrative or contractual measures. These measures shall take into account socioeconomic requirements according to Article 2(3). They have to (a) correspond to the ecological requirements of habitats of Annex I and species of Annex II present on the sites and (b) fulfil the general objective of the directive to maintain or restore at a favourable conservation status the natural habitats and the species of fauna and flora of Community interest.



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3. Article 6(2)

Clarification of the concepts of *deterioration; disturbance; and significant effect*

3.1. The text

'Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbances of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this directive.'

3.2. Scope

The article takes as a starting point the **prevention principle**: *'Member States shall take appropriate steps **to avoid**, in the special areas of conservation, the deterioration... as well as disturbances...'.*

These measures go beyond the simple management measures necessary to ensure conservation since these are already covered by Article 6(1). The words *'avoid'* and *'could be significant'* stress the anticipatory nature of the measures to be taken. It is not acceptable to await until deterioration or disturbances occur before taking measures (see under Section 4.4.2 the interpretation of *'likely to'* in Article 6(3)).

This article should be interpreted as requiring Member States to take all the appropriate actions which it may reasonably be expected to take, to ensure that no significant deterioration or disturbance occurs.

The scope of this article is broader than that of Article 6(3) and (4) which apply only to plans and projects requiring an authorisation. It is also applicable to the performance of activities which do not necessarily require prior authorisation, like agriculture or fishing.

Article 6(2):

- applies **permanently** in the special areas of conservation (SACs). It can concern past, present or future activities or events (for instance, in the case of a toxic spill affecting a wetland, this article would mean that all preventive measures should have been taken to avoid the spillage, even if its location is distant from the wetland). If an already existing activity in a SAC causes deterioration of natural habitats or disturbance of species for which the area has been designated, it must be covered by the necessary conservation measures foreseen in Article 6(1). This may require, if appropriate, that the negative impact is brought to an end either by stopping the activity or by taking mitigating measures. This can include economic compensation.

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- **is not limited to intentional acts**, but could also cover any chance events that could occur (fire, flood, etc.), as long as they are predictable. In case of catastrophes this concerns only the obligation to take (relative) precautionary measures to decrease the risk of such catastrophes as long as they could jeopardise the aim of the directive.

The legislator envisaged certain **limits** to the responsibility of the Member States:

- **Spatial limit**. Measures aim only at species and habitats located *'in the SACs'*. On the other hand, measures may need to be implemented **outside** the SAC, i.e. if external events may have an impact on the species and the habitats inside the SAC. Indeed, the article does not specify that measures have to be **taken** in the SAC but to **avoid** in the SAC.

- **Limit of habitats and species concerned**. The appropriate measures concern only habitats and species *'for which the areas have been designated'*. In particular, the habitats and species concerned by the measures to be taken are those identified in the Natura 2000 standard data forms (see Sections 2.2 and 4.5.3). The aim is not therefore to take general conservation measures, but rather to take measures focused on the species and habitats which justified the selection of the special area of conservation. The disturbances and/or deterioration will thus be determined by the information which has been communicated by the Member States and which has been used to ensure the coherence of the network for the species and habitats concerned.

Member States are required to take preventive measures to avoid deterioration and disturbances connected with a predictable event. These measures apply only to the species and habitats for which the sites have been designated, and should also be implemented, if necessary, outside the sites.

3.3. Does implementation differ for deterioration and disturbance?

In terms of **disturbance of species**, Article 6.2 specifies that appropriate steps have to be taken to avoid it *'in so far as such disturbance could be significant* ***in relation to the objectives*** *of this directive'.*

The disturbance in question has to be relevant to (have an impact on) the conservation status of the species in relation to the objectives of the directive. It is therefore in relation to these **objectives** that the Member State has to determine whether or not disturbance is significant.

In terms of **deterioration of habitats** however, the effect in relation to the objectives of the directive is not mentioned in the text of the directive. It is simply stated that the deterioration of habitats must be avoided. The purpose of all the measures taken under this directive has to correspond to the objectives of the directive and to respect the principle of proportionality. The deterioration of habitats is therefore also to be assessed against the objectives of the directive. Indeed, it seems difficult to assess deterioration in absolute terms without reference to measurable limits. As presented below, connecting deterioration to the objectives of the directive makes it possible to use Article 1 of the directive to interpret the limits of what one can regard as deterioration.

Disturbance and deterioration should be assessed against the objectives of the directive.

3.4. Which conditions should trigger measures by the Member States?

There exists an apparent difference between the limit of acceptability for the deterioration of a habitat or the disturbance of a species.

- In the case of **disturbance**, the latter has to be **significant** (a certain degree of disturbance is tolerated). In addition, it is not necessary to prove that there will be a real significant effect, but the likelihood alone (*'could be'*) is enough to justify corrective measures. This can be considered consistent with the prevention and precautionary principles.
- In the case of **deterioration**, the legislator did not explicitly give this margin. This does not exclude however some room for manoeuvre in determining what can be described as deterioration (see below).

Deterioration is a physical degradation of a habitat. It can be directly assessed through a series of indicators (see below), for example, a reduction in the area or characteristics of the habitat.

On the other hand, disturbances do not directly affect the physical conditions. However, if they are significant, they may trigger changes in physical parameters, which have the same result as deterioration. If disturbances are significant enough to trigger changes in this way, they can be assessed in the same way as deterioration, using indicators of conservation status (see below).

Disturbances are assessed in the same way as deterioration as long as they trigger change in indicators of the conservation status of protected species in such a way as to affect the conservation status of the species concerned.

3.5. When should measures in relation to disturbance and deterioration be taken?

First, it should be stressed that measures must be **appropriate.** This means that they should fulfil the main objective of the directive in contributing to the conservation status of the habitats or species concerned while taking account of *'economic, social and cultural requirements and regional and local characteristics'.*

The inter-linkage of the recitals and articles of the directive provides the context for considering the appropriate measures to be taken by the Member States (see Section 2.3).

As mentioned in the previous paragraph 3.4, disturbance and deterioration should be assessed against the conservation concept, bearing in mind that according to Article 3(1) the network is composed of **sites** and shall enable the natural habitats types and the species' habitats concerned to be maintained at **favourable conservation status** in their natural range.

The favourable conservation status, as defined in Article 1 of the directive, can serve as a term of reference to fix the limit of acceptable disturbance and deterioration with respect to the objectives of the directive and to determine if the appropriate measures are properly implemented (see below).

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The conservation status of a habitat or species in a site will be assessed according to the contribution of this site to the ecological coherence of the network, either:

- against its initial status at the time of transmission of site-related information provided in the Natura 2000 standard data forms (see Section 4.5.3) if this conservation status is favourable; or
- against an aim of improving the conservation status announced at the time of the setting-up of the network. Indeed, if a Member State is obliged to propose the classification of habitats in an unfavourable conservation status, it is only logical to assume that it will set a restoration target for these habitats so as to ensure their sustainability. When Community funds are granted for the improvement of the conservation status of a habitat or species in a site, it is this improved status that will be taken into consideration.

On a particular site the conservation status should reflect the dynamic nature of the habitats and species concerned. In that regard, the importance of **surveillance** of the conservation status of habitats and species, as required by Article 11 of the directive, should be stressed.

Deterioration or disturbance is assessed against the conservation status of species and habitats concerned. At a site level, the maintenance of the favourable conservation status has to be evaluated against the initial conditions provided in the Natura 2000 standard data forms when the site was proposed for selection or designation, according to the contribution of the site to the ecological coherence of the network. This notion should be interpreted in a dynamic way according to the evolution of the conservation status of the habitat or of the species.

3.6. Indicators of disturbance and deterioration

The conditions which govern the concepts of disturbance and deterioration are well defined, but they should be assessed by the Member State, on the one hand, against the general conservation status of the species or the habitats concerned (at biogeographical level) and, on the other hand, against the local conditions (at site level). As a general rule, on a particular site, disturbance or deterioration is assessed on a case-by-case basis, using indicators (see below), with respect to the significance of their change in value. This is measured against (a) the conservation status of the natural habitat or species concerned, and (b) the contribution of the site to the coherence of the Natura 2000 network.

3.6.1. Deterioration of habitats

Deterioration is a physical degradation affecting a habitat. The definition of the conservation status (Article 1(e) — see Section 2.3), means that the Member State has to take into consideration all the influences on the environment hosting the habitats (space, water, air, soils). If these influences result in making the conservation status of the habitat less favourable than it was before, the deterioration can be considered to have occurred.

To assess this deterioration against the objectives of the directive, one can refer to the definition of the **favourable conservation status of a natural habitat** set out in Article 1(e), on the basis of the following factors:

- *'The **natural range** and **areas** it covers within that range are **stable or increasing**'.*

Any event which contributes to the reduction of the areas covered by a natural habitat for which this site has been designated can be regarded as deterioration. For example, the importance of reduction of the area of the habitat has to be assessed in relation to the total surface occupied in the site according to the conservation status of the habitat concerned;

- *'The **specific structure and functions of the area necessary for its long-term maintenance exist** and are likely to continue to exist in the foreseeable future'.*

Any impairment of the factors necessary for the long-term maintenance of the habitats can be regarded as deterioration.

The functions necessary for the long-term maintenance depend of course on the habitat concerned (it would be useful to have common indicators enabling to assess these elements for each habitat type). Member States have to know these requirements (by means of studies, data collection, etc.) since Article 6(1) provides that they have to take measures *'which correspond to the ecological requirements of the habitats in Annex I and species in Annex II'.*

- *'The **conservation status of its typical species** is favourable as defined in (i)' (see Section 2.3 for the definition of item (i) of Article 1).*

Habitat deterioration occurs in a site when the area covered by the habitat in this site is reduced or the specific structure and functions necessary for the long-term maintenance or the good conservation status of the typical species which are associated with this habitat are reduced in comparison to their initial status. This assessment is made according to the contribution of the site to the coherence of the network.

3.6.2. Disturbance of species

Contrary to deterioration, disturbance does not directly affect the physical conditions of a site; it concerns the species and it is often limited in time (noise, source of light, etc.). The intensity, duration and frequency of repetition of disturbance are therefore important parameters.

In order to be significant a disturbance must affect the conservation status. The conservation status of a species is defined in Article 1(i) (see Section 2.3).

In order to assess whether a disturbance is significant in relation to the objectives of the directive, reference can be made to the definition of the **favourable conservation status of a species** given in Article 1(i), on the basis of the following factors.

- *'**Population dynamics data** on the species concerned indicate that it is maintaining itself on a long-term basis as a viable element of its natural habitats'.*

Any event which contributes to the long-term decline of the population of the species on the site can be regarded as a significant disturbance.

- *'The **natural range** of the species is **neither being reduced** nor is likely to be reduced for the foreseeable future'*

Any event contributing to the reduction or to the risk of reduction of the range of the species within the site can be regarded as a significant disturbance.

- *'There is, and will probably continue to be, a **sufficiently large habitat** to maintain its populations on a long-term basis'.*

Any event which contributes to the reduction of the size of the habitat of the species within the site can be regarded as a significant disturbance.

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Disturbance of a species occurs on a site when the population dynamics data for this site show that the species could no longer constitute a viable element of it in comparison to the initial situation. This assessment is done according to the contribution of the site to the coherence of the network.

4. Article 6(3)

Clarification of the concepts of *plan or project; significant effect; appropriate assessment; site's conservation objectives; competent authorities; opinion of the public; integrity of the site*

4.1. The text

'Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.'

4.2. Scope

As regards **purpose and context**, the role of the third and fourth paragraphs of Article 6 needs to be considered in relation to that of the first (or, in the case of SPAs, with that of the first and second paragraphs of Article 4 of Directive 79/409/EEC) and second paragraphs of Article 6. In particular, it is important to remember that, even if it is determined that an initiative or activity does not fall within the scope of Article 6(3), it will still be necessary to make it compatible with the other aforementioned provisions.

It may be noted that ecologically positive or ecologically compatible activities may already be accommodated within Article 6(1) and (2) — for example, traditional farming practices which sustain particular habitat types and species. The provisions of Article 6(3) and (4) constitute a form of development regime, setting out the circumstances within which plans and projects with negative effects may or may not be allowed. The provisions thus ensure that negative economic and other non-ecological requirements can be balanced against conservation objectives.

Article 6(3) and (4) define a **step-wise procedure** for considering plans and projects ([10]).

(a) The first part of this procedure consists of an assessment stage and is governed by Article 6(3), first sentence.

(b) The second part of the procedure, governed by Article 6(3), second sentence, relates to the decision of the competent national authorities.

(c) The third part of the procedure (governed by Article 6(4)) comes into play if, despite a negative assessment, it is proposed not to reject a plan or project but to give it further consideration.

The applicability of the procedure and the extent to which it applies depend on several factors, and in the sequence of steps, each step is influenced by the previous step.

As regards **geographical scope**, the provisions of Article 6(3) are not restricted to plans and projects which exclusively occur in or cover a protected site; they also target developments situated outside the site but likely to have a significant effect on it.

Article 6(3) and (4) set out the circumstances within which plans and projects with negative effects may or may not be allowed. Activities not falling within the scope of Article 6(3) will still have to be compatible with the provisions of Article 6(1) — or, in the case of SPAs, Article 4(1) and (2) of Directive 79/409/EEC — and 6(2) of Directive 92/43/EEC.

4.3. What is meant by 'plan or project not directly connected with or necessary to the management of the site'?

In as much as Directive 92/43/EEC does not define 'plan' or 'project', due consideration must be given to general principles of interpretation, in particular the principle that an individual provision of Community law must be interpreted on the basis of its wording and of its purpose and the context in which it occurs.

([10]) A simplified flow chart of this procedure is presented in Annex III at the end of this document.

There are two arguments for giving a broad interpretation to 'plan' or 'project'.

- Firstly, the directive does not circumscribe the scope of either 'plan' or a 'project' by reference to particular categories of either. Instead, the key limiting factor is whether or not they are likely to have a significant effect on a site (see Annex I, point 5).
- Secondly, a corollary of the continued applicability of Article 6(2) to activities excluded from the scope of Article 6(3) and (4) is that, the more narrowly 'plan' and 'project' are defined, the more potentially restricted is the means to balance a conservation interest against a damaging non-conservation interest. This may produce disproportionate or inconsistent results.

4.3.1. Project

Support for a broad definition of 'project' is reinforced, by analogy, if we refer to **Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment** (as amended by Directive 97/11/EC) ([11]). That directive operates in a similar context, setting rules for the assessment of environmentally significant projects. Article 1(2) of Directive 85/337/EEC provides that 'project' means:

'the execution of construction works or of other installations or schemes — other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources.'

As can be seen, this is a very broad definition (see Annex I, point 6), which is not limited to physical construction. For example, a significant intensification of agriculture which threatens to damage or destroy the semi-natural character of a site may be covered.

4.3.2. Plan

The word 'plan' has a potentially very broad meaning ([12]). This point has already been noted in an Advocate-General opinion (see Annex I, point 7).

Of obvious relevance are **land-use plans**. Some have direct legal effects for the use of land, others only indirect effects. For instance, regional or geographically extensive spatial plans are often not applied directly but form the basis for more detailed plans or serve as a framework for development consents, which then have direct legal effects. Both types of land-use plans should be considered covered by Article 6(3) to the extent that they are likely to have relevant significant effects on a Natura 2000 site.

Sectoral plans can also be considered as within the scope of Article 6(3), again in so far as they are likely to have a significant effect on a Natura 2000 site. Examples might include transport network plans, waste management plans and water management plans.

However, a distinction needs to be made with 'plans' which are in the nature of policy statements, i.e. policy documents which show the general political will or intention of a ministry or lower authority. An example might be a general plan for sustainable development across a Member State's territory or a region. It does not seem appropriate to treat these as 'plans' for the purpose of Article 6(3), particularly if any initiatives deriving from such policy statements must pass through the intermediary of a land-use or sectoral plan. However, where the link between the content of such an initiative and likely significant effects on a Natura 2000 site is very clear and direct, Article 6(3) should be applied.

([11]) OJ L 175, 5.7.1985, p. 40 and OJ L 73, 14.3.1997, p. 5 respectively.

([12]) The Commission has proposed a directive on the environmental assessment of plans and programmes (COM(96) 511 final, amended proposal COM(1999) 73) which may be of assistance in considering the term 'plan'. In that context, the terms 'plans' and 'programmes' can be used alternatively.

Where one or more specific projects are included in a plan in a general way but not in terms of project details, the assessment made at plan level does not exempt the specific projects from the assessment requirements of Article 6(3) in relation to details not covered by the plan assessment.

4.3.3. Not directly connected with or necessary to the management ...

From the context and purpose of Article 6, it is apparent that the term 'management' is to be treated as referring to the 'conservation' management of a site, i.e. the term 'management' is to be seen in the sense in which it is used in Article 6(1).

In making provision for conservation management plans, Article 6(1) of Directive 92/43/EEC envisages flexibility for Member States as regards the form such plans can take. The plans can either be specifically designed for the sites or 'integrated into other development plans'. Thus it is possible to have a 'pure' conservation management plan or a 'mixed' plan with conservation as well as other objectives.

The words '*not directly connected with or necessary to ...*' ensure that a non-conservation component of a plan or project which includes conservation management amongst its objectives may still require assessment.

For example, commercial timber harvesting may form part of a conservation management plan for a woodland designated as a special area of conservation. In as much as the commercial dimension is not necessary to the site's conservation management, it may need to be considered for assessment.

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There may be circumstances where a plan or project directly connected with or necessary for the management of one site may affect another site. 33

For example, in order to improve the flooding regime of one site, it may be proposed to build a barrier in another site, with a possible significant adverse effect on the latter. In such a case, the plan or project should be the subject of an assessment as regards the affected site.

The term 'project' should be given a broad interpretation to include both construction works and other interventions in the natural environment. The term 'plan' also has a broad meaning, including land-use plans and sectoral plans or programmes but leaving out general policy statements. Plans and projects related to conservation management of the site, either individually or as components of other plans and projects, should generally be excluded from the provisions of Article 6(3).

4.4. How to determine whether a plan or project is 'likely to have a significant effect thereon, either individually or in combination with other plans or projects'

This phrase encapsulates a cause-and-effect relationship. On the one hand, it is necessary to explore what sorts of effects are covered (*'significant effect'*), and then to explore what sorts of causes are likely to create such effects (*'likely to have ... either individually or in combination'*).

Determining whether a plan or project is likely to have a significant effect will have practical and legal consequences. Therefore, when a plan or project is proposed, it is important that, firstly, this key issue is considered, and that, secondly, the consideration is capable of standing up to scientific and expert scrutiny.

Proposals that are considered as not likely to have significant effects can be processed without reference to the succeeding steps of Article 6(3) and (4). However, Member States are advised that the reasons for reaching such a conclusion should be justified, and that it is good and prudent practice to record them.

4.4.1. Significant effect

The notion of what is a 'significant' effect cannot be treated in an arbitrary way. In the first place, the directive uses the term in an objective context (i.e. it does not qualify it with discretionary formulae). In the second place, a consistency of approach to what is 'significant' is necessary to ensure that Natura 2000 functions as a coherent network.

While there is a need for objectivity in interpreting the scope of the term 'significant', clearly such objectivity cannot be divorced from the specific features and environmental conditions of the protected site concerned by the plan or project. In this regard, the conservation objectives of a site as well as prior or baseline information about it can be very important in more precisely identifying conservation sensitivities. Some of this information will be present in the data that accompanies the site selection process under Article 4 of Directive 92/43/EEC (see Section 4.5.3). Member States may also have available detailed site conservation management plans which describe variations in sensitivity within a site.

Against this background, it is clear that what may be significant in relation to one site may not be in relation to another (see Annex I, point 8).

For example, a loss of a hundred square metres of habitat may be significant in relation to a small rare orchid site, while a similar loss in a large steppic site may be insignificant.

The notion of what is 'significant' needs to be interpreted objectively. At the same time, the significance of effects should be determined in relation to the specific features and environmental conditions of the protected site concerned by the plan or project, taking particular account of the site's conservation objectives.

4.4.2. Likely to have ...

The safeguards set out in Article 6(3) and (4) are triggered not by a **certainty** but by a **likelihood** of significant effects. Thus, in line with the precautionary principle, it is unacceptable to fail to undertake an assessment on the basis that significant effects are not certain.

It is again useful to refer to Directive 85/337/EEC, since the formula 'likely to have a significant effect' is almost identical to the basic formula used to create the assessment duty of Member States under the earlier directive ([13]). Directive 85/337/EEC and amending Directive 97/11/EEC are also of assistance in setting out a range of factors which may contribute to a likelihood of a significant effect.

([13]) See Article 2(1) of Directive 85/337/EEC.

Any proposal which is deemed to require an assessment under Directive 85/337/EEC on the grounds, *inter alia*, that it is likely to significantly affect a Natura 2000 site can be judged to also come under the assessment requirement of Article 6(3).

Directive 85/337/EEC in its Article 2(1) refers in particular to the factors of nature, size and location of the project. Amending directive 97/11/EEC in its Annex III presents a more detailed set of factors comprising, *inter alia*: the size of a project; the production of waste; pollution and nuisances; the risk of accidents; existing land use; the relative abundance, quality and regenerative capacity of natural resources in the area; the absorption capacity of the natural environment, with particular attention to natural areas and sites classified or protected under Directives 79/409/EEC and 92/43/EEC; the extent of the potential impact; the magnitude and complexity of the impact; the probability of the impact; the duration, frequency and reversibility of the impact.

A likelihood of significant effects may arise not only from plans or projects located **within** a protected site but also from plans or projects located **outside** a protected site. For example, a wetland may be damaged by a drainage project located some distance outside the wetland's boundaries. For this reason, it is important that Member States, both in their legislation and in their practice, allow for the Article 6(3) safeguards being applied to development pressures which are external to a Natura 2000 site but which are likely to have significant effects within it.

The procedure of Article 6(3) and (4) is triggered not by a certainty but by a likelihood of significant effects, arising not only from plans or projects located within but also outside a protected site.

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4.4.3. ... either individually or in combination with other plans or projects

A series of individually modest impacts may in combination produce a significant impact. Article 6(3) tries to address this by taking into account the combination of effects from other plans or projects. It remains to be determined what other plans and projects are covered. In this regard, Article 6(3) does not explicitly define which other plans and projects are within the scope of the combination provision.

It is important to note that the underlying intention of this combination provision is to take account of cumulative impacts, and these will often only occur over time. In that context, one can consider plans or projects which are **completed; approved but uncompleted**; or **not yet proposed**:

- In addition to the effects of those plans or projects which are the main subject of the assessment, it may be appropriate to consider the effects of already completed plans and projects in this 'second level' of assessment. Although already completed plans and projects are excluded from the assessment requirements of Article 6(3), it is important that some account is still taken of such plans and projects in the assessment, if they have continuing effects on the site and point to a pattern of progressive loss of site integrity.

  Such already completed plans and projects may also raise issues under Article 6(1) and (2) of Directive 92/43/EEC if their continued effects give rise to a need for remedial or countervailing conservation measures or measures to avoid habitat deterioration or species disturbance.

- Plans and projects which have been approved in the past and which have not been implemented or completed should be included in the combination provision.
- On grounds of legal certainty, it would seem appropriate to restrict the combination provision to other plans or projects which have been **actually proposed**. At the same time, it must be evident that, in considering a proposed plan or project, Member States do not create a presumption in favour of other as yet unproposed plans or projects in the future.

For example, if a residential development is considered not to give rise to a significant effect and is therefore approved, the approval should not create a presumption in favour of further residential developments in the future.

When determining likely significant effects, the combination of other plans or projects should also be considered to take account of cumulative impacts. It would seem appropriate to restrict the combination provision to other plans or projects which have been actually proposed.

4.5. What is meant by 'appropriate assessment of its implications for the site in view of the site's conservation objectives'?

The 'appropriate assessment' raises questions concerning form and content.

4.5.1. Form of the assessment

As pointed out above, the trigger for an assessment under Directive 85/337/EEC is almost identical to the trigger for an assessment under Directive 92/43/EEC, being essentially related to the likelihood of significant effects.

- The European Court of Justice has emphasised that, in relation to the transposition of Directive 85/337/EEC (and by implication its application), it is necessary to take into account sensitivity of location (see Annex I, point 9). For a project likely to have a significant effect on a site protected by Article 3, it will therefore often be appropriate to undertake an assessment that fulfils the requirements of Directive 85/337/EEC.

  Where an assessment for the purposes of Article 6(3) takes the form of an assessment under Directive 85/337/EEC, this will provide obvious assurances in terms of records and transparency.

- Where an assessment for the purposes of Article 6(3) does not take the form of an assessment under Directive 85/337/EEC, questions arise as to what may then be considered 'appropriate' in terms of form.

  In the first place, an assessment should be **recorded**. A corollary of the argument that the assessment should be recorded is the argument that it should be **reasoned**. Article 6(3) and (4) requires decision-makers to take decisions in the light of particular information relating to the environment. If the record of the assessment does not disclose the reasoned basis for the subsequent decision (i.e. if the record is a simple unreasoned positive or negative view of a plan or project), the assessment does not fulfil its purpose and cannot be considered 'appropriate'.

Finally, **timing** is also important. The assessment is a step preceding and providing a basis for other steps — in particular, an approval or refusal of a plan or project. The assessment should therefore be considered as only comprising what is in the record of the assessment pre-dating these further steps. Of course, where a plan or project undergoes redesign before a decision is taken on it, it is quite in order to revise the assessment as part of an iterative process. However, it should not be open to authorities to add retrospectively to an assessment once the succeeding step in the sequence of steps set out in Article 6(3) and (4) has been taken.

In some cases, an assessment under Directive 85/337/EEC (as amended by Directive 97/11/EC) could accommodate an assessment under Article 6(3). The latter should anyhow be recorded and provide a basis for other steps; in particular it should be sufficiently reasoned to allow the right decision to be taken.

4.5.2. Content of the assessment

As regards content, an Article 6(3) assessment is narrower in scope than an assessment under Directive 85/337/EEC, being confined to implications for the site in view of the site's conservation objectives.

However, the ecological impacts of the plan or project may not be properly assessed in many cases without an assessment of the other environmental components (i.e. soil, water, landscape, etc) set out in Article 3 of Directive 85/337/EEC.

Furthermore, even allowing for an exclusively conservation focus, the assessment in its methodology can usefully draw on the methodology envisaged by Directive 85/337/EEC. In particular, Directive 85/337/EEC envisages that an assessment may contain information on several points, including a description of the project, a description of the aspects of the environment likely to be affected by the project and a description of the project's likely significant effects ([14]).

It is worth noting that, although, for purposes of Article 6(3), an assessment does not, strictly speaking, need to look beyond the plan or project proposed to address alternative solutions and mitigation measures, there may be a range of benefits from doing so.

In particular, an examination of possible **alternative solutions and mitigation measures** may make it possible to ascertain that, in the light of such solutions or mitigation measures, the plan or project will not adversely affect the integrity of the site.

As regards **mitigation measures**, these are measures aimed at minimising or even cancelling the negative impact of a plan or project, during or after its completion.

Mitigation measures are an integral part of the specifications of a plan or project. They may be proposed by the plan or project proponent and/or required by the competent national authorities. For example, they may cover:

- the dates and the timetable of implementation (e.g., not to operate during the breeding season of a particular species);

([14]) That directive makes reference to 'direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent, positive and negative effects' — see footnote 1 of Annex III.4 of the directive, which is identical to footnote 1 of Annex IV.4 of Directive 97/11/EC.

- the type of tools and operation to be carried out (e.g., to use a specific dredge at a distance agreed upon from the shore in order not to affect a fragile habitat);
- the strictly inaccessible areas inside a site (e.g., hibernation burrows of an animal species).

Mitigation measures are distinguishable from compensatory measures *sensu stricto* (see Section 5.4). Of course, well-implemented mitigation measures limit the extent of the necessary compensatory measures by reducing the damaging effects which require compensation.

Even where a broad assessment does not lead to the conclusion that the plan or project will not adversely affect the integrity of a site, the provisions of Article 6(4) suggest the practical value of such a broad exercise.

As regards **alternative solutions**, once it is proposed to consider approving a damaging plan or project, these become relevant (for more details, see under Section 5.3.1). Moreover, a reference to such solutions may also be needed to satisfy the independent requirements of Directive 85/337/EEC.

All these aspects above may be considered as ideally forming part of an iterative process seeking to improve the siting and design of a plan or project at the earliest stages.

Finally, the 'in combination' reference in Article 6(3) (see Section 4.4.3) has two implications in terms of the content of an assessment.

- Firstly, it means that the content of an assessment should address the potential for 'in combination' effects to arise from a specific plan or project under consideration in an approval procedure and other plans or projects not under consideration in the same approval procedure.
- Secondly, it means that the contents of the assessments of different plans or projects under consideration at the same time should include references to and take account of each other in so far as the different plans and projects give rise to 'in combination' effects.

An Article 6(3) assessment should focus on the implications for the site in view of the site's conservation objectives. It could in its methodology usefully draw on the methodology envisaged by Directive 85/337/EEC. In particular, an examination of possible mitigation measures and alternative solutions may make it possible to ascertain that, in the light of such solutions or mitigation measures, the plan or project will not adversely affect the site. 'In combination' effects need also to be addressed in an assessment.

4.5.3. How are 'the site's conservation objectives' established?

Article 4(1) requires Member States to propose a list 'indicating which natural habitat types in Annex I and which species in Annex II that are native to its territory the sites host'. According to its second paragraph, the information on each site shall include a map of the site, its name, location, extent and the data resulting from the application of the criteria specified in Annex III (Stage 1) provided in a format established by the Commission ([15]).

The format requires that all Annex I habitat types present on a site and all Annex II species occurring at the site should be mentioned in the appropriate place in the data form. This information forms the basis for a Member State establishing 'the site's conservation objectives', for example through a man-

([15]) Standard data form, established by Commission Decision 97/266/EC of 18 December 1996 (OJ L 107, 24.4.1997, p. 1).

agement plan. The reason for a site's inclusion in the network is evidently the protection of those habitats and species. Sometimes, there may be competition between different habitat types and species, and it may, of course, be appropriate to prioritise when establishing the site's conservation objectives (for example, by giving precedence to a priority habitat type as against a competing non-priority habitat type).

Where the presence of the Annex I habitat type or Annex II species is deemed to be 'non-significant' for purposes of the format, these should not be considered as included in 'the site's conservation objectives'. The Member States are also invited to present information on other important species of flora and fauna than those listed in Annex II (point 3.3). This information has no relevance either for the determination of a site's conservation objectives.

The information provided according to the standard data form established by the Commission forms the basis for a Member State's establishment of the site's conservation objectives.

4.6. Decision-making

4.6.1. The 'competent national authorities'

It is clear that the word 'national' in this expression has been used in contrast with the word 'Community' or 'international'. Thus, the term refers not only to authorities within the central administration but also to regional, provincial or municipal authorities, which have to give an authorisation or consent to a plan or project.

A court can constitute a competent authority if it has the discretion to make a decision on the substance of a proposed plan or project for purposes of Article 6(3).

Competent national authorities are those entitled to give an authorisation or consent to a plan or project.

4.6.2. When is it appropriate to obtain the opinion of the general public?

Directive 92/43/EEC does not indicate when it is appropriate to obtain the opinion of the general public. However, consultation of the public is an essential feature of Directive 85/337/EEC. Clearly therefore, where the assessment required by Article 6(3) takes the form of an assessment under Directive 85/337/EEC, public consultation is necessary.

In this context, it is worth mentioning the possible longer-term implications of the Aarhus Convention ([16]) which emphasises the importance of public consultation in relation to environmental decision-making.

Public consultation should be considered in the light of the provisions of Directive 85/337/EEC and the Aarhus Convention.

([16]) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. This Convention was concluded in Aarhus, Denmark in June 1998. The European Community is one of the signatories.

4.6.3. The concept of the 'integrity of the site'

It is clear from the context and from the purpose of the directive that the 'integrity of the site' relates to the site's conservation objectives (see Section 4.5.3 above). For example, it is possible that a plan or project will adversely affect the integrity of a site only in a visual sense or only habitat types or species other than those listed in Annex I or Annex II. In such cases, the effects do not amount to an adverse effect for purposes of Article 6(3), provided that the coherence of the network is not affected.

On the other hand, the expression 'integrity of the site' shows that focus is here on the specific site. Thus, it is not allowed to destroy a site or part of it on the basis that the conservation status of the habitat types and species it hosts will anyway remain favourable within the European territory of the Member State.

As regards the connotation or meaning of 'integrity', this can be considered as a quality or condition of being whole or complete. In a dynamic ecological context, it can also be considered as having the sense of resilience and ability to evolve in ways that are favourable to conservation.

The 'integrity of the site' has been usefully defined as *'the coherence of the site's ecological structure and function, across its whole area, or the habitats, complex of habitats and/or populations of species for which the site is or will be classified'* ([17]).

A site can be described as having a high degree of integrity where the inherent potential for meeting site conservation objectives is realised, the capacity for self-repair and self-renewal under dynamic conditions is maintained, and a minimum of external management support is required.

When looking at the 'integrity of the site', it is therefore important to take into account a range of factors, including the possibility of effects manifesting themselves in the short, medium and long-term.

The integrity of the site involves its ecological functions. The decision as to whether it is adversely affected should focus on and be limited to the site's conservation objectives.

([17]) PPG 9, UK Department of the Environment, October 1994.


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5. Article 6(4)

Clarification of the concepts of *alternative solutions; imperative reasons of overriding public interest; compensatory measures; overall coherence; opinion of the Commission*

5.1. The text

'If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest'.

5.2. Scope

This provision forms part of the procedure of the assessment and possible authorisation, by the competent national authorities, of plans and projects likely to affect the special area of conservation (SAC). Two fundamental considerations arise.

- On the one hand, it addresses specific situations (exceptions) with regard to the general rule of Article 6(3) according to which authorisation can only be granted to plans or projects not affecting the integrity of the sites concerned.
- On the other hand, its concrete application has to be done in respect of the various steps provided for and in the sequential order established.

The preliminary assessment of the impacts of a plan or project on the site, provided for in Article 6(3), enables the competent national authorities to arrive at conclusions regarding the consequences of the initiative envisaged in relation to the integrity of the site concerned. If these conclusions are positive, in the sense that there is a high degree of certainty that the initiative in question will not affect this site, the competent authorities can give their consent on the plan or project. In case of doubt, the precautionary principle should be applied and procedures under Article 6(4) followed, as in the case of negative conclusions.

Being a derogation from Article 6(3) this provision has to be **interpreted in a restrictive way**, so that its application is limited to circumstances where all the conditions required are satisfied. In this regard, it falls on whoever wants to make use of this exception to prove, as a prerequisite, that the aforementioned conditions indeed exist in each particular case.

The provisions of Article 6(4) apply when the results of the preliminary assessment under Article 6(3) are negative or uncertain. The sequential order of its steps has to be followed.

5.3. Initial considerations

5.3.1. Examining alternative solutions

The **first step** of the competent authorities is to examine the possibility of resorting to alternative solutions which better respect the integrity of the site in question. Such solutions should normally already have been identified within the framework of the initial assessment carried out under Article 6(3). They could involve alternative locations (routes in case of linear developments), different scales or designs of development, or alternative processes. The 'zero-option' should be considered too.

In conformity with the principle of subsidiarity, it rests with the competent national authorities to make the necessary comparisons between these alternative solutions. It should be stressed that the reference parameters for such comparisons deal with aspects concerning the conservation and the maintenance of the integrity of the site and of its ecological functions. In this phase, therefore, other assessment criteria, such as economic criteria, cannot be seen as overruling ecological criteria.

It rests with the competent national authorities to assess alternative solutions. This assessment should be made against the site's conservation objectives.

5.3.2. Examining imperative reasons of overriding public interest

In the absence of alternative solutions — or in the presence of solutions having even more negative environmental effects on the site concerned, with regard to the abovementioned conservation aims of the directive — the **second step** of the competent authorities is to examine the existence of imperative reasons of overriding public interest, including those of a social or economic nature, which require the realisation of the plan or project in question.

The concept of *'imperative reason of overriding public interest'* is not defined in the directive. However, Article 6(4) second subparagraph mentions human health, public safety and beneficial consequences of primary importance for the environment as examples of such imperative reasons of overriding public interests. As regards the *'other imperative reasons of overriding public interest'* of social or economic nature, it is clear from the wording that only public interests, promoted either by public or private bodies, can be balanced against the conservation aims of the directive. Thus, projects that lie **entirely** in the interest of companies or individuals would not be considered to be covered.

So far the European Court of Justice has not given clear indications for the interpretation of this specific concept. It may therefore be helpful to refer to other fields of Community law, where similar concepts appear.

The 'imperative requirement' concept was worked out by the Court of Justice as an exception to the principle of free movement of goods. Among these imperative requirements which can justify national measures restricting freedom of movement, the Court recognised public health and environment protection, as well as the pursuit of legitimate goals of economic and social policy.

In addition, Community law also knows the concept of 'service of general economic interest', evoked in Article 86(2) (ex 90(2)) of the Treaty, within the framework of the exception to the rules of competition envisaged for companies responsible for the management of such services. In a communication on services of general interest in Europe ([18]), the Commission, taking account of case law on the matter, gave the following definition of services of general economic interest: *'they describe activities of commercial service fulfilling missions of general interest, and subject consequently by the Member States to specific obligations of public service* ([19]). *It is the case in particular of services in transport, energy, communication networks'.*

Having regard to the **structure of the provision**, in the specific cases, the competent national authorities have to make their approval of the plans and projects in question subject to the condition that the balance of interests between the conservation objectives of the site affected by those initiatives and the abovementioned imperative reasons weighs in favour of the latter. This should be determined along the following considerations.

(a) The public interest must be **overriding:** it is therefore clear that not every kind of public interest of a social or economic nature is sufficient, in particular when seen against the particular weight of the interests protected by the directive (see, for example, its fourth recital stating *'Community's natural heritage')* (see Annex I, point 10).

(b) In this context, it also seems reasonable to assume that the public interest can only be overriding if it is a **long-term interest**; short-term economic interests or other interests which would only

([18]) COM(96) 443, of the 11.9.1996.

([19]) The public service obligations, in their turn, are characterised for the respect of some essential principles of operation, such as continuity, equal access, universality and transparency, but can vary from one Member State to the other, according to different situations, such as geographical or technical constraints, political and administrative organisation, history and traditions.

yield short-term benefits for society would not appear to be sufficient to outweigh the long-term conservation interests protected by the directive.

It is reasonable to consider that the 'imperative reasons of overriding public interest, including those of a social and economic nature' refer to situations where plans or projects envisaged prove to be indispensable:
— within the framework of actions or policies aiming to protect fundamental values for citizens' lives (health, safety, environment);
— within the framework of fundamental policies for the State and society;
— within the framework of carrying out activities of an economic or social nature, fulfilling specific obligations of public service.

5.4. Adopting compensatory measures

5.4.1. What is meant by 'compensatory measures' and when should they be considered?

The term '*compensatory measures*' is not defined in the 'Habitats' directive. Experience would suggest the following distinction.

- Mitigation measures in the broader sense, which aim to minimise or even cancel the negative impacts on the site itself (see Section 4.5).
- Compensatory measures *sensu stricto*: independent of the project, they are intended to compensate for the effects on a habitat affected negatively by the plan or project. For example, general tree-planting to soften a landscape impact does not compensate for the destruction of a wooded habitat with quite specific characteristics.

Measures required for the 'normal' implementation of the 'Habitats' or 'Birds' directives cannot be considered compensatory for a damaging project. For example, the implementation of a management plan or the proposal/designation of a new area, already inventoried as of Community importance, constitute 'normal' measures for a Member State. Compensatory measures should be additional to proper implementation.

The compensatory measures should be considered only after having precisely ascertained a negative impact on the integrity of a Natura 2000 site. Proposing compensatory measures from the beginning could not exempt from the need to respect beforehand the steps described in Article 6, in particular the study of alternatives and the comparative assessment of the interest of the project/plan in relation to the natural value of the site.

The compensatory measures constitute measures specific to a project or plan, additional to the normal practices of implementation of the 'Nature' directives. They aim to offset the negative impact of a project and to provide compensation corresponding precisely to the negative effects on the species or habitat concerned. The compensatory measures constitute the 'last resort'. They are used only when the other safeguards provided for by the directive are ineffectual and the decision has been taken to consider, nevertheless, a project/plan having a negative effect on the Natura 2000 site.

5.4.2. Content of compensatory measures

The compensatory measures *sensu stricto* have to ensure the maintenance of the contribution of a site to the conservation at a favourable status of one or several natural habitats *'within the biogeographical region concerned'*. It results from the fact that:

- a site should not be irreversibly affected by a project before the compensation is indeed in place. For example, a wetland should normally not be drained before a new wetland, with equivalent biological characteristics, is available for inclusion in the Natura 2000 network;
- compensation must be additional in relation to the Natura 2000 network to which the Member State should have contributed in conformity with the directives.

In terms of the **'Birds' directive**, compensation cannot be the designation of an inventoried area which should have already been classified by the Member State. One could on the other hand accept, as a compensation, work to improve the biological value of an area (to be designated) or of a SPA (designated) so that the carrying capacity or the food potential are increased by a quantity corresponding to the loss on the site affected by the project. *A fortiori*, the re-creation of a habitat favourable to the bird species concerned is acceptable provided the created site is available at the time when the affected site loses its natural value.

In terms of the *'Habitats' directive*, the compensation could, similarly, consist of the re-creation of a comparable habitat, the biological improvement of a substandard habitat or even the addition to Natura 2000 of an existing site the proposal of which under the directive had not been deemed essential at the time of the drawing up of the biogeographical list.

In the latter case, one could argue that overall, the project will result in a loss for this habitat type at Member State level. However, at Community level, a new site will benefit from the protection provided for in Article 6, thus contributing to the objectives of the directive.

The compensatory measures can consist of:
— recreating a habitat on a new or enlarged site, to be incorporated into Natura 2000;
— improving a habitat on part of the site or on another Natura 2000 site, proportional to the loss due to the project;
— in exceptional cases, proposing a new site under the 'Habitats' directive.

The result has normally to be operational at the time when the damage is effective on the site concerned with the project unless it can be proved that this simultaneity is not necessary to ensure the contribution of this site to the Natura 2000 network.

5.4.3. 'Overall coherence' of the Natura 2000 network

The expression *'overall coherence'* appears in Article 6(4) in the context where a plan or project is allowed to be carried out for imperative reasons of overriding public interest and the Member State has to take measures to compensate for the loss.

It also appears in Article 3(1) which states that Natura 2000 is *'a coherent European ecological network of special areas of conservation'* and in Article 3(3) which stipulates that *'where they consider it necessary, Member States shall endeavour to improve the ecological coherence of Natura 2000 by maintaining, and where appropriate developing, features of the landscape which are of major importance for wild fauna and flora, as referred to in Article 10.'*

Article 10, which deals more generally with land-use planning and development policy, stipulates that

> *'Member States shall endeavour, where they consider it necessary, in their land-use planning and development policies and, in particular, with a view to improving the ecological coherence of the Natura 200 network, to encourage the features of the landscape which are of major importance for wild fauna and flora.*
>
> *Such features are those which, by virtue of their linear and continuous structure (such as rivers with their banks or their function as stepping stones (such as ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species.'*

The word 'ecological' is used both in Article 3 and Article 10 to explain the character of the coherence. It is obvious that the expression *'overall coherence'* in Article 6(4) is used in the same meaning.

Article 6(4) requires to 'protect' the overall coherence of Natura 2000. Thus, the directive presumes that the 'original' network has been coherent. If the derogation regime is used, the situation must be corrected so that the coherence is fully restored.

- Under the **'Habitats' directive** the selection of a site for the Natura 2000 network rests on:
  - — the taking into account of habitat and species in proportions (surfaces, populations) described in the standard data form;
  - — the inclusion of the site in a biogeographical region within which it is selected;
  - — the selection criteria established by the 'Habitats' Committee and used by the European Topic Centre — Nature Conservation to advise the Commission to retain a site on the Community list.
- The **'Birds' directive** does not provide for biogeographical regions, or selection at Community level. By analogy, one could consider that **the overall coherence of the network** is ensured if: 46 47
  - — compensation is ensured along the same migration path;
  - — the compensation site(s) are accessible with certainty by the birds usually occurring on the site affected by the project.

In order to ensure the overall coherence of Natura 2000, the compensatory measures proposed for a project should therefore: (a) address, in comparable proportions, the habitats and species negatively affected; (b) concern the same biogeographical region in the same Member State; and (c) provide functions comparable to those which had justified the selection criteria of the original site.

The distance between the original site and the place of the compensatory measures is not therefore an obstacle, as long as it does not affect the functionality of the site and the reasons for its initial selection.

5.4.4. Who bears the cost of the compensation measures?

It appears logical that, in line with the 'polluter pays' principle, the promoter of a project bears the cost of the compensatory measures. It may include it in the total budget submitted to the public authorities in the event of co-financing. In this connection, the European funds could, for example, co-finance the compensatory measures for a transport infrastructure retained under the TEN (trans-European network).

A subsidy granted by a public authority for measures taken in order to compensate for damage to a Natura 2000 site can be considered as a **State aid** (within the meaning of Article 87 (ex 92) of the Treaty), should it be granted to an undertaking established in a Natura 2000 site, designated before or after the establishment of the undertaking. However, in the case of an undertaking acting as a contractor for a public authority to build an infrastructure, the subsidy would not be considered as a State aid as long as it is granted in exchange of works carried out.

The Member State is bound to compensatory measures as from the entry into force of Article 6. Their financing can fall within its competence.

5.4.5. Communication to the Commission of the compensatory measures

The competent national authorities have to communicate to the Commission the compensatory measures adopted. The provision in question specifies neither the form, nor the purpose of this communication. However, in order to facilitate that process the Commission services have prepared a standard format ([20]) for supplying information to the Commission according to the provisions of Article 6(4)1 or 6(4)2. In any case, it is not the Commission's role either to suggest compensatory measures, or to validate them scientifically.

This communication should enable the Commission to appreciate the manner in which the conservation objectives of the site in question are pursued in the particular case. While the national authorities are only specifically obliged to communicate the compensatory measures adopted, the communication of certain elements relating to the studied alternative solutions and to the imperative reasons for overriding public interest which required the realisation of the plan or project can also prove necessary, insofar as these elements affected the choice of the compensatory measures.

The communication of compensatory measures must enable the Commission to appreciate the manner in which the conservation objectives of the site in question are pursued in the particular case. However, it is not the Commission's role to suggest compensatory measures.

5.5. What happens with sites hosting priority habitats and/or species?

The second subparagraph of Article 6(4) provides for a special treatment whenever the plan or project concerns a site hosting priority habitats and/or species. The realisation of plans or projects likely to adversely affect these sites could be justified only if the evoked imperative reasons of overriding public interest concern human health and public safety or overriding beneficial consequences for the environment, or if, before granting approval to the plan or project, the Commission expresses an opinion on the initiative envisaged.

In other words, damage to the sites would only be accepted as overruling the fulfilment of the objectives of the directive when the specific imperative reasons mentioned above occur or, alternatively, after the additional procedural safeguard of an independent appraisal by the Commission.

This provision raises a number of questions relating to:

- the identification of sites concerned;

([20]) This format is presented in Annex IV of this document.

- the interpretation of the concepts of human health, public safety and the primary beneficial consequences for the environment;
- the procedure for the adoption of the Commission's opinion and the consequences which arise from this opinion.

5.5.1. The sites concerned

Article 6(4), second subparagraph, applies when the realisation of the plan or project is likely to affect a site hosting priority habitats and/or species. In this regard, it would be reasonable to consider that a plan or project:

(a) not affecting, in any manner, a priority habitat/species; or

(b) affecting a habitat/species which has not been taken into account in the selection of a site ('non-significant presence' in the standard data form)

should not de facto justify that a site should be subject to this second subparagraph.

Article 6(4), second subparagraph may be understood as applying to all sites hosting priority habitats and/or species, when these habitats and species are affected.

5.5.2. The concepts of 'human health', 'public safety' and 'primary beneficial consequences for the environment'

Human health, public safety and primary beneficial consequences for the environment constitute the most important imperative reasons of overriding public interest. However, like the concept of 'imperative reasons of overriding public interest' these three categories are not defined expressly. 48 49

Community law refers to public health and public safety reasons as ones which can justify the adoption of restrictive national measures to the free movement of goods, workers and services as well as to the right of establishment. In addition, the protection of persons' health is one of the fundamental objectives of Community policy in the field of the environment. In the same view, the primary beneficial consequences for the environment constitute a category which must be included in the aforementioned fundamental objectives of environmental policy.

Within the framework of the principle of subsidiarity, it rests with the competent national authorities to check whether such a situation occurs. Of course, any situation of this kind is likely to be examined by the Commission within the framework of its activity of control on the correct application of Community law.

As regards the concept of 'public safety', it is useful to refer to the judgement of the Court of Justice of 28 February 1991 in Case C-57/89, *Commission* v *Germany* (*'Leybucht Dykes'*). That decision preceded the adoption of Directive 92/43/EEC and hence Article 6. However, the decision retains relevance, not least because the Court's approach influenced the drafting of Article 6. At issue were construction works to reinforce dykes on the North Sea at Leybucht. These works involved a reduction in the area of an SPA. As a matter of general principle, the Court stated that the grounds justifying such a reduction must correspond to a general interest which is superior to the general interest represented by the ecological objective of the directive. In the specific case, the Court confirmed that **the danger of flooding and the protection of the coast** constituted sufficiently serious reasons to justify the dyke works and the strengthening of coastal structures as long as those measures are confined to a strict minimum.

The national authorities can authorise the realisation of the plan or project only if the proof of the existence of the aforesaid reasons of overriding public interest is given and within the limits within which the plan or project in question proves necessary for the fulfilment of the public interest in question.

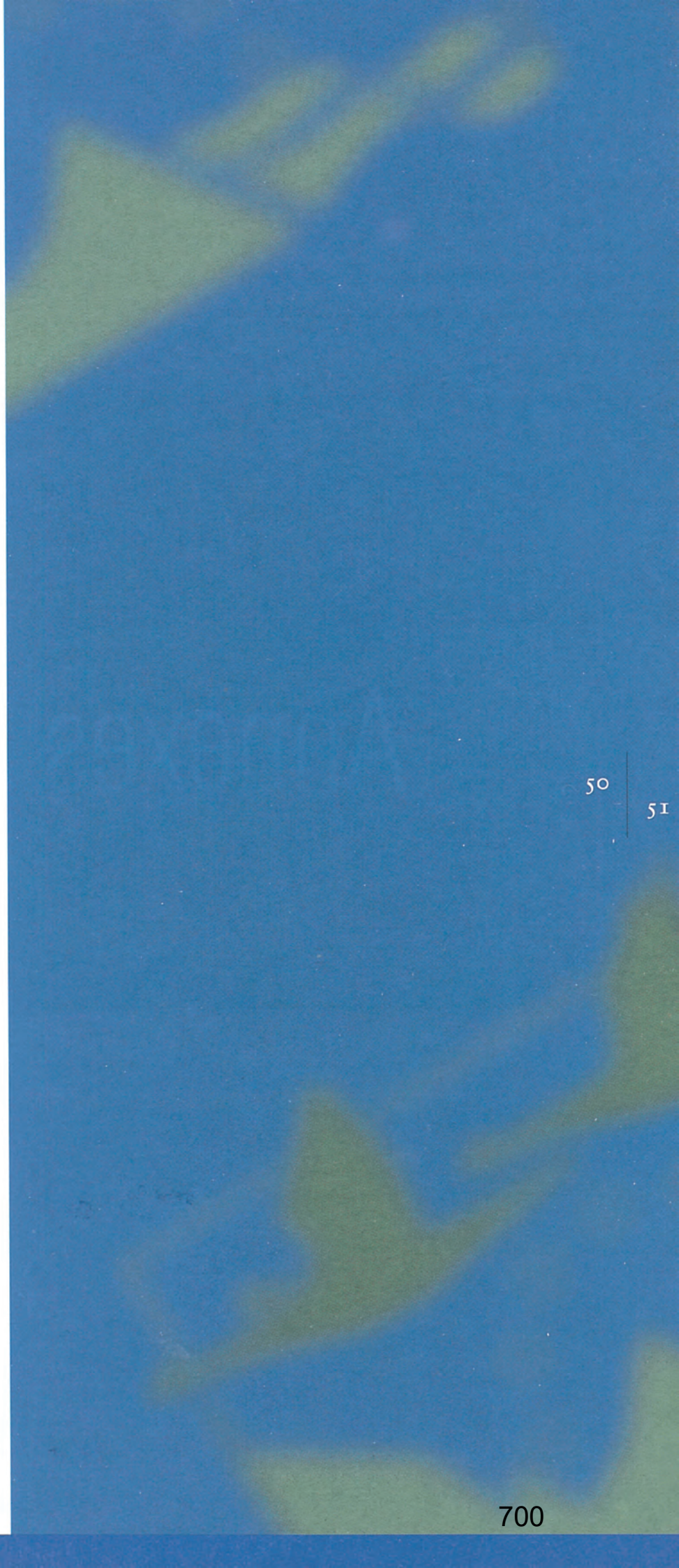
5.5.3. Adoption of the Commission's opinion — its consequences

In the case of imperative reason of overriding public interest other than human health, safety and environmental benefits, the prior opinion of the Commission is necessary. Article 6(4), second subparagraph, does not specify a procedure or the specific contents of such an opinion ([21]). One must therefore refer once again to the economy and to the aims pursued by the provision in question. The opinion has to cover the assessment of the ecological values which are likely to be affected by the plan or project, the relevance of the invoked imperative reasons and the balance of these two opposed interests, as well as an evaluation of the compensation measures. That assessment involves both a scientific and economic appraisal as well as an examination of the necessity and proportionality of the realisation of the plan or project with regard to the invoked imperative reason.

From its nature, the opinion is not an act having binding legal effects. The national authorities can move away from it and decide to implement the plan or project, even if the opinion is adverse. In the latter case however, one can reasonably expect that the decision will address the Commission's arguments and explain why its opinion has not been followed. In any case the Commission can assess whether the implementation of the plan or project is in conformity with the requirements of Community law and, if necessary, initiate appropriate legal action.

The Commission, in delivering its opinion, should check the balance between the ecological values affected and the invoked imperative reasons, and evaluate the compensation measures. The opinion is not binding but in a case of non-conformity with Community law, legal action may be taken.

([21]) The relevant standard format (Annex IV) also covers the request for a Commission opinion according to the provisions of Article 6(4)2.


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Annexes

ANNEX I

COURT CASE REFERENCES

(1) The need for a strict transposition of Article 6 has already been signalled in a case brought before the European Court of Justice (Opinion of Advocate General Fennelly in Case C-256/98, *Commission* v *France*, delivered on 16 September 1999).

(2) See the decision of the European Court of Justice in Case C-355/90, *Commission* v *Spain* [1993] ECR I-4221 (*'Santoña Marshes'*) and its decision of 18 March 1999 in Case C-166/97, *Commission* v *France (Seine Estuary)*.

(3) As above.

(4) Case C-392/96, *Commission* v *Ireland*, judgment of ECJ of 21 September 1999.

(5) This point is also underlined by Advocate General Fennelly of the European Court of Justice in the case above under (1).

(6) The relevant case law of the European Court of Justice further emphasises that the concept of 'project' is to be broadly interpreted — see in particular judgment of 24 October 1996 in Case C-72/95, *Kraaijeveld*.

(7) As above under (1).

(8) To see what in practice may be considered 'significant', it is helpful to refer to the case law of the European Court of Justice, in particular Case C-355/90, *Commission* v *Spain* [1993] ECR I-4221 (*'Santoña Marshes'*). Although that case was not decided by reference to Article 6(3) and (4) of Directive 92/43/EEC (being decided by reference to the preceding protection regime for SPAs under Directive 79/409/EEC), it serves to indicate some of the types of activity which may be considered as having significant effects on a protected site.

(9) The Court has stated that *'Even a small-scale project can have significant effects on the environment if it is in a location where the environmental factors set out in Article 3 of (Directive 85/337/EEC) such as fauna and flora ... are sensitive to the slightest alteration.'* (Case C-392/96, *Commission* v *Ireland*, judgment of ECJ of 21 September 1999).

(10) See also the emphasis the ECJ placed on the common responsibilities of the Member States in the context of the 'Birds' directive in Cases C-252/85 and C-262/85 (Respectively: *Commission* v *France* [1988] ECR 2243 and *Commission* v *Italy* [1987] ECR 3073).

ANNEX II

CONSIDERATIONS ON MANAGEMENT PLANS

While the appropriate management plans are not always necessary, at both the Galway seminar ([22]) and the Bath Conference ([23]), participants stressed that the management plans could constitute an effective means to fulfil the obligations provided for by the 'Habitats' directive.

The following extract from the conclusions of the Galway seminar sets out a number of considerations which may be helpful in view of the preparation of management plans:

1. Methodology

- Is a management plan for the site really needed? Explain why
- Who will initiate the plan? Who will be responsible for the plan?
- What is important about the site (both natural value and socioeconomic context)?
- What are its main threats?
- What do we want to achieve?
- How do we want to achieve it, according to what precise time schedule?
- How much will it cost? Will it optimise the benefits for nature conservation?

2. Objectives

The objectives of the management plan for the site have to correspond to the ecological requirements of the natural habitats and species significantly present on it in order to ensure their favourable conservation status. They must be as clear as possible, realistic, quantified and manageable. Use clear language with concrete formulation, to be understandable by everybody.

- What is the favourable conservation status for each habitat type and species present on the site?
- How does it contribute to the integrity of the site and the coherence of the network?
- Is it assessed in a dynamic way according to the evolution of the conservation status of the habitats or species concerned?

3. Consultation and implementation

It is an essential part of the process to establish a management plan needing a multidisciplinary and professional approach.

- Have you identified all the local actors?
- Have you involved them according to a bottom-up approach?
- When do you involve them?

An illustration of the consultation method is the *document d'objectifs* in France where all interest groups are invited to participate under the responsibility of the competent authorities (*préfet de région*).

([22]) Organised by the Irish authorities from 9 to 11 October 1996 in Galway, Ireland on SAC Site Management.

([23]) Organised by the Commission and the UK presidency from 28 to 30 June 1998 in Bath, UK, on Natura 2000 and People.

4. Monitoring and evaluation

These issues are one of the most important parts of the plan, especially for determining whether you have been successful with your plan. As with the objectives of the management plan, monitoring has to be clearly and accurately defined, including an analysis of financial matters.

Annex II *A*

Examples of LIFE-Nature projects ([24]) that have involved management plans or statutory, administrative or contractual measures

For each project, its relevant aspects are indicated below:

Belgique-België

- *Protection through acquisition and management of the last calcareous mires in Belgium (B4-3200/95/435)*

  The provincial authority has secured the bulk of this very valuable site by leasing it from the owners.

- *Integral Coastal Conservation Initiative (B4-3200/96/483)*

  Preparation of management plans for both the coastal (dune) and the marine habitats (offshore).

Deutschland

- *Protecting great bustard habitats in Brandenburg (B4-3200/92/14529)*

  Contractual arrangements with farmers were concluded, involving land purchase and leasing, or management agreements.

- *Preservation and re-establishment of the Trebeltal fen* and *Restoration and conservation of riverine fens in Mecklenburg-Vorpommern (B4-3200/94/731* and *B4-3200/95/260)*

  Elaboration and implementation of a management plan to restore riverine and fen habitats, through close cooperation with conservation and water authorities.

- *Transnational programme for the conservation of bats in western-central Europe (B4-3200/95/842)*

  Contractual arrangements with landowners and public authorities, and establishment of a management plan.

- *Conservation and development of nature of the Federseelandscape (B4-3200/96/489)*

  Rural land consolidation procedure, supported through agri-environment measures.

([24]) Further information can be found on Internet at: http://europa.eu.int/comm/life/nature/databas.htm

Ελλαδα - Greece

- *Management and protection of the threatened biotopes of western Crete with ecotopes and priority species (B4-3200/95/850)*

  Preparation of management plans with direct involvement of local authorities.

- *The Mediterranean monk seal in Greece: Conservation in action (B4-3200/96/500)*

  Drawing up management plans in permanent consultation with the various stakeholders.

España

- *First, second and third phases of the action programme for the conservation of the brown bear and its habitat in the Cantabrian mountains (B4-3200/92/15185 & 94/736 & 95/523)*

  Agreements with hunters for the management of hunting areas in a way that is compatible with bear conservation

- *First and second phases of the creation of a network of flora micro-reserves and purchase of land of significant botanical interest in the Valencia region (B4-3200/93/766 & 95/521)*

  Agreements with the land-owners and implementation of management plans for the microreserves (160 sites)

- *First and second phases of the conservation programme for three threatened vertebrate species in the Pyrenees (sub-project Spain) (B4-3200/93/772, 95/277, 95/524)*

  Agreements with hunters for the maintenance of reserve areas for the Gypaetus barbatus, and compensation payments to avoid timber cutting in forest within the brown bear distribution area.

- *Conservation of the little bustard, great bustard and lesser kestrel in the SPAs of Extremadura (B4-3200/96/507)*

  Agreement with farmers for the improvement of the steppe habitat.

France

- *Protection programme for bogs in France (B4-3200/95/518)*

  Preparation of a manual for the management of bog habitats.

- *Experimental drawing up of management plans for future French Natura 2000 sites (B4-3200/95/519)*

  Testing of management plans on 35 sites and drafting of a methodological guide for preparing management plans for Natura 2000 sites.

Ireland

- *Development of management plans and emergency actions aimed at candidate SACs (B4-3200/95/837)*

  Developing management plans for potential SACs

Österreich

- *Bear protection programme for Austria (B4-3200/95/847)*

  Elaboration of a management plan in cooperation with all authorities and interest groups concerned and a strong public participation input.

- *Wetland management in the Upper Waldviertel. (B4-3200/96/539)*

  Developing management plans for numerous small wetland sites (bogs, ponds, small river-areas), and partly implementing them in close contact with the affected landowners and users.

Portugal

- *Second phase of the project for conservation of the stepparian bird fauna of Castro Verde (B4-3200/95/510)*

- *New technology applied to nature conservation in Guadiana valley (B4-3200/95/511)*

  Both projects involved the preparation and implementation of management plans for areas that after the end of the projects were integrated into SPAs.

Suomi-Finland

- *Protection of biodiversity, and particularly of flying squirrel habitats, in the Nuuksio area (B4-3200/95/508)*

  Preparation of a management plan for recreation and conservation in privately owned areas.

- *Saimaa ringed seal management plan for Lake Pihlajavesi (B4-3200/95/505)*

  Land use plans focusing on seal conservation.

Sverige

- *Protection and restoration of Stora Alvaret on Öland Island, south-east Sweden (B4-3200/96/547)*

- *Preservation of the hermit beetle, Osmoderma eremita (B4-3200/97/288)*

  Use of agri-environmental schemes for the long-term management of the sites.

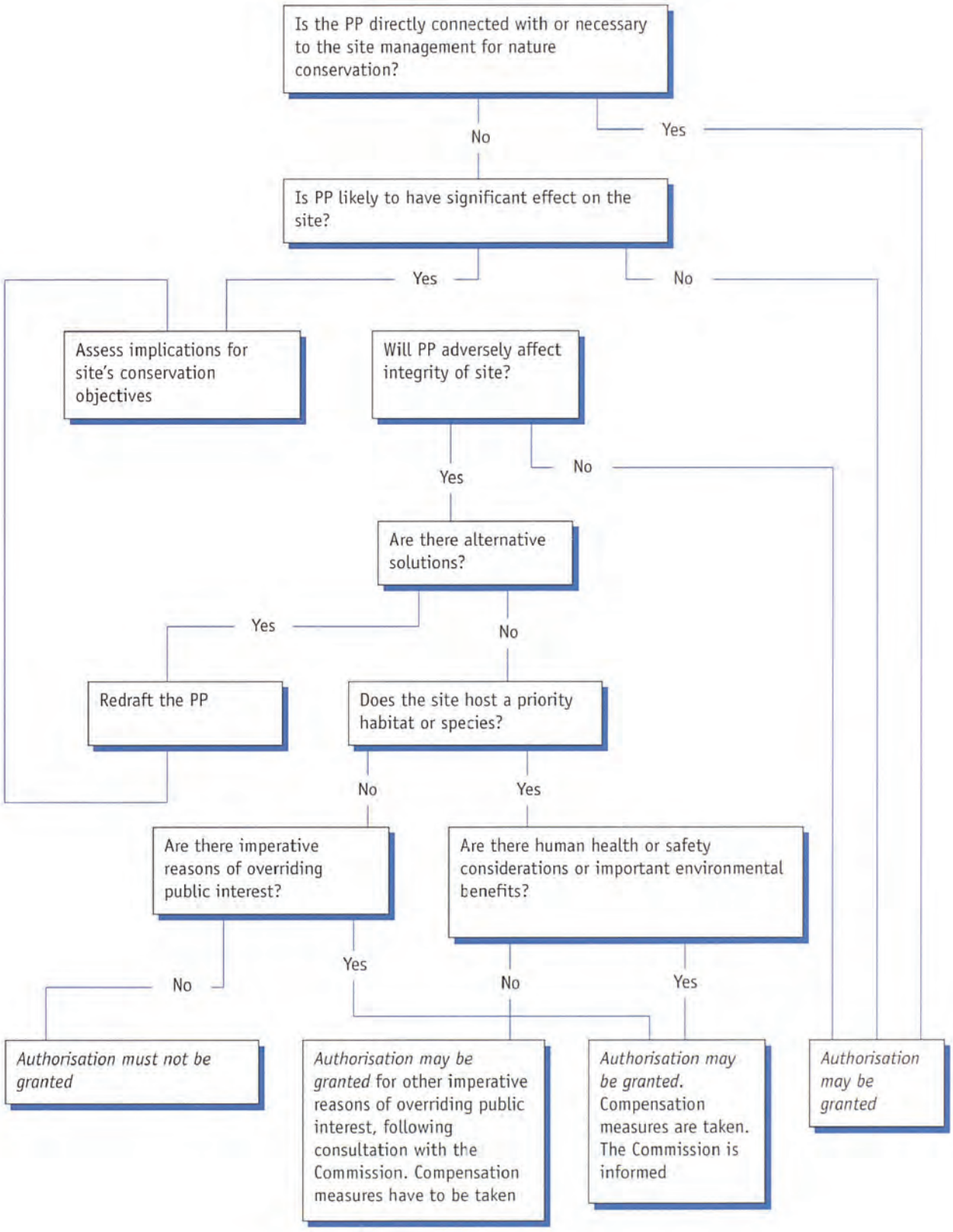
United Kingdom

- *Conservation management of priority upland habitats through grazing: guidance on management of upland Natura 2000 sites (B4-3200/95/854)*

  Development of a practical manual for grazing management planning.

ANNEX III

CONSIDERATION OF PLANS AND PROJECTS AFFECTING NATURA 2000 SITES



Annex IV

Form for submission of information to the European Commission according to Article 6(4)

Member State: Date:

Information to the European Commission
according to Article 6 of the 'Habitats' directive
(Directive 92/43/EEC)

Documentation sent for: ☐ information (Article 6(4)1) ☐ opinion (Article 6(4)2)

Competent national authority:

Address:

Contact person:

Tel., fax, e-mail:

1. Plan or project

Name and code of Natura 2000 site affected:

This site is:

☐ an SPA under the 'Birds' directive

☐ a proposed SCI under the 'Habitats' directive

☐ hosting a priority habitat/species

Summary of the plan or project having an effect on the site:

2. Negative effects

Summary of the assessment of the negative effects on the site:

NB: This summary should focus on the adverse effect expected on the habitats and species for which the site has been proposed for the Natura 2000 network, include the appropriate maps and describe the already decided mitigation measures.

3. Alternative solutions

Summary of alternative solutions studied by the Member State:

Reasons why the competent national authorities have concluded that there is absence of alternative solutions:

4. Imperative reasons

Reason to nevertheless carry out this plan or project:

- ☐ Imperative reasons of overriding public interest, including those of a social or economic nature (in the absence of priority habitat/species)
- ☐ human health
- ☐ public safety
- ☐ beneficial consequences of primary importance for the environment
- ☐ other imperative reasons of overriding public interest

Short description of the reason:

5. Compensation measures

Foreseen compensatory measures and timetable:

ANNEX V

MEMBER STATE NATURE PROTECTION AUTHORITIES ([25])

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- Ms Els MARTENS
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  The National Forest and Nature Agency
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- Ms Tine NIELSEN SKAFTE
  The National Forest and Nature Agency
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Deutschland

- Dr Ursula VON GLISCYNSKI
  Ministry for the Environment, Nature
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- Mr Detlef SZYMANSKI
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Ελλάδα-Greece

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  General Secretariat for Forests and the Natural
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  Ministère de l'Environnement, Direction de la
  Nature et des Paysages
  20, avenue de Ségur, F-75302 PARIS 07 SP

([25]) List of delegates to the 'Habitats' Committee, established under Directive 92/43/EEC. An updated list can be found on the Internet at: http://europa.eu.int/comm/life/nature/databas.htm

- Mr Henri JAFFEUX
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- Mrs Marie-Paule KREMER
  Ministère de l'Environnement
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COMMON STANDARDS MONITORING
INTRODUCTION TO THE GUIDANCE MANUAL

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1 Introduction

This chapter provides an introduction to the guidance manual on the Common Standards Monitoring of designated sites adopted by the statutory nature conservation agencies. It covers the various concepts and terms, and provides the background to the guidance on setting conservation objectives, and assessing feature condition, covered in the later chapters of the manual.

The introduction reflects current thinking but this may develop further as our experience of site-based monitoring increases. Comments on issues which readers feel are not adequately explained would be welcome – please send them to James Williams, Biodiversity Information Service, JNCC, Monkstone House, City Road, Peterborough. PE1 1JY, or email james.williams@jncc.gov.uk.

2 The need for monitoring

One of the key responsibilities of the statutory nature conservation agencies in the UK is the identification and protection of a series of sites intended to conserve important wildlife and Earth science features. Such sites may be designated under

- National legislation (Sites of Special Scientific Interest (SSSIs) in Britain and Areas of Special Scientific Interest (ASSIs) in Northern Ireland),
- European Directives (Special Areas of Conservation (SACs) and Special Protection Areas (SPAs)), or
- An international Convention (Ramsar sites).

Once sites have been designated, the country agencies work with owners/occupiers and others to protect and enhance their special features, for example by agreeing management plans and advising on development proposals.

Site-based conservation is a corner-stone of biodiversity and earth science conservation in the UK, and a substantial proportion of the agencies' resources is devoted to the selection, management and protection of statutory sites. Clearly, mechanisms are needed to assess how successful these activities have been in achieving nature conservation objectives, both on individual sites and across the site series as a whole. For example, on any particular site it is important to evaluate whether management measures have achieved the desired objectives, or whether new measures need to be put in place. At a broader level, assessment is required of the effectiveness of legislative and policy measures in contributing to biodiversity conservation on protected sites. Monitoring can provide the information necessary to undertake these assessments.

3 What is monitoring?

A useful definition of monitoring (and the one used in this document) is provided by Hellawell (1991), modified by Brown (2000):

> *Monitoring is an intermittent (regular or irregular) series of observations in time, carried out to show the extent of compliance with a formulated standard or degree of deviation from an expected norm.*

In line with this definition, we need to define the state desired in terms of objectives or targets, and then undertake monitoring to assess whether these objectives are being met.

Monitoring, in the sense used here, is distinct from *surveillance*, which is repeated survey using a standard methodology undertaken to provide a series of observations over time. Surveillance can yield valuable information on trends in the state of biodiversity and Earth science, but does not by itself establish whether objectives or standards have been met. Information derived from surveillance may be used to inform judgements on the condition of features on sites.

4 Designations covered by common standards monitoring

While common standards monitoring was designed for SSSIs, ASSIs, cSACs, SPAs and Ramsar sites, in principle the approach could be applied to any defined area holding specific features of conservation interest (e.g. statutory voluntary nature reserves), although consideration of the level of targets set may be necessary.

4.1 UK sites as at 31 March 2003

Designation	Number of Sites	Area (ha)
Special Protection Areas	240	1,436,609
candidate Special Areas of Conservation	576	2,405,778
Ramsar	144	758,782
Sites of Special Scientific Interest (SSSI)	6,586	2,335,405
Areas of Special Scientific Interest (ASSI)	196	92,033
SSSI + ASSI	6,782	2,427,438

Protected sites vary enormously, both in extent and number of interest features. They range from enclosed fields of less than a hectare notified for a single rare species, to extensive tracts of unenclosed upland covering tens of thousands of hectares and containing over 20 different interest features.

4.2 Multiple Designations

Many areas of wildlife interest in the UK have multiple site designations. The relationship between them in terms of site boundaries and interest features is often complex. For example, all but a handful of candidate SACs and SPAs in the UK are underpinned by SSSI or ASSI designation, but the cSAC may be made up of a number of component SSSI/ASSIs. In addition, the SSSI/ASSIs may have been notified for a different suite of habitats and species. Almost all Ramsar sites are also Natura 2000 sites, but the interest features are not necessarily identical.

From a monitoring perspective, **an important principle is that data must be collected in such a way as to allow a separate assessment of <u>each</u> <u>individual</u> interest featur**e.

5 The relationship between common standards monitoring and the Habitats/Birds Directives

The requirements of the Habitats Directive have implications for common standards monitoring, particularly in relation to the scope of conservation objectives and the concept of favourable conservation status. These issues are equally pertinent to the Birds Directive.

5.1 The scope of conservation objectives

In relation to common standards monitoring, the term ‘conservation objective’ has a clear definition: it defines the favourable condition of an interest feature in terms of a set of targets or target ranges. This is fundamental to site assessment and management, and also serves reporting purposes. Although the term ‘conservation objective’ is defined differently in other situations (for example, Article 6.3 of the Habitats Directive), for the purposes of Common Standards Monitoring the definition in section 6.2 of this document should be used.

5.2 Favourable conservation status

Favourable Conservation Status is defined in Articles 1e and 1i of the Habitats Directive. However, whilst the UK nature conservation agencies agree that the concept can be applied at a variety of levels, there is ongoing debate as to the degree to which favourable conservation status can be applied directly at the site level. However, key elements which contribute to the determination of Favourable Conservation Status can be applied to sites.

For habitats, the elements of Favourable Conservation Status which relate to extent, structure, function, and typical species are used to provide guidance on attributes and targets. For species, the elements of population dynamics, range, habitat extent and quality are important.

Important elements which define Favourable Conservation Status which need to be reflected in the assessment of feature condition, are the 'long-term maintenance' and 'foreseeable future' criteria incorporated in Articles 1e and 1i of the Habitats Directive. For a feature to be assessed as being in favourable condition, the ecological circumstances need to be such that there is a reasonable expectation that the feature will be maintained in that condition (ie not deteriorate) in the long- term.

6 Common standards for monitoring protected sites

The Environmental Protection Act 1990 defines one of JNCC's special functions as to 'establish common standards throughout Great Britain for the monitoring of nature conservation …'. In the context of protected sites, the development of common standards for monitoring provides two major benefits:

- It provides country agency staff with a reliable method with which to assess the conservation status of key interest features on their sites. This enables assessments made by different people at different times to be compared with some confidence and enables staff to identify changes taking place on their sites.
- Assessments from different sites can be aggregated to produce summary reports at a range of geographical scales. This can identify priorities for action at the local and national level. Such aggregation is essential if the UK is to report on the condition of designated sites across the UK, for example to meet the reporting requirements of EU Directives.

The establishment of common standards does not mean that monitoring has to be undertaken using prescriptive and rigidly-applied procedures. The approach needs to be sufficiently flexible to take into account natural geographical variation across the UK and to accommodate the varying requirements and operational practices of the country agencies. However, standards need to be sufficient to ensure that consistent judgements would be made by different staff.

A full copy of *A statement on common standards for monitoring designated sites* (JNCC 1998) can be found on the JNCC website (www.jncc.gov.uk). The common standards cover:

- Features to be monitored
- Conservation objectives
- Judging the condition of site features
- Recording threats and management measures
- Monitoring cycle
- Reporting arrangements

6.1 Features to be monitored

The features to be monitored are known as the **interest features** for which the site has been **notified or designated**. They include individual habitat types, species and Earth science features, and also complex features such as habitat mosaics and species assemblages. Each interest feature must be identified, monitored, assessed and reported on separately.

For international sites (SPA, candidate SAC, Ramsar), the notified (interest) features are those which have been submitted to the European Commission or Ramsar Bureau respectively on official data forms. A master list is held by JNCC within the International Designations Database.

For national sites, the interest feature is the feature which has been notified by the country agency in accordance with the SSSI/ASSSI selection guidelines (for biological features), or which is the interest feature specified in the Geological Conservation Review/Earth Science Conservation Review (for

earth science features). Features which have not been notified are not reported on under the common standards.

6.2 Conservation objectives

Conservation objectives* will be prepared for each interest feature on each site. These objectives contain **targets or target ranges** which should be met if the feature is to be judged to be in **favourable condition**. Each interest feature will have one or more measurable characteristics or **attributes** that together can be used to define favourable condition (see section 9). These attributes will either describe an aspect of the interest feature directly or be good indicators of its condition. The choice of target range in relation to favourable condition is critical. It is important to relate these to the feature under consideration, and to recognise which fluctuations in a population are normal and are not a cause for concern.

* Note that SNH refers to these as 'condition objectives'

6.3 Judging the condition of features

The following categories will be used to describe the condition of interest features:

- **Favourable - maintained.** An interest feature should be recorded as *maintained* when its conservation objectives were being met at the previous assessment, and are still being met.
- **Favourable - recovered.** An interest feature can be recorded as having *recovered* if it has regained favourable condition, having been recorded as unfavourable on the previous assessment.
- **Unfavourable - recovering.** An interest feature can be recorded as *recovering* after damage if it has begun to show, or is continuing to show, a trend towards favourable condition.
- **Unfavourable - no change.** An interest feature may be retained in a more-or-less steady state by repeated or continuing damage; it is unfavourable but neither declining or recovering. In rare cases, an interest feature might not be able to regain its original condition following a damaging activity, but a new stable state might be achieved.
- **Unfavourable - declining.** Decline is another possible consequence of a damaging activity. In this case, recovery is possible and may occur either spontaneously or if suitable management input is made.
- **Partially destroyed.** It is possible to destroy sections or areas of certain features or to destroy parts of sites with no hope of reinstatement because part of the feature itself, or the habitat or processes essential to support it, has been removed or irretrievably altered.
- **Destroyed.** The recording of a feature as destroyed will indicate the entire interest feature has been affected to such an extent that there is no hope of recovery, perhaps because its supporting habitat or processes have been removed or irretrievably altered.

6.4 Recording threats and management measures

An important part of monitoring is the potential for relating observed changes in the condition of the interest features to the reasons for such changes. As part of the monitoring process, the following should be recorded:

- **threats** occurring on, or near, the site which may be driving features into unfavourable condition or preventing them from achieving favourable condition; and

- **management measures** which may result in improvements to the condition of features or maintain features in favourable condition.

This information will be employed in the consideration of the causes of observed changes in feature condition and in guiding management action. However, it may not be possible to attribute cause and effect from the information gained during monitoring, in which case further investigation may be required.

6.5 Monitoring cycle

All interest features on all statutory sites will be assessed at least once within a six-year period. This corresponds to the six-year reporting cycle used for the EC Habitats Directive.

Each individual interest feature should be monitored ideally within the same year, and certainly within a three-year period. For a large site (e.g. in the uplands), it may not be possible to assess the whole of some features within one year, but the expectation is that the assessment must be completed within three years – this is to reduce the potential for the state of the feature to have changed between the start and end of the assessment.

The above remarks do not preclude more frequent monitoring if the ecological needs of the feature justify it and the common standards allow for such flexibility (for example, some of the species feature monitoring set out in the guidance is more frequent). For some species features, the guidance may recommend that an assessment be made on the basis of records collated over the six year monitoring cycle; where this is the case the assessment should be made at the end of the monitoring cycle.

6.6 Reporting arrangements

Information obtained from common standards monitoring will be used to prepare reports for a variety of purposes. For example, it should satisfy the requirement to report on the status of international site networks under the Habitats and Birds Directives and the Ramsar Convention. For the SSSI and ASSI series, information will be presented, at the UK level, using Biodiversity Action Plan broad habitat types, an agreed set of species categories, and categories appropriate to the Geological Conservation Review. A report of the results of Common Standards Monitoring (CSM) will be pulled together at least every six years. Once the first cycle has been completed, it is likely that annual reports will be produced, based on a rolling six year cycle.

7 The relationship between monitoring and site management

One of the principal reasons for undertaking site monitoring is to assess whether management practices have been effective or not. It follows that there must be a close link between management planning and monitoring. Sound conservation objectives can only be derived by considering the ecology of the habitats and species (at community, ecosystem and landscape scales) on the site and, where appropriate management is known, the range of management options available. Ideally, conservation objectives should be formulated within the context of a management plan which specifies the practical measures needed to achieve favourable condition for the range of interest features present on the site. This offers a mechanism for resolving any potential conflicts between different interest features (see sections 8 and 17).

Once monitoring has been completed and an assessment made of the condition of the feature, there should be a feedback loop to site management, taking into account the information gathered on potential threats and management measures. The monitoring assessment may trigger adjustments to site management practices, or possibly be used to direct more detailed investigation into the reasons for apparent problems. If condition monitoring is only undertaken once every six years as required under CSM, this cannot be relied upon as the sole mechanism for reviewing site management – it needs to be supplemented by compliance monitoring (to assess whether agreed management prescriptions are being followed), and possibly more frequent assessments on problematic or priority sites. Where the reasons for an unfavourable assessment are unclear, or the appropriate management response is unknown, there may be a need for further, more detailed survey, monitoring or research activities.

8 Complex Sites / Reconciling potential conflicts between interest features

Although some sites are designated for a single interest feature, many sites have more than one. Inevitably, the management requirements of each interest feature will not be the same. For example, on upland sites the ideal grazing regime for different habitats may vary considerably, ranging from moderately heavy grazing for grasslands, to light grazing for heathlands, to no grazing at all for tall-herb vegetation. Similarly, on lowland heathland sites the management required to maintain high-quality vegetation may be at odds with that needed to sustain populations of scarce reptiles or invertebrates.

These issues must be resolved during the preparation of conservation objectives. Ideally, this should be done by developing a management plan for the whole site, based on a sound knowledge of the site's ecology and the management constraints and opportunities. On some large sites, especially in the uplands, it may be possible to implement an ecosystem management approach.

It may be necessary to consider prioritisation of interest features, e.g. by placing greater emphasis on Natura 2000 or BAP interests. On larger sites it may be possible to accommodate different management treatments on different parts of the site. There may be benefits in taking a wider view of conservation priorities and adopting different approaches on different sites. For example, rather than trying to restore small areas of woodland on all upland sites within a particular region, it may be better to attempt woodland regeneration on an extensive scale on only one or two sites. Such an approach may deliver significant nature conservation benefits, but can only be achieved within the context of a regional/national strategy.

Of particular concern with respect to the integration of features are those situations which have for a variety of reasons been described as 'complex'. These fall into the following categories:

- Where there are many features on a single site. These may be independent ecologically.
- Where there is one feature, but it comprises a mix of habitats (for invertebrates the juxtaposition of microhabitats can be very important).
- Where the feature is very large.
- Where there are interacting features (i.e. a change in one feature will lead to a change in another).

In all these cases, care will need to be taken to ensure that the perceived complexity is appropriately addressed in the conservation objectives. This is best done by being explicit about decisions which have been taken – i.e. what is being assessed and why.

Principles to consider when dealing with features in these circumstances:

- Consider the priority of the individual features – which is the higher priority ?
- Favouring one feature over another must only take place if there is a detailed rationale and clear safeguards to ensure the coherence of the site and of the site network.
- Non-notified features should not be favoured over notified, qualifying ones.
- Consider the effects of features on each other – are they interlinked ecologically.
- Be explicit about the judgements being made for <u>each</u> feature and upon what they are based.
- Allow sufficient time for gathering information upon which the features will be assessed – large features may take more time.

Local decisions will need to be taken on these principles if conflict is encountered. These will need to be justified in a national or at least regional context and signed off by an Area Manager or equivalent after consultation with relevant specialists.

9 Selection of attributes for interest features

9.1 Basic principles

Attributes are characteristics of an interest feature that describe its condition, either directly or indirectly. They can be regarded as indicators which allow judgements to be made about the condition of the interest feature. The selection of attributes in this guidance has been informed by two important principles:

- **All attributes must be measurable, so that targets can be set as part of the conservation objective for the feature.**
- **Attributes should describe the condition of the feature and not the factors which influence it – in general, management activities are not suitable attributes.** Thus in determining if a calcareous grassland is favourable or not, one of the attributes to be assessed may be sward height – this is what is being aimed at, not the mechanism by which it is achieved, which might be via grazing or by mowing.

9.2 Range of attributes

There are a wide range of suitable possible attributes. For example, habitat attributes may include extent, floristic composition, vegetation structure, and physical characteristics; species attributes may include population size, distribution, food availability, and habitat factors. Attributes for Earth science features may include the quality and extent of landforms/rock exposures and freedom from human induced influence in the case of active geomorphological sites.

For habitat interest features, floristic or vegetative attributes have generally been used as indicators of the condition of the habitat. However, the definitions of favourable condition for habitats are not based solely on maintaining suitable conditions for plant species. In some cases, the requirements of animal species have also been taken into account, and attributes have, where possible, been selected which convey information about the typical fauna associated with each habitat (e.g. structural features and fine-scale patterning of vegetation). (See 'Attributes for species interest features' in section 10).

9.3 Mandatory attributes

During the preparation of the guidance, care has been taken to select the minimum number of attributes which will allow reliable assessments of condition to be made. These form a core set of mandatory attributes which describe condition most economically, and are intended to be suitable for use across the UK. An assessment must be made of all of these attributes – each will contribute to the final evaluation of feature condition. The guidance adopts the term 'mandatory' to indicate these highest priority attributes.

As a general rule, attributes have been chosen which do not require expert knowledge, although staff will need training in their use. However, in some cases the use of attributes requiring additional (specialist) input is essential if a reliable and safe evaluation of feature condition is to be made (e.g. lower plants and some habitats such as cliffs and caves where specialised access skills may be needed). These situations are highlighted in the guidance.

9.4 Flexibility

However, some flexibility in the selection of attributes is acceptable (see also section 6). Some attributes may not be applicable to all examples of a particular interest feature. For example, encroachment of wetland species such as rushes is a management issue in some lowland grasslands, and in such situations the cover or frequency of wetland species is an important aspect of feature condition, and should be used as an mandatory attribute. However, in many dry grasslands use of such an attribute would be irrelevant. Another approach is illustrated by the selection of attributes for woodland habitats. Here, there are five broadly-defined categories of attribute (such as regeneration potential and tree and shrub composition) which should be incorporated within conservation objectives for all woodland features, but the selection of specific attributes within each of these categories is determined by site-specific conditions. Therefore, in some cases flexibility has been given in the

guidance to choose one or more of a number of alternative attributes. It should be stressed that once chosen, it is mandatory that they are assessed.

What is key, however, is that for any particular feature on an individual site, a clear set of attributes are identified which will be used to assess the feature each time it is monitored. An audit trail of decisions which have been taken is essential to document why this set of attributes is necessary in the circumstances which apply on this site. Note that it is NOT acceptable to assess the feature using totally different sets of attributes between cycles of assessment.

9.5 Discretionary attributes

In addition, in a few cases (e.g. in the Birds guidance), "discretionary" attributes have been identified. These lower priority attributes will not contribute towards assessments of condition but may inform site management. It is up to individual agencies to determine whether or not to collect more detail than the minimum required, as this is a matter of resources. In some sets of guidance, there may be discretion to choose between alternative attributes, or where attributes may only be relevant in certain circumstances – these may also be termed discretionary, but once a decision has been made that they are to be used on a particular site, for a certain feature, they should be regarded as mandatory.

10 Attributes for species interest features

Assessing favourable condition for species interest features could be by direct means (e.g. measures of species population size) or via indirect means (e.g. extent/condition of suitable habitat). These are complementary, and a balance (section 10.3) should be struck for any particular feature having due regard to both needs and practicalities.

10.1 Indirect measures

The use of direct measures is expected to be the norm, but for many species (especially cryptic and/or poorly known species, such as many invertebrates) it is very difficult to make reliable estimates of population size; in some cases (e.g. wood-boring beetles), population assessment may even destroy the species' habitat. Even where quantitative assessments can be made (e.g. birds), populations may fluctuate widely on a seasonal, annual or longer-term basis; defining appropriate target/limit values may be problematic if the population dynamics of the species are unknown. Given that management for notable species is normally undertaken by managing the habitat, rather than directly managing the species, it is normally appropriate to include habitat attributes within conservation objectives for species interest features where the habitat needs of the species are known.

10.2 Direct measures

Notwithstanding the foregoing remarks, some direct measure of a species feature is clearly highly desirable, as over-reliance on habitat attributes could lead to misleading conclusions. The relationships between habitat condition/extent and associated species are often poorly-known. If condition assessment for species relied solely on habitat attributes it would be possible for the habitat to be in apparently favourable condition, but for the associated species to have declined to the point of extinction. Species may also be influenced by factors other than habitat condition/extent, e.g. disturbance, as in relation to bat roosts.

10.3 A balance of approaches

The solution is to use a combination of approaches, tailored to the particular interest feature. The following principles are advocated:

- In general, attributes for species interest features should include both assessments of habitat extent/quality and assessments of the species population where data exist through recording schemes, or can be easily and reliably obtained without significant costs or delays.
- Quantitative assessments of population size should only be used when:
  - i. the species population can be counted or measured reliably, e.g. most birds, some vascular plants, some invertebrates (butterflies and dragonflies); and

ii. meaningful targets/limits can be set which take population fluctuations into account; and

iii. assessment methods avoid significant additional costs, time, or generating a need for higher competencies of local staff.

- Where quantitative assessments cannot be used, conservation objectives should generally incorporate species presence/absence, i.e. for a species feature to be in favourable condition the species should usually be recorded at least once during a 6-year reporting cycle.
- Some habitat attributes should be used, provided the habitat requirements of the species are broadly known – if necessary, further work should be undertaken to establish this.

There will be a gradient in the balance of attributes from groups where the habitat attributes will predominate and where presence/absence of the species may be the most that can be expected to be monitored, through to groups where species population data will predominate and where only major changes of habitat may be worth recording. Most species interest features are likely to lie between these two extreme positions and, for these, population data and habitat attributes will both be important. When assembling evidence of feature condition, the use of relevant 'contextual' information on species populations, collected through existing recording schemes or specially commissioned surveillance schemes outwith CSM methods should always be considered.

For certain species, disturbance or predation are major factors affecting populations, and conservation objectives should include attributes relating to minimising these factors. There is obviously a cross-over here to the management plan for the site.

11 Setting targets

For each interest feature, favourable condition will be defined by setting broad targets for each attribute. As a general guide, favourable condition will reflect the state of an interest feature at the time of its selection but with the proviso that the ecological or other processes supporting the feature should be such as to enable it to maintain its condition over time. In practice, the site condition at the time of selection may not be known, or be inappropriate, in which case the guidance provided in this manual, adjusted to meet the particular circumstances of the site as determined by best judgement, can be used to determine favourable condition.

Targets should be set to ensure that habitats and species populations are maintained in a condition which is likely to be sustained over the foreseeable future, in line with the principles of favourable conservation status (see section 5.2). For example, a wetland feature that requires a certain water level regime to maintain it, will not be considered as being in favourable condition if the water level requirements are not being met, irrespective of whether the plant and/or animal community targets were met at the time of monitoring. This is because it is entirely foreseeable that these attributes will not be maintained over time. In this example, the target for the water regime will be set at the level to be reached to maintain the wetland feature (i.e. possibly different from what it was at the date of site selection).

However, targets should not (for common standards monitoring purposes) be set at levels which seek to achieve substantial improvements to the feature beyond that needed to maintain its biological or earth science interest at the time of selection. In certain exceptional circumstances, where the feature was selected with the specific view to improving it to a better state (e.g. degraded raised bogs), the biological targets for favourable condition can be set significantly higher than was their condition at the time of selection. This is, however, an exceptional circumstance and not to be applied generally.

Targets for species and habitat features must reflect ecological variation and, where relevant, local distinctiveness; in many cases they will be determined by site-specific factors (see section 16). However, guidance on setting appropriate target values has been provided wherever possible, e.g. by specifying a range of values within which site-specific targets should lie.

For geological sites *that are being preserved*, a target of no reduction in quality or quantity of the features of interest is generally applicable. Targets set for any particular interest feature may also need to take into account the conservation objectives of other features on the site (see sections 8 and 16).

12 Ecosystem dynamics

Targets should take into account ecosystem dynamics, e.g. successional changes on sand dunes and localised loss of woodland areas due to natural processes. However, it is acknowledged that it may sometimes be difficult to distinguish between such 'natural' changes and changes caused by human induced factors. The key to dealing with natural change is to be clear about what is important about the site. In order to illustrate this, two examples, for woodlands and coastal features are given below.

12.1 Woodlands

For some woodland features of interest, natural change could be as damaging as direct human intervention. If a site is important for butterflies associated with open space, 'natural change' that leads to the glades scrubbing up will put the butterfly feature in unfavourable condition. In another site important lichens might occur on just six specific veteran trees: if wind blow uproots the trees (leaving them lichen-side down) the lichen feature becomes unfavourable.

Where the interest feature is more general, for example the semi-natural woodland community the impact of 'natural change' may be viewed more benignly. A shift in the relative abundance of vernal flowers or in the relative dominance of oak versus other site native trees may be acceptable, or at most slight changes in management may be recommended to off-set it, without the need to alter the overall condition assessment.

A third situation is in sites where our aim is to develop as near-natural a woodland state as we can under the prevailing conditions. Since we do not know what 'near-natural' actually is in 'state' terms we must judge success by the degree to which natural processes operate. Almost any composition / structure is acceptable. Natural change is positively welcomed as a sign of success. Thus if the wood blows down (as many did in the 1987 storm) this is not an undesirable event and does not make the woodland feature unfavourable.

12.2 Coastal

A key element of the scientific interest of coastal habitats such as sand dunes, soft cliffs or salt marshes is the presence of active coastal processes, which influence the development of a range of natural successional stages. Many of the coastal habitats which are Annex I features are directly related to the interaction between natural processes and vegetation, this is reflected in titles such as 'shifting dunes with *Ammophila arenaria*', 'annual vegetation of driftlines' and '*Salicornia* and other annuals colonising mud and sand'. Coastal habitats are often of interest themselves for active geomorphological processes.

Moreover, all coastlines are naturally dynamic. Despite the many modifications to the coast, these natural processes continue and are important in determining the overall condition of habitat features. Understanding how the features of a site adjust in response to these processes poses a particular challenge for conservation. A functional coastal ecosystem must have the capacity to change, and designated sites must be considered in a wider context.

While, for many coastal habitats, dynamic change is a natural and necessary process, it is also often what human activities are intended to reduce or prevent. Activities such as mechanical beach cleaning, building of structures (e.g. groynes or even offshore breakwaters), or land reclamation can affect natural processes or prevent a coastal system from responding to natural events. In other cases, activities elsewhere in a coastal cell may not even be on the site which is being assessed - which can lead to difficulties in judging what factors (natural or human induced) are causing change.

In many cases, it is the absence of artificial structures or operations that indicate that natural processes are able to operate. The presence of structures or operations that are clearly having a detrimental effect on the feature through the interruption of natural processes should, therefore, be recorded, as these will indicate that natural processes are restricted in some way. Whilst this goes against the

guidance in section 9.1, it is difficult to provide hard and fast rules for all situations. In the circumstances described in this section, recording structures or operations would seem to be sensible, assuming the feature being assessed is a dynamic process, and the coastline is a manifestation of that process. If the feature is assessed as unfavourable, and there are no obvious reasons why, it may be necessary to look beyond the site for the factors which are influencing the feature.

A change from one habitat type to another as part of a normal succession would not inevitably result in a verdict of unfavourable condition. This will be a matter of setting target ranges appropriately to take account of coastal dynamics. In some very mobile systems, the feature could even migrate beyond the site boundary. In addition, the effects of climate change may cause some habitats to migrate landwards. If this is recorded during assessment, the site boundary may need to be amended and the site re-notified.

Notwithstanding the foregoing remarks, natural coastal process events can be damaging to interest features. For example, a breach in a barrier bank could damage or destroy a coastal lagoon and its component plant and animal communities, with little chance of these being restored in the foreseeable future. The condition of the lagoon feature clearly then becomes unfavourable. We should not conclude that a feature is in favourable condition simply because it is the end result of coastal dynamics. Changes due to coastal dynamics and natural succession should be considered alongside the state of the feature when assessing condition.

13 Habitat mosaics and transitions

13.1 Habitat mosaics

The SSSI selection guidelines allow habitat mosaics to be identified as interest features in their own right. The component habitats may, or may not, be individually qualifying SSSI features. In practice, with the exception of upland SSSIs, it appears that very few sites have been notified specifically for their habitat mosaics.

Where a habitat mosaic is a notified interest feature, it is expected that a conservation objective will be drawn up for the mosaic as a whole. This could include various attributes which reflect:

i. the overall extent of the mosaic (targets should generally be set to avoid any loss of area);

ii. the diversity of component habitats of the specific mosaic (the range of semi-natural habitats should usually be at least maintained at current levels);

iii. the extent of selected component habitats, where these are felt to be of particular importance (taking into account the dynamic nature of many mosaics, and also any targets for management-controlled habitat expansion/reduction);

These attributes could all be assessed from vegetation maps or aerial photographs.

One or more components of the mosaic will often be notified interest features in their own right, and, in these circumstances, attributes should be selected and targets set using the relevant habitat guidance. Even where component habitats are not individually qualifying features, it may still be appropriate to select a restricted number of additional habitat condition attributes, over and above those listed previously. This will need to be judged on a case by case basis, balancing the desire for simplicity against the need to collect sufficient information to judge the overall condition of the mosaic. On large and diverse upland sites it would usually be pointless to undertake detailed monitoring of component habitats such as acid grassland which are of limited conservation value. But for smaller mosaics (e.g. comprising two habitats, neither of which are extensive enough to qualify individually) some measure of quality of the separate habitats may be essential to reach an informed decision regarding the condition of the mosaic feature.

13.2 Transitions between habitats

Vegetation types are not always sharply delimited from each other and different forms of vegetation may grade into one another in response to environmental gradients, and there may be quite extensive transition zones. Transitions between habitats are often of interest in their own right; their importance

is explicitly acknowledged in the SSSI selection guidelines, and, in some cases, transitions contribute to the reasons for site designation. Habitat transitions and stands of intermediate character may also be important factors in the context of SAC designation.

Where transition zones are limited in extent but are of significant conservation interest, they should be incorporated within the site's conservation objectives. This can generally be done by including the transition as one of the 'indicators of local distinctiveness' (see section 15.5) chosen to reflect locally distinctive elements of the site. Targets could then be set for the location, extent and composition of the transition, as appropriate.

Transitions between habitats may be relatively extensive, and sometimes entire stands of vegetation may be intermediate in character. In such cases, it is possible that use of the generic habitat guidance would result in an inappropriate choice of attributes and targets. For example, a stand of vegetation may be transitional between lowland heathland and acid grassland. This does not necessarily lessen its conservation value, but rigid application of the monitoring guidance for either lowland heathland or acid grassland may lead to a judgement that it is in unfavourable condition when it is actually favourable. In these circumstances it is recommended that an integrated set of attributes and targets is chosen, based on both sets of guidance, and taking into consideration the salient characteristics of the vegetation. Advice from specialists will be required to ensure that appropriate targets are chosen.

14 Species assemblages

14.1 What is an assemblage ?

ASSIs/SSSIs, SPAs and Ramsar sites may each be notified because of the presence of important assemblages of species. This might seem straightforward, but in the context of species features two situations can be envisaged:

1. A colony of different species all occurring / living together, where the total number of individuals is the key aspect of the interest on the site (e.g. more than 20,000 seabirds on a SPA site).
2. A number of characteristic species which together form the feature and usually share similar ecological or habitat requirements (e.g. the co-occurrence of woodland or upland bird species, or heathland invertebrates).

The term 'assemblage' can also be used in a third, functional, way; when there are a number of features which co-exist, yet are individually notified (i.e. they are features in their own right). While it may be possible to assess them using the same or very similar attributes, these species must be assessed as individual features independently of any assemblage of which they may also form a part (e.g. under scenario 1).

14.2 Scoring systems

For some taxonomic groups, the selection of SSSIs for species assemblages is based on a simple scoring system with clearly-defined thresholds for sites considered to be of SSSI quality (e.g. vascular plants, breeding birds, amphibians and dragonflies). Quantitative thresholds are also used to identify SPAs and Ramsar sites for waterfowl assemblages, and SPAs for seabird assemblages. In other cases (e.g. most invertebrate assemblages), SSSI selection guidelines are less clearly defined.

There are several possible approaches to monitoring species assemblages. Where there are quantitative selection thresholds an acceptable approach might be to evaluate the assemblage against the selection criteria. For example, by recording presence/absence of the constituent species and comparing the scores with the SSSI selection guidelines and/or the assessment at the time of notification. However, it needs to be recognised that not all species may be recorded during one site visit, while the original selection of the feature may have been made after several visits using a compilation of data. It may be sensible, therefore, to set a favourable condition threshold which takes account of such circumstances. Recording relative abundance of the components of the assemblage on a scale of common to rare, could provide additional information for subsequent comparisons.

14.3 Indicator species

An alternative approach is to use indicator species to assess the condition of the whole assemblage. Suitable indicators would typically include species characteristic of a range of different micro-habitats, and, if possible, conspicuous species that could be recorded by a non-specialist. Both approaches should usually be complemented by setting target values for habitat attributes which relate to the features required for the maintenance of the assemblage.

15 The need for flexibility in preparing conservation objectives

15.1 Variation within the UK

Favourable condition for a particular habitat, species or earth science feature cannot be defined in exactly the same way on every site. We cannot use the same suite of tightly-defined attributes and associated target values in every circumstance, as this would ignore the considerable ecological/natural variation across the UK in response to climate, geology and other variables. For example, the typical species of blanket bog in Dartmoor differ from those in the Flow Country. In addition to broad-scale ecological variation determined by factors such as climate, there is also considerable site-specific variation reflecting local factors.

Frequently, 'local distinctiveness' or broader scale variation makes a significant contribution to what is 'special' about a particular site. For example, the selection of SACs in the UK has been influenced by the requirement to represent the range of ecological variation shown by each Annex I habitat and Annex II species (McLeod *et al.* 2002). Similarly, when selecting SSSIs, it is often the presence of a locally uncommon species or interesting spatial patterning of vegetation that leads one site to be chosen ahead of others. It is, therefore, essential that conservation objectives incorporate site-specific characteristics and geographically-related variation when this is appropriate to the feature.

15.2 High quality features

A flexible approach to preparing conservation objectives is also needed for other reasons. For example, if target values for a particular attribute are set at a uniform level on all sites, there may be some sites containing high-quality features which are significantly above this threshold. It would not be acceptable to allow these features to decline significantly while still reporting them as being in favourable condition. In such cases, targets will need to be raised to more appropriate levels so that monitoring can act as a trigger for action to avoid deterioration to a lowest common denominator level.

Targets may also need to be modified to take account of management conflicts between different features (see section 8). In practice, the *perceived* problem of potential conflicts between interest features may be larger than the reality. This is not to dismiss the problem, but to urge those setting conservation objectives to consider the needs of different features in the round.

However, the need to accommodate important ecological variation within conservation objectives must be balanced by the requirement to maintain a consistent approach which allows data from different sites to be aggregated. The UK guidance has been drafted with this in mind. The most important principle here is that variation must be considered within the context of the ecology of each interest feature. Locally distinctive characteristics of biological sites determined by unusual geology should certainly be reflected in the conservation objectives for the features on that site.

15.3 Species poor sites

Some sites are naturally species poor. For example, on some heathland sites it is very difficult to find more than one grass and one forb. In these cases, conservation objectives will have to set target values that are lower than in the standard guidance. It would be illogical to require more species present than is naturally the case, but equally it would be inappropriate to reduce the generic target for the habitat because of a few sites. This is likely to be the exception rather than the rule, and if lower targets are set, they should be checked with a relevant specialist and an audit trail of the decisions made.

15.4 Flexibility

Some attributes have been defined at a broad level. For example, many habitats have an attribute for the frequency of 'typical' species. Representative lists of appropriate species are usually provided, but the selection of species on any particular site will need to reflect site-specific characteristics.

There is considerable discretion in setting targets for most attributes. For many attributes, guidance is provided on the range of values which would generally be considered acceptable for a feature to be in favourable condition. The target which will be used on any particular site will usually be a subset within this range, and will be determined by site-specific issues. Quality control to check that the guidance is being properly applied will however be necessary to ensure that we do have a common standard.

15.5 Indicators of local distinctiveness

Local variation can also be addressed by including additional attributes ('indicators of local distinctiveness') which describe important site-specific facets of the interest feature. The choice of suitable site-specific attributes is extremely wide. The following are likely to be particularly useful:

i. the presence of notable fauna and flora, e.g. local rarities and distinctive species assemblages (in addition to species and assemblages which are notified features in their own right);

ii. spatial patterning of vegetation, including transition zones and habitat mosaics;

iii. distinctive structural and physical characteristics (e.g. patches of bare ground important for invertebrates, ponds and streams, veteran trees).

This approach is recommended for habitat and Earth science features, but will be of limited application for species features. Note that this approach is only advocated where it helps to determine the quality of the notified feature on a citation. It must not be used as an excuse for making assessments of features that are not notified (see section 6.1).

16 Judging condition: making the assessment

Once the monitoring evidence has been collected, a **judgement** about the condition of the interest feature must be made. This judgement should be reached by reviewing all relevant evidence critically.

An interest feature is expected to meet <u>all</u> high priority ('mandatory') attributes for it to be considered to be in favourable condition. Rarely, exceptions might be made to this rule: this must always be documented. A special situation might arise over the next few years as Common Standards Monitoring is 'bedded down'; that an interest feature may appear to have 'failed' because the original selection of attributes and targets was wrong. If this is the case, the targets *must* be adjusted *before* a decision is made on the assessment of the feature. Agency quality assurance processes should ensure that the guidance is followed, and exceptions documented.

It might be felt by staff that the failure is due to a short-term management problem which has already been addressed. Even if this is the case, if the feature fails the target values set it must be assessed as unfavourable to ensure that corrective action is followed through. Remember that an assessment is the state of the feature at a particular point in time.

Alternatively, the monitoring results may provide a misleading picture of the condition of the feature, perhaps because monitoring was focused on an unrepresentative part of the site or was undertaken at the wrong time of year. This should be noted for future action, and it may be that a local decision is taken to repeat the monitoring, but if the target values for the attributes are not met, applying the precautionary approach, the feature must be considered unfavourable. Any case such as this should be flagged for quality assurance.

Even if a feature is judged to be in favourable condition, there may be concerns that it is declining in quality or that the management is in some way inappropriate. This is an indication that the target or limits set were wrong and should be flagged for quality assurance. It may also trigger more detailed/frequent monitoring, or scientific investigation.

An important point to remember is that condition assessment is not a completely scientific exercise. In the end it relies on making judgements based on the best available evidence. The reasoning leading up to the final decision should be carefully recorded as part of an audit trail (see also setting targets in section 11 and changes from guidance to take account of local circumstances in section 15).

Where information is aggregated together from different parts of a large site, a clear explanation should be placed on file of the process used. This will help with future assessments (by when the member of staff involved may have moved on or left the organisation), and also clarifies any questions which may be asked during quality control or quality assurance processes.

17 Assessing trends in condition

The critical distinction to be made when judging the condition of interest features on statutory sites is between favourable and unfavourable condition. However, the framework of condition categories agreed as part of common standards monitoring includes sub-categories relating to trends in feature condition. If a feature is assessed as being in unfavourable condition, it is important to be able to judge whether it is recovering, stable, or declining. This is critical to informing decisions about the management of sites.

17.1 Habitats and earth heritage features

For the 'unfavourable - recovering', 'unfavourable - no change' and 'unfavourable - declining' categories, the basis for assessment is the availability of evidence which demonstrates a trend. This evidence will often be that obtained by comparing the attribute targets with baseline information or by information obtained on a previous monitoring occasion. However, evidence can also be obtained by inference. For example, information on recent and current grazing levels and their impact on the condition of heathland vegetation may be provided by the structure of heather and other dwarf shrubs, including the presence of distinctive growth forms and the proportion of grazed shoots. In woodlands, the growth of seedlings/saplings will provide an indication of grazing levels and the potential for woodland regeneration. Evidence of recent removal of non-native trees indicates the composition attribute target may be improving. Wherever possible, attributes of this type have been included in the habitat guidance, but suitable attributes are not available for all management factors.

Finally, knowledge of the management regime and other factors affecting the site (e.g. air pollution) can also contribute to judgements about whether a feature is likely to be recovering or declining. For example, if an area of degraded blanket bog (in unfavourable condition) is being grazed heavily and regularly burnt, it is fairly safe to assume that its condition will not be improving. However, this approach relies on being confident that particular management treatments will lead to certain changes in condition, rather than directly assessing any changes.

Assessing condition in the 'recovering', 'no change' and 'declining' sub-categories at the time of the first assessment, can be achieved using the evidence referred to above.

In subsequent six year cycles, trends in condition could be assessed in various ways:

- changes in the number of attributes 'failing';
- trends in the number of samples 'failing';
- trends in the values of attributes;
- changes in the area of the habitat/extent of landform/rock exposure in favourable/unfavourable condition.

Different habitats have different response times - it may be possible to restore some grassland vegetation within a few years, but blanket bog may take decades - and the ecology of a feature needs to be taken into account when judging condition. The rate of progress from unfavourable to favourable condition will also be determined by management. For example, on upland heathland the complete removal of livestock will probably lead to favourable condition being attained much more rapidly than if more modest stock reductions are put in place. The end-point will be the same, but the rate of progress will be markedly different.

Ultimately, it is for the person carrying out the assessment to examine the evidence and formulate a view based upon it. They then need to record their reasons for their view. If the evidence appears dubious or weak as regards any trend, an assessment of *no change* is to be preferred.

17.2 Species

Species present particular problems, including the often poorly understood relationships between species populations and their habitat, and the difficulty in interpreting quantitative population measurements given the widely fluctuating population dynamics of many species. For many species, it may be impossible to use population attributes to determine the sub-categories in any meaningful way, and other evidence will have to be considered when assessing trends for these. For example, it may be possible to infer recovery from improvements in one or more of the habitat attributes. Where possible, the guidance for species features will give advice on how to evaluate trends.

17.3 Unfavourable Recovering

The generality of the foregoing remarks apply to undertaking the assessment of feature condition in relation to the *Unfavourable Recovering* category. At first assessment a view will be formed after considering the available direct and indirect evidence to determine whether the feature is, in fact, recovering. Where management has been put in place to address all the factors preventing the feature from returning to favourable condition, and in the best judgement of the assessor such a return will occur in due course, the feature should be assessed as falling in the *unfavourable recovering* category, notwithstanding that full recovery may take several years. However, a distinction is made here between management leading to full recovery and that which is limited to some improvements. For recovery, remedial measures should have been taken to address all failing attributes; recovery will not occur if only some of the attributes have been addressed. While the latter will lead to improvement, it will not lead to favourable condition being attained, and features in this condition should be assessed as falling in the *unfavourable no change* category.

17.4 Favourable recovered

As soon as the favourable condition threshold is exceeded, the state changes from *unfavourable recovering* to *favourable recovered*. Common Standards Monitoring should not be expected to determine if the management is correct, merely point out if the condition of a feature on a site is as we wish it to be. Although it is undesirable for a feature to fluctuate between favourable and unfavourable conditions, what this may mean is that the management of the site/feature is failing the feature in some way.

17.5 Partially Destroyed

It is not unusual for the condition of a feature within a protected area to vary between different parts of the site. This might have been the case at designation or have happened subsequently. If the condition of part of a feature is considered to be, for whatever reason, beyond restoration, it will cease to be a target for future management actions and is consequently not usefully monitored from that point onwards.

The *partially destroyed* condition should then be applied to that part of the feature and that part will be excluded from future condition assessment. Such an assessment would need to be accompanied by corresponding changes to any variables in attributes or targets (e.g. extent) within the conservation objectives for the remainder of the feature. The *partially destroyed* category can apply to all types of features. For habitats, it may apply because of permanent habitat loss within the site. A species example might be permanent loss of part of a population because of factors acting outside of the site such as climate change. Within the Earth sciences, the category might apply to loss of part of a mineral or fossil feature.

Use of the *partially destroyed* category is important in order that destroyed parts of a feature on a site do not mask and detract from the condition of remaining viable feature components. Without this category one could envisage a situation where the destruction of part of a feature resulted in permanently unfavourable condition of that feature and, therefore, removed incentives to manage the remainder.

There are some practical issues that need to be resolved in handling and reporting use of this category:

- It is important that the extent of a *partially destroyed* feature is reported even though it would not be subject to monitoring. This means that *partially destroyed* features will be reported as two separate elements (including when the first assessment at which the feature is discovered to be damaged), one a constant partially destroyed element, and the second the condition of the remainder of the feature (which might be any of the favourable or unfavourable states).
- It is important that *partially destroyed* is not applied to unfavourable components of a feature simply to avoid long and intensive management programmes. Where possible, guidance for features will use attributes and targets capable of determining the issue of whether a feature is partially destroyed.

17.6 Destroyed

The same principles apply to the use of the *destroyed* condition category, except that it relates to an entire feature. If a feature is considered to be, for whatever reason, beyond restoration, then it should be reported as having been *destroyed*. In this instance, the practical implication is that no management will take place to restore the feature and, if this is the sole feature on a site, the site will cease to be monitored.

There are obvious scenarios in which a feature, or part of it, has been destroyed beyond restoration, such as due to complete loss of habitat from erosion, excavation or permanent covering (e.g. roads). In such cases, not only will the feature itself change, but the processes that are essential to support it will have been irretrievably lost. This applies equally to habitat and species features.

When a feature, or part of it, has been destroyed, but the underlying processes that supported it remain viable, then it may be possible to restore it. In this circumstance, the feature cannot be considered truly destroyed as it is likely to re-establish and so it should be regarded as unfavourable. Examples might include: the loss of a plant species due to herbicide application, loss of trees from wind-throw, loss of a bird species due to disturbance events, loss of an amphibian due to a pollution event, etc. However, there are limits to the kind of management that could be undertaken to restore a feature and if a feature is unlikely to re-establish then generally it should be considered destroyed. Careful consideration will need to be given to which state to use when the impact on the feature comes from beyond the site boundary. The work necessary to enable restoration or re-establishment to take place may be difficult or long term; this should not be an excuse to use the destroyed categories; these should only be used when the feature cannot be restored.

It is recommended that all cases where a feature is considered to be either *partially destroyed* or *destroyed* should be reviewed by the relevant advisory staff to ensure consistency in these assessments.

18 Undertaking the monitoring - field methodology

18.1 Personnel

The number of sites and interest features covered by the common standards monitoring programme is very substantial. To be operationally practical, the monitoring must utilise rapid and simple assessment techniques wherever possible. The CSM approach is not intended to yield results to which a 95% confidence interval can be assigned, but is intended to '*facilitate quick and simple judgements*' (JNCC 1998).

Another important principle is that '*the bulk of the monitoring effort is likely to be undertaken by local conservation officers in the course of their day to day duties*' (JNCC 1998) who will not usually have specialist knowledge of plant and animal identification, monitoring techniques, etc, although necessary training will be provided. Evaluation of the condition of certain interest features may require the use of specialist techniques (e.g. assessment of water quality for freshwater features) or experts in particular taxonomic groups (e.g. many lower plants and invertebrates). In such cases, the monitoring may need to be contracted out, or may utilise information supplied by other organisations. However,

it is expected that the final judgement about the condition of the feature will be made by country agency staff.

18.2 Structured walks

For many of the guidance sections, the basic method for undertaking the assessment is to undertake a structured walk around the site. This is more than a random shuffle through the habitats present, but rather should be planned to look at the major variations present in habitat structure. In addition, at a number of stops (defined in individual guidance sections) it is expected that notes will be made on the attributes being assessed. This is not to imply that the targets for each attribute must all be met at all of the stops, but rather to ensure that the assessment made is based upon the whole of the feature rather than initial and final impressions.

18.3 Sampling large features/sites

For large sites, which it is not possible to visit in their entirety within a single fieldwork session, more planning will be required. It is possible that only a sample of the site can be visited. If this is the case, advice from agency monitoring specialists should be sought at the planning stage. The sample visited should be sufficiently large that a fair assessment of the feature(s) present can be made. In effect the question to ask is 'do we have confidence that the assessment made is a fair reflection of the state of the whole of the feature on the site?' It is likely that for very large or multi-feature sites multiple visits will be needed. In this case, care must be taken to ensure that the final judgement of the condition of each feature takes account of all the information gathered. It may be helpful to remember that if it is not possible to assess the whole of a feature within a single field season (the preferred scenario), a feature must be completely assessed within three years (except where presence/absence over the whole six year cycle is an attribute for species – see section 6.5).

18.4 Timing/frequency of monitoring

For assessments to be ecologically meaningful, they must be undertaken at the right time of year. This may mean that multiple site visits are required to assess different features on the same site. The individual guidance sections include information on when field data should be collected. It is also important to recognise that relevant information can also be collected as part of other visits to sites – for example as part of a regular liaison visit a number of plant species might be noted as present. This information could be very helpful when undertaking the assessment for the feature in question, especially if it is a uncommon species which is difficult to locate on a year-on year basis.

When collecting data it is important to note the dates of field visit(s), (as opposed to the of making an assessment or of entry of information onto a corporate computer system) as these will be useful in quality assurance of the assessment.

19 Management measures and threats

19.1 Pressure – State – Response

Linking recording and reporting management measures to the condition assessments which form the core of Common Standards Monitoring enables Agencies to identify whether management and activities on or adjacent to sites are neutral, advantageous or deleterious for a particular feature on a specific site. Comparisons between sites are useful to decide whether it is necessary to alter site management or influence / control particular threats, in order to change the state of a feature from unfavourable to favourable. These will be facilitated by knowledge of what is working well elsewhere in the site network.

The consideration of what threats and management measures are occurring on or adjacent to sites is an application of the pressure, state, response (PSR) model. Threats are considered to be negative pressures which may be driving features into unfavourable condition. Condition assessments made under the common standards model are the state of features at a given point in time. Management measures are considered to be the responses put in place to mitigate threats or ensure that state remains in a favourable condition. It is expected that the assessment of threats and management measures will

be at least in part a field based exercise, undertaken in parallel with the collection of data to make the common standards condition assessment.

19.2 Standardised threats

Threats are therefore those things which are driving a feature into unfavourable state. Threats should be recorded for each feature. Local needs for information may be more detailed, but any information collected should be summarised for reporting purposes into the categories below.

Categories agreed for reporting purposes:

- Agricultural operations (e.g. ploughing, fertiliser, pesticides)
- Burning
- Development carried out under planning permission (including roads, Acts of Parliament etc)
- Dumping / spreading / storage of materials (e.g. spoil deposition or large bale silage)
- Earth Science feature obscured / removed (e.g. fossil collecting) / modified (e.g. cave entrances)
- Flood defence or Coastal defence works
- Forestry (including neglect such as lack of coppicing)
- Game or fisheries management (e.g. introduction of stock at too high a level, over-zealous cutting of river banks, bait digging)
- Invasive species (including bracken or scrub)
- Lack of remedial management (e.g. stopping-up drains, scrub cutting, erecting deer fences)
- Over-grazing (including deer browsing)
- Recreation / disturbance (including scrambling, off road vehicle use, recreation pressure, disturbance of fauna etc)
- Statutory Undertaker (i.e. works carried out by a statutory body which is not required to seek planning permission, including military operations)
- Under-grazing
- Water management (including drainage, dredging or alterations to the water table. Could be too much water or too little)
- Water quality (including silt, water pollution (direct or diffuse), run-off, nutrient enrichment, eutrophication etc)
- Other (specify: note that this should only be used for threats which do not fit within the schema; it is expected that the schema will be reviewed and, if necessary, revised on a regular basis).

19.3 Management measures

Management Measures are those things which are helping to achieve favourable condition, either by maintaining the state, or by encouraging recovery from unfavourable condition. The measures should be recorded for each feature. If the management of the feature is successful, the features should be either favourable or unfavourable recovering. If the features are unfavourable no change or declining, or worse, partly destroyed, it implies that the threats on the site are not being mitigated or managed effectively. This should be a trigger for review of the measures in place, or the exact prescription(s) agreed under a particular incentive or scheme.

Reporting management measures on sites:

	Which management measures are in place?
Management agreement / scheme /	
Conservation agency grant	
Enforcement of Site Management prescriptions (e.g. through nature conservation order)	
Woodland grant scheme	
Agri-environment schemes e.g. Tir Gofal, ESA, Countryside Stewardship	
Planning condition or agreement	
Other grant (e.g. HLF, LIFE)	
Inheritance Tax / Capital Tax Exemption	
No formal agreement, but management sympathetic (incl. consents)	
Other (please specify)	

20 Validation and quality control

JNCC and the Agencies are developing together a quality control and quality assurance programme which will address the issues below and make it clear who needs to do what at each stage. The text within this section is intended to give an outline of the sorts of quality assurance that will need to be put in place, rather than provide detail of work actually being carried out.

20.1 Operational practice

Country agencies need to be sure that operational practices are communicated to operational staff, understood and adhered to. The role also needs to ensure that conservation objectives for the site are used in undertaking the practical monitoring.

20.2 Application of guidance and comparability of targets

This task can be achieved by ensuring conservation objectives comply with the guidance issued. Together the UK guidance informs the writing of conservation objectives which set targets and apply standards. Country Agencies need to ensure that guidance to set conservation objectives has been issued, understood and used consistently. A key component of this role is also to ensure that the guidance has been used to create comparable targets for the same feature on different sites, taking into account the necessity for some site specific variation.

The specialist groups charged with the development of UK guidance need to ensure that targets are comparable between countries. Put simply, are England, Scotland, Wales and Northern Ireland setting targets for a feature at different levels of condition?

There is a third role to ensure that targets are sufficiently comparable across different groups of feature. Are we aiming for a more favourable condition for lowland grassland than for woodland? This is effectively undertaking quality assurance across the UK guidance setting groups. This will be a role for JNCC.

20.3 Consistency of results

A quality assurance process should aim to measure inter-observer variability. A number of the groups developing guidance tested the methodology in terms of inter-observer variability, with generally favourable results. Country Agencies can usefully continue to measure and reduce inter-observer variability.

There is another task to check if different Country Agency interpretations of UK guidance cause inter-observer variability between the countries. Do SNH, CCW, EHS-NI and EN operational staff make different condition assessments for the same site? A test of this will probably be undertaken during the refinement of guidance. Differences might be caused through divergent operational practices or by divergent use of UK guidance in setting conservation objectives.

20.4 Reliability of Results

Country Agencies need to test whether the results they produce really reflect the condition of the feature on the site. English Nature intend to do this through a validation network that will check results on a few sites through more rigorous monitoring.

20.5 Quality of guidance

UK guidance needs to be assessed against the results of the other quality assurance activities and improved appropriately. This will require input from all involved in the CSM process.

21 Contextual information

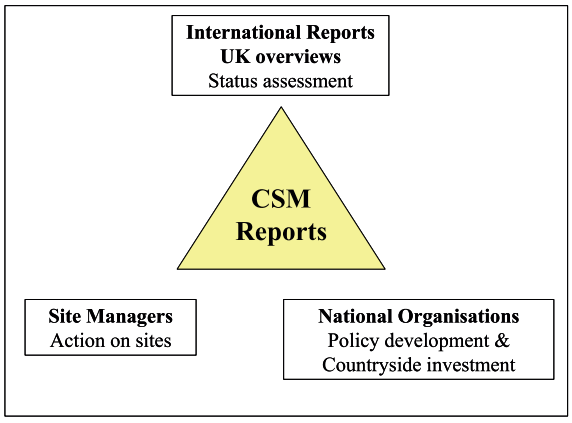
The interpretation of condition assessments made using common standards monitoring approaches will often require access to contextual data. This enables the monitoring assessments to be viewed in a broader geographical or temporal perspective (e.g. by comparing results for a particular feature with trends in the wider environment in the UK or beyond). Contextual information may be collected by the conservation agencies or may be provided by the activities of other institutions.

National biodiversity surveillance programmes, such as Countryside Survey 2000, the Wetland Bird Survey (WeBS) and the BSBI and Butterfly Monitoring Schemes, provide information on the status of biodiversity across the UK, and allow site-based information to be considered in a wider context. Other useful sources of information may include data on air pollution levels, models of the potential impacts of climate change, and data on trends in pesticide use, fertiliser application, etc.

On some sites, long-term surveillance programmes have been established, e.g. permanent quadrats or transects which are recorded at regular intervals. These will yield site-specific information on trends, which will support interpretation of common standards monitoring assessments.

In addition, the information referred to in this section may be the source of data required to ascertain whether target levels for attributes have been met, or whether species are present on a particular site.

22 Reporting



Reports may be used for three purposes.

- At the local level to help site managers assess their management and put the features on their sites in context with other sites which have that feature.
- At the national level to review policy implementation and resource allocation, and
- At the UK or international level to provide information for international reporting, and for broader policy review.

22.1 Timetable

Following a pilot year in 1998, implementation of Common Standards Monitoring commenced in April 1999. The first 6-year cycle will therefore be complete at the end of March 2005. Following this, JNCC plans to collate data together to assess the progress made, lessons learnt, and state of the site networks.

22.2 International reporting

It is expected that Common Standards Monitoring data will be used to help meet the UK's international reporting obligations. Common Standards Monitoring assessments are relevant to reports on the condition of habitats and species covered by the Habitats Directive, the Birds Directive, the Ramsar Convention and the UK BAP, using appropriate reporting categories. It is, therefore, important that the features which occur on each designation (e.g. cSAC, SPA, Ramsar) can be identified separately so that reports can be created on the features which occur on any one of the designations (e.g. all features on Ramsar sites).

The reporting cycles for the Conventions and Directives vary from 3-6 years, so it is likely that results will be aggregated from the most recent assessment made for each relevant feature on the appropriate sites. It is also likely that reports will need to be aggregated for individual features (e.g. for Habitats Directive Annex I habitats and Annex II species) in order to feed into assessments of their conservation status.

22.3 ASSI / SSSI reporting

Data derived from Common Standards Monitoring can be collated in various ways for reporting purposes. It is anticipated that the results of Common Standards Monitoring will be used to:

- assess performance against national SSSI targets;
- identify priorities for resource allocation or investment;
- identify threats to feature or site integrity which require action at a site or policy level;
- and review the effectiveness of site management practices.

It may also be necessary to aggregate information on features to produce site-based reports.

The reporting categories used for reporting on SSSIs and ASSIs at a UK level are listed in the table below. For habitats, the reporting categories are Biodiversity Action Plan (BAP) broad habitats. The relationship between BAP broad habitats and other habitat classifications is given in Jackson (2000). Individual country agencies may wish to report in more detail than these categories for their own purposes.

Habitat categories	Species categories	Earth science categories
Broad-leaved, mixed and yew woodland	Vascular plants	Stratigraphy
Coniferous woodland	Non-vascular plants	Structural and metamorphic geology
Boundary and linear features[1]	Mammals	Igneous petrology
Arable and horticultural[1]	Reptiles	Mineralogy
Improved grassland[1]	Amphibians	Palaeontology
Neutral grassland	Fish	Quaternary geology and geomorphology
Calcareous grassland	Birds - aggregations of breeding birds	Geomorphology
Acid grassland	Birds - assemblages of breeding birds	
Bracken[1]	Birds - aggregations of non-breeding birds	
Dwarf shrub heath	Butterflies	
Fen, marsh and swamp	Dragonflies	
Bogs	Other invertebrates	
Standing open water and canals		
Rivers and streams		
Montane habitats		
Inland rock		
Built up areas and gardens[1]		
Supralittoral rock		
Supralittoral sediment		
Littoral rock		
Littoral sediment		
Inshore sublittoral rock		
Inshore sublittoral sediment		
Offshore shelf rock		
Offshore shelf sediment		
Continental shelf slope		
Oceanic seas		

23 The generic guidance - history of development

23.1 Agency and JNCC Initiatives

Since 1998, a substantial body of work has been undertaken to refine some of the concepts set out in *A statement on common standards for monitoring designated sites* and to add the supporting detail necessary to translate the published statement into a working system for site monitoring. This work is included among the references at the end of the chapter.

However, as this work developed it became apparent that there was a danger of differences in approach evolving, and that this could lead to inconsistency in assessment and reporting across the UK. For this reason, it was decided to develop UK-wide guidance.

23.2 UK Guidance

As a result of the need to develop UK-wide guidance a major project was initiated in 2000, with fourteen specialist groups comprising staff from the country agencies and JNCC given the following tasks:

- to prepare UK guidance on the setting of conservation objectives which define favourable condition for interest features on designated sites. Guidance should include the selection of attributes for assessing feature condition and (where possible) appropriate target values;

[1] These habitats are only rarely identified as interest features on statutory conservation sites; no monitoring guidance has been produced, and in the few cases where they are listed as interest features conservation objectives will be drawn up on a site-by-site basis.

- to provide guidance on how to assess feature condition against the conservation objectives following monitoring;
- to suggest suitable field methods for the monitoring of feature condition.

23.3 Principles

Several principles were established for the preparation of the UK guidance:

- it must comply with *A Statement on common standards for monitoring designated sites*;
- it should, so far as possible, build on and refine the previous developmental work carried out by the country agencies;
- it should acknowledge the ecological/geographical variation of features across the UK, and should accommodate, the different practices adopted by the various country agencies, for the practical monitoring of features on sites;
- it should accommodate the natural variation inherent in habitat features;
- it should be field-tested prior to being finalised;
- due consideration should be given to the skills and expertise levels it is reasonable to expect of operational staff undertaking monitoring and condition assessments;
- the preparation of guidance should include quality assurance / a reality check using experienced local staff and specialists to ensure that the guidance is fully appropriate and that assessments can be reliable and consistent.

23.4 Co-ordination

The work of the specialist groups has been co-ordinated by JNCC to ensure that a consistent approach is adopted across all interest features and that liaison between groups is undertaken where necessary. The newly-established Inter-Agency Monitoring Group (IAMG) maintained an overview of progress and provided fora for discussion of cross-cutting issues.

The preparation of guidance by each group has been a lengthy and iterative process, incorporating review by specialists, feedback from field testing, and quality assurance by JNCC. Evolving thinking on issues such as local distinctiveness and species monitoring is being incorporated into the guidance. Guidance was accepted for dissemination when it had been considered and endorsed by the Chief Scientists' Group.

24 Future development / refinement

24.1 Revision of guidance

It is anticipated that the guidance manual will be published and updated electronically on the JNCC website (www.jncc.gov.uk). The guidance to be published in 2003/4 will be revised and updated in the light of feedback from those using it, both statutory and non-statutory organisations.

24.2 Use outside statutory sites

Common standards monitoring guidance has not been developed for use on non statutory sites, or as part of a monitoring programme of the wider countryside. Nevertheless, similar programmes are being considered, as the concept of rapid assessment against an objective is equally valid in these scenarios.

25 Bibliography

Brown A. 2000. *Habitat monitoring for conservation management and reporting. 3: Technical guide.* CCW: Bangor.

Davies J, Baxter J, Bradley M, Connor D, Khan J, Murray E, Sanderson W, Turnbull C, Vincent M. 2001. *Marine monitoring handbook.* JNCC: Peterborough.

Davies SM, Yost L (eds). 1998. *Conservation objectives: Guidelines for identifying the attributes of interest features under the EC Habitats Directive and Wild Birds Directive.* JNCC: Peterborough.

Ellis NV, (1998. revised 2000). Monitoring the condition of Earth science sites. A framework and guidelines for Earth science SSSIs and ASSIs. Joint Nature Conservation Committee. Peterborough.

Ellis NV, Bowen DQ, Campbell S, Knill JL, McKirdy AP, Prosser CD, Vincent MA, Wilson RCL. 1996. *An introduction to the Geological Conservation Review.* Geological Conservation Review Series No. 1. JNCC: Peterborough.

English Nature. 1999a. *National specialist guidance for conservation objectives. Volume 1. Annex I habitats and earth heritage features.* English Nature: Peterborough.

English Nature. 1999b. *National specialist guidance for conservation objectives. Volume 2. Species for SACs and SPAs.* English Nature: Peterborough.

Environment and Heritage Service. 1999. *Guidelines for the selection of Biological ASSIs in Northern Ireland*. Environment and Heritage Service: Belfast.

European Commission. 2000. Managing Natura 2000 sites: the provisions of Article 6 of the 'Habitats' Directive 92/43/EEC. Office for Official Publications of the European Communities: Luxembourg.

Hellawell JM. 1991. Development of a rationale for monitoring. In: B Goldsmith (ed) *Monitoring for conservation and ecology* (pp 1-14). London: Chapman & Hall.

Hurford C, Perry K. 2001. *Habitat monitoring for conservation management and reporting. 1: Case studies.* CCW: Bangor.

Hurford C, Jones MR, Brown A. 2001. *Habitat monitoring for conservation management and reporting. 2: Field methods.* CCW: Bangor.

Jackson, DL. 2000. Guidance on the interpretation of the Biodiversity Broad Habitat Classification (terrestrial and freshwater types):Definitions and the relationship with other habitat classifications. JNCC report no. 307. JNCC: Peterborough.

Jerram R, Drewitt A, Backshall J. 2001. Information note 1: Assessing vegetation condition in the English uplands. In Backshall, J. Manley, J. and Rebane, M. (eds.) 2001. The Upland Management Handbook. English Nature, Peterborough.

JNCC. 1992. *Guidelines for selection of biological SSSIs: non-vascular plants.* JNCC: Peterborough.

JNCC. 1994. *Guidelines for selection of biological SSSIs: bogs.* JNCC: Peterborough.

JNCC. 1996. *Guidelines for selection of biological SSSIs: inter-tidal marine habitats and saline lagoons.* JNCC: Peterborough.

JNCC. 1998. *A statement on common standards monitoring.* JNCC: Peterborough.

JNCC. 1999. *The Birds Directive: selection guidelines for Special Protection Areas.* JNCC, Peterborough.

Kirby, K, Solly, L. 2000. *Assessing the condition of woodland SSSIs in England*. British Wildlife. June 2000 pp.305-311.

McLeod, CR, Yeo, M, Brown, AE, Burn, AJ, Hopkins, JJ, Way, SF (eds.). 2002. *The Habitats Directive: Selection of Special Areas of Conservation in the UK*. 2nd edn. Joint Nature Conservation Committee: Peterborough. www.jncc.gov.uk/SACselection.

Nature Conservancy Council. 1989. *Guidelines for selection of biological SSSIs.* NCC: Peterborough.

Ramsar Convention Bureau. 2000. *Ramsar handbooks for the wise use of wetlands. Handbook 7. Strategic Framework and guidelines for the future development of the List of Wetlands of International Importance of the Convention on Wetlands.* Ramsar Convention Bureau: Gland, Switzerland.

Robertson HJ, Jefferson RG. 2000. *Monitoring the condition of lowland grassland SSSIs. I. English Nature's rapid assessment method.* English Nature Research Reports No. 315.

Rowell, TA. 1993. *Common Standards for Monitoring SSSIs.* Executive Summary, Report volume 1, volume 2. Contract report to Joint Nature Conservation Committee, Peterborough.

Smith, I. 2002. Conservation objectives help note 1: Guidance on Conservation Objectives, Executive Summaries and Index. Version 3.2. English Nature, Peterborough.

SNH. 2000. *Site condition monitoring guidance folder.*

Stroud, DA, Chambers, D, Cook, S, Buxton, N, Fraser, B, Clement, P, Lewis, P, McLean, I, Baker, H, Whitehead, S (eds.). 2001. *The UK SPA network: its scope and content. Volume 1: Rationale for the selection of sites*. Joint Nature Conservation Committee: Peterborough.

26 Abbreviations and Acronyms

ASSI	Area of Special Scientific Interest
BAP	Biodiversity Action Plan
BSBI	Botanical Society of the British Isles
CA	Country Agencies (CCW,EN, EHS, SNH)
CBD	Convention on Biological Diversity
CCW	Countryside Council for Wales
cSAC	candidate Special Area for Conservation
CSM	Common Standards Monitoring
EC	European Commission
EHS	Environment and Heritage Service
EN	English Nature
FCS	Favourable Conservation Status
GB	Great Britain (i.e. England, Scotland & Wales only)
HAP	Habitat Action Plan
JNCC	Joint Nature Conservation Committee
NBN	National Biodiversity Network
NCC	Nature Conservancy Council
NGO	Non-Governmental Organisation
NI	Northern Ireland
NNR	National Nature Reserve
SAC	Special Area of Conservation
SAP	Species Action Plan
SNH	Scottish Natural Heritage
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest
UK	United Kingdom (i.e. England, Scotland, Wales and Northern Ireland)
UK BAP	United Kingdom's Biodiversity Action Plan

European Sites Guidance Internal Guidance to decisions on 'site integrity': A framework for provision of advice to competent authorities	
Author: Caroline Chapman	February 2004 Final Version 1.0

1.0 Aim

One of the roles of English Nature as the statutory nature conservation body is to provide advice to competent authorities on the scope and conclusions of appropriate assessments required under the Conservation (Natural Habitats &c.) Regulations 1994. Our understanding of site 'integrity' underpins our advice and it is important that we have clear agreement of what is meant by this term and a consistency of approach across English Nature when offering advice. The purpose of this guidance is to provide a framework within which to provide advice to competent authorities regarding the concept of 'site integrity'

2.0 Background

In accordance with the Conservation (Natural Habitats &c.) Regulations 1994, competent authorities are required to make an appropriate assessment where there is likely to be a significant effect on a European site, as a result of plans or projects that are not considered to be necessary for the management of the site. In light of the conclusions of the assessment, and subject to there being no alternative solutions and imperative reasons of over-riding public interest why it should proceed, they can only agree to the plan or project after having ascertained there will be **no adverse effect on the integrity of the European site.**

In addition to the advice required by in accordance with Regulation 48, competent authorities are also obliged to review all relevant decisions in respect of plans or projects made prior to the Habitats Regulations or to the site concerned becoming a European site under Regulation 50. English Nature has a key role in the provision of advice throughout this review process and the decisions regarding integrity to be taken as part of any appropriate assessments. Such advice needs to be well founded and consistent.

3.0 Defining Integrity

When considering integrity it is important to refer back to the Habitats Directive itself, since all terms in the Directive should be defined in the context of delivering Favourable Conservation Status (FCS). Article 1 provides a definition of FCS.

For habitats,

- their range and area must be stable or increasing,
- the species structure and functions necessary for long term maintenance exist and are likely to continue to exist for the foreseeable future, and
- the status of the typical species is considered to be favourable.

For species,

- the population dynamics data on species indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats,

- the natural range is stable and likely to continue to be, and there is and will probably continue to be a sufficiently large habitat to maintain its population on a long term basis.

Article 1b then goes onto describe '*natural habitats'* as "terrestrial or aquatic areas distinguished by geographic, abiotic and biotic features, whether entirely natural or semi-natural". A definition of site integrity, should reflect that each site should function so as to contribute to FCS across the Natura 2000 network.

Integrity is considered at a site level, and the most commonly used definition is found in PPG9 where it is defined as:

> "The coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and/or levels of populations of the species for which it was classified"

EC guidance(1) builds on this and makes the following further points about site integrity. It states that the focus of site integrity is on the specific site, thus it is not allowed to destroy a site or part of a site on the basis that the conservation status of the habitat type and species it hosts will anyway remain favourable within the territory of the Member State. It goes on to provide further guidance which states that a site can be described as having a high degree of integrity where:

- the inherent potential for meeting its conservation objectives are realised,
- the capacity for self-repair and self-renewal under dynamic conditions is maintained and,
- a minimum of external management of the site is required.

Therefore, when looking at 'the integrity of the site', it is important to take into account a range of factors, including the possibility of effects manifesting themselves in the short, medium and long-term. In a dynamic context 'integrity' can be considered as a site having a sense of resilience and ability to evolve in ways that are favourable to conservation.

Joint EA/EN/CCW guidance(2) on application of the Habitats Directive refers to an adverse effect on integrity as "likely to be one that prevents the site from maintaining at least the same contribution to favourable conservation status (FCS) as it did at the time of designation". This statement has caused confusion with regards the extent to which a site can be restored beyond its condition at the time of its designation/classification. However the key words within the statement are 'at least' which provide the scope, where appropriate, for restoration where the site was not considered to be in a condition, at the time of designation, which enables it to contribute to the FCS of the habitat or species for which it has been classified. This interpretation is supported throughout the Directive which repeatedly refers to maintenance *or restoration*. If the Directive was written with the intention of simply maintaining sites in their condition at the time of selection or classification, on the assumption that this would be sufficient to enable favourable conservation status to be achieved, then the word 'restoration' would not have been necessary.

4.0 A Framework for Provision of Advice

> It is important to stress that this framework is not intended to be prescriptive but to provide a common thought-process that is comprehensive and consistent.

4.1 Integrity of Site Checklist

A simple, pragmatic checklist for assessing likely effect on integrity is provided below. This has been derived from the provisions of the Habitats Directive as outlined above, and is supported by existing UK case studies. The EC has published a similar 'integrity of site' checklist, which is listed as appendix 2. The checklist below should be used to identify if there is a potential mechanism through which an adverse effect on integrity may occur. Further site-specific factors would then need to be considered, in particular in the case of dynamic coastal sites.

Has the appropriate assessment shown:

1. **That the area of annex I habitats (or composite features) will not be reduced?**
2. **That there will be no direct effect on the population of the species for which the site was designated or classified?**
3. **That there will be no indirect effects on the populations of species for which the site was designated or classified due to loss or degradation of their habitat (quantity/quality)?**
4. **That there will be no changes to the composition of the habitats for which the site was designated (eg reduction in species structure, abundance or diversity that comprises the habitat over time)?**
5. **That there will be no interruption or degradation of the physical, chemical or biological processes that support habitats and species for which the site was designated or classified?**

If the answer to *all* of these questions is 'Yes' then it is reasonable to conclude that there is not an adverse effect on integrity. If the answer is 'No' to *one or more* of the questions then further site-specific factors as listed in 4.2-4.7 need to be considered in order to reach a decision. The theoretically derived checklist above is supported by the consideration of actual case studies, as outlined in Table 1 below, and the definition of integrity used in each case.

Checklist criteria	Supporting Case Studies
1. The area of annex I habitats (or composite features) will not be reduced	*Harwich Harbour (see International Case Report *)* Adverse effect on integrity was "the direct loss of inter-tidal habitats as result of reduction in tidal range and the accelerated rate of erosion".
2. No direct effect on the population of Annex II species (on or across the site)	*Largie Estate, Tayinloan - definition of adverse effect on integrity (see appendix 1 for further details).* The integrity of the site was related to the "sustainability of the local population of Greenland White fronted Geese".
3. No indirect effects on the populations of Annex II species due to loss of their habitat (quantity/quality) in the long term	*Barksore Marshes (See international case report * for further details)* The inspector declared that the permanent loss of 16.5% of grazing marsh in SPA "was not an insignificant proportion: and [was] aware of no policy guidance to suggest that even smaller losses (say 5% or 1%) of a valued habitat type within an SPA should be regarded as being acceptable. Habitats can be as much affected by a number of small losses as by one major reduction."
4. No changes to the composition of the habitats. (eg reduction in species structure, abundance or diversity that comprises the habitat over time.)	*Claypit Woods* In this case the "use of woods for combat games would have a significant effect on the achievement of the conservation objectives implied by its designation as a cSAC." Since the damage caused by trampling might harm long-term future of the woodland by impeding natural regeneration.
5. No interruption or degradation of the physical, chemical or biological processes that support habitats and species for which the site was designated.	*Manor Farm Dilham - (see appendix 1 for further details)* In this case the "depression in the chalk piezometric levels would reduce the supply of basic oligotrophic water to the fen and therefore the extent of that supply's influence. Abstraction would be harmful to the 'critical functioning of the alkaline fen, and as such would have an adverse effect on integrity. *Loch Poll -* • SPA designated for black throated divers which need oligotrophic conditions. Effect on integrity was determined as "the change in nutrient status from oligotrophic to mesotrophic."

Table 1: Supporting Case Studies for derived integrity checklist

The key further site-specific factors that need to be considered when forming judgements on integrity in individual cases are listed below, and each is then considered in more detail in subsequent sections:

- Scale of impact
- Long term effects and sustainability
- Duration of impact and recovery/reversibility
- Dynamic systems
- Conflicting feature requirements
- Off-site impacts
- Uncertainty in cause and effect relationships and a precautionary approach.

A series of case studies are provided as appendix 1, which provide examples of many of the issues considered within this paper. In particular they provide further clarity of the precautionary principle and how far it should be applied in accordance with the Habitats Regulations.

4.2 Scale of impact and integrity

The scale of any impact is an important factor in reaching a conclusion over whether it is possible to ascertain no adverse effect on site integrity. It is not possible to provide specific criteria on scale but there are certain key factors which should be taken into account. Consider the following example;

Q: An outfall pipe discharging into a 1000ha estuarine SPA site (designated for over-wintering waders) has been shown to dramatically reduce the benthic invertebrate diversity across an area of $50m^2$ around the outfall. There are no toxic components within the discharge, but the benthic invertebrate community is an important prey source for the birds. Would this alone constitute a foreseeable risk of adverse effect on the integrity of the site?

A: As the site is SPA only, then due to the scale of the area affected, together with the fact that there is not a mechanism for toxic effects and that there are still invertebrates present (of a limited diversity) within the $50m^2$ area, the bird populations the site is capable of supporting are not realistically affected by the outfall. Therefore, although from the integrity checklist it is has not been shown that "That there will be no interruption or degradation of the physical, chemical or biological processes that support habitats and species for which the site was designated", the scale of actual impact is negligible and there would be no adverse effect on site integrity.

This is not to say that indirect mechanisms of impact would not represent a threat to the integrity of the site if the scale were sufficient (eg: multiple discharges of this magnitude across a site acting in combination). As a contrast to the example above therefore, consider the following;

Q: An estuary designated as an SPA for over-wintering birds is partially covered (40%) by *enteromorpha* mats from March until October. The sediments under the mats are anoxic and benthic invertebrate communities are significantly reduced, recent research has shown that although the mats die off in October, it takes several months for the benthic communities to recover. What are the implications for site integrity?

A: There is a clear indirect mechanism for impact upon the designated features. Diversity of benthic invertebrates is listed as an attribute of the favourable condition table and although the mats may not be present for much of the winter, the pro-longed impacts on the benthic community will reduce the long-term capacity of the site to support the bird populations for which it was designated. It would not be possible to ascertain no adverse effects on site integrity.

From the examples above, it is clear that scale of impact is important when considering site integrity. The key factors to consider with regards scale are outlined below:

- Is the feature itself directly affected? Any direct loss of a designated feature would serve to reduce either the area of a key habitat or the population of a key species. When considering loss of

designated features it is necessary to distinguish between permanent loss of a feature (eg: through construction of a building) and reversible loss of a feature (eg: through invasion of scrub). The issue of scale is of particular relevance in cases of reversible loss (because in the case of permanent loss, it is the irreversibility that is crucial). For example, we may be able to conclude no adverse effect on integrity in the case of a small temporary loss of a feature whilst being unable to conclude no adverse effect on integrity in the case of an equivalent permanent loss of that feature.

- If the feature is indirectly affected, would the scale of the impact be sufficient to prevent the site from sustaining the habitat, complex of habitats and/or levels of populations of the species for which it was classified? If so then it would not be possible to demonstrate no adverse effect on site integrity.
- The location of the impact and the rarity of features affected is also an influencing factor with regards scale. For example, if the small area impacted contains key/pristine habitat (ie: limestone pavement which was only present in isolated patches elsewhere, or an important roost site within an SPA), then the scale may be more significant than for a similar impact in a less ecologically rich part of the site. It is useful therefore when considering scale to take into account the proportion of a feature directly or indirectly affected rather than the proportion of a site.

4.3 Duration of impact and recovery/reversibility

The duration of any impact(s) and the potential for recovery/reversibility are important factors to consider when determining whether it is possible to demonstrate no adverse effect on integrity. The following key points need to be worked through:

- What is the anticipated duration of any potential impact (as opposed to the duration of the plan or project)? The issue of duration should also be considered with reference to the issue of scale. For example a conclusion of no adverse effect on integrity may be able to be reached in the case of a small-scale effect from which the site/feature can quickly recover.
- Is recovery possible and if so would it be natural recovery or would management be required?
- What is the timescale of any anticipated recovery (for example vegetated shingle habitats take thousands of years to form and recovery times would be of this magnitude, other habitats may be expected to recover within a year)? The longer the recovery time the more difficult it will be to demonstrate no adverse effect on integrity.
- Is there any uncertainty regarding whether recovery will take place?

4.4 Long-term impacts and biological-lag

There are mechanisms for impact which may not manifest themselves through evidence of damage on site in the short term. Examples include impacts associated with atmospheric deposition, exceedance of water quality standards and changes to the high-flow regime in rivers. Impacts of this type are often difficult to attribute directly to effects on the features, however they are linked to site integrity. Several of the indicators on the integrity checklist can be linked to long-term impact mechanisms.

Decisions relating to integrity in such cases need to be based upon best available information and professional judgement. Certain environmental standards (eg: critical loads and environmental quality standards) are set for ecosystem protection. Unless there are specific reasons why the standard is not appropriate to the site/feature in question, and assuming the issue of scale has been considered, then exceedence of any such standard would represent a threat to the integrity of the site. It would not generally be possible to ascertain no adverse effect on site integrity in such circumstances.

Note of Caution:
With certain environmental standards, such as critical loads, we must have sufficient confidence that the level is actually exceeded. Any assumptions or errors in modelling approaches need to be refined as far as possible (and ground-truthed where appropriate) before a conclusion is recorded

4.5 Conflicting feature requirements

There are circumstances where a given environmental condition may be beneficial to one feature whilst being detrimental to another. For example managing degraded lowland raised mire whilst maintaining scrub & trees for nightjar. The key step in these situations is to consider whether the activity is directly connected with or necessary to the management of the site? If so then the Habitats Regulations apply no further and the issue of integrity is not relevant. If however a plan or project is not necessary for the management of a site, but happens to have an incidental benefit for a feature, this should not be considered as mitigation for any negative effects on another feature. Under such circumstances any mitigation would need to offset the damage to the feature affected.

4.6 Off-site Impacts

There is a difference between an off site impact which affects a population/habitat whilst it is on the site (eg: discharges into a watercourse upstream of the site) and an off-site impact which affects a mobile species whilst it is off site (eg: impacts on migrating salmon passing through an estuary to return to their designated river). This section considers the latter and is therefore limited to consideration of designated mobile species such as birds and migratory fish.

The impacts on the mobile designated features of a site should be considered not only within the site boundary but also off site. **Any** impact to the designated species (or habitat upon which they are dependent) which causes a significant decline in the size, distribution, structure or function of the population **within** the designated site, should be considered to have an adverse effect on the integrity of the site. However, a clear link needs to be made between the population being impacted and that of the population within the designated site. Off-site impacts are considered in further detail in a separate guidance note [(5)]. Two relevant case studies (Islay and Blundell Sands) are provided in appendix 1:

4.7 Dynamic Sites

Coastal sites are more dynamic than terrestrial sites and are often subject to relatively rapid changes in both their physical characteristics and their wildlife interest. There are circumstances where plans or projects that *are not* 'directly connected with or necessary for the management of the site', but are either compatible with or supportive of a site's structure and function, can lead to changes in the distribution and abundance of those populations and habitats (or changes in physical and/or biological processes) for which the site was notified. In such circumstances discretion needs to be exercised in arriving at any judgement on adverse effect on integrity.

5.0 A Precautionary Approach to Site Integrity

In accordance with the Conservation (Natural Habitats &c.) Regulations, a conclusion of no adverse effect on the integrity of the European site has to be reached before a plan or project can be affirmed/consented. This is a precautionary approach which works on the basis that if a judgement is reached that there is a foreseeable risk of adverse effects on site integrity, then a conclusion of "no adverse effect on integrity" cannot be reached. Advice provided must be reasonable and based upon information attributing foreseeable risk of a causal effect. For example, with regards evidence being 'lacking' then this evidence must have been looked for and related hypotheses need to have been clearly tested as far as reasonably possible within the appropriate assessment. Steps to prevent the risks materialising then need to be put into place as necessary within a legally enforceable framework. This is highlighted by the Lord Nimmo Smith judgement of the Cairngorms railway case (see appendix 1 for further details) when the judge provided the statement below.

> I do not accept that this means that there must be an absolute guarantee that the integrity of the site will not be adversely affected. There can never be an absolute guarantee about what will happen in the future, and the most that can be expected of ..... a competent authority ..... or SNH ..... is to identify the potential risks so far as they may be reasonably foreseeable in light of such information as can reasonably be obtained, and to put in place a legally enforceable framework with a view to preventing these risks from materialising.

6.0 Integrity and Favourable Condition

- Site integrity is considered in the context of potential adverse effect of a 'plan or project' on a European site (SAC, cSAC or SPA) following an appropriate assessment of the implications of that plan or project for the site;
- Whereas the condition is determined by carrying out a condition assessment at the unit level of a SSSI.

In practice, however where there is a situation that an adverse effect on integrity is reasonably foreseen by an 'appropriate assessment' and the plan or project is implemented, and the predicted results occur, then the condition of the site must be considered to be affected, and be thus unfavourable. The condition may in some cases become unfavourable recovering rather than something worse.

In the context of regulation 50, sites may currently be recorded as unfavourable and this may, or may not be due to the activities which are subject to review. Similarly a 'plan or project' may be adversely effecting the integrity of a site which is currently recorded as 'favourable' in a previous condition assessment, because (at the time) the assessment did not consider all matters related to points 1 to 5 above.

7.0 References

(1) EC Guidance "Managing Natura 2000 sites: The provisions of Article 6 of the Habitats Directive 92/43/EEC" April 2000.
(2) EA/EN/CCW Guidance document: "EU Habitats and Birds Directive Handbook – Policy, procedures and guidance for Agency permissions and activities: assessing new plans, projects and reviewing existing permissions."
(3) EC Guidance "Assessment of Plans and projects Significantly Affecting Natura 2000 Sites: Methodological Guidance on the provisions of Atricle 6(3) and 6(4) of the Habitats Directive 92/43/EEC" November 2001.
(4) Philp, C. Research on-going, 2004.
(5) EN guidance note: Off site impacts on designated features and site integrity, Jan 2004.

Appendix 1: Case studies to principles discussed in the paper

WWF -UK Ltd and RSPB v Secretary of State for Scotland (Cairngorms case) 1998
Example of: precautionary principle
A competent authority is not required to provide an absolute guarantee that the integrity of a European site will not be adversely affected. In the face of a potential risk that is reasonably foreseeable in the light of information that can reasonably be obtained, they are required to put in place a legally enforceable framework with a view to preventing those risks from occurring. This does not seem to be advocating absolute precaution but precaution in the face of a reasonably foreseeable risk.

ADT Auctions Ltd v Secretary of State for environment, Transport and the Regions and Hart District Council 2000
Example of: precautionary principle
The proposed development was for housing adjacent to Thames Basin Heaths pSPA. The judge agreed with a Planning Inspector's finding that there were too many factors associated with the proposed development which would pose real or potential threat to the integrity of the Annex I Bird Habitat on the pSPA to warrant permission being granted. A real as opposed to hypothetical risk was identified. In these circumstances the judge identified the approach required by Regulation 48(5) as being relevant "both when the decision maker is satisfied the proposed development will adversely affect the site's integrity and when he is undecided whether it will or not."

Water Resources Act appeal, Manor Farm, Dilham, Norfolk 2001
Example of: precautionary principle, long term impacts.
The main issue was the impact of increased abstraction on alkaline fen habitat on the Broads cSAC. The inspector identified the purpose of an appropriate assessment as "to ascertain that the proposed abstraction would not have an adverse impact on the integrity of the alkaline fen" whilst referring to the Cairngorms case and recognising that his did not imply absolute certainty. Although there was no absolute proof of a causal link between the abstraction and the water supply at the fen surface, the inspector was satisfied that the evidence presented identified a potentially serious threat to the integrity of the fen. He rejected the appeal on the basis that he could not ascertain no adverse effect on the integrity of the site and relying on the ADT Auctions case ("I should reject the proposal if either I believe that the integrity would be harmed or if I am undecided")

Proposed erection of wind turbines at Bowmore, Islay 1999
Example of: off-site impacts, precautionary principle, long term impacts.
The development site was close to (approx 500m) but outside an SPA important as a roost site for Greenland white-fronted geese. A risk of the geese colliding with turbines as they attempt to pass through the development site on their way to and from feeding areas was identified. Predictions were put forward as to the levels of mortality due to collision, together with avoidance rates. The inspector felt unable to conclude that confidence could be placed in the avoidance rates suggested by the applicants as they were neither site nor species specific. This, despite the fact that throughout the world only one goose, of another species, had ever been found to have been killed as a result of collision with a windfarm. The inspector found the precise impact of the development to be uncertain due to reasonable doubt as to the level of goose fatalities. That doubt and the effect that fatalities on the scale predicted as possible would have did not, the inspector felt, enable him to be satisfied that an adverse effect on the site would be avoided. The existence of reasonable doubt as to the level of fatalities and thus to the potential effect of the development on the integrity of the SPA suggested to the inspector a situation where the precautionary principle might be applied.

Application for sand extraction from the Ribble estuary 2001.
Example of: the precautionary principle, indirect effects.
The proposal was to extract sand from the beach foreshore at Southport, within the Ribble and Alt Estuaries SPA and adjacent to the Sefton Coast cSAC. The effect mainly in issue, from a conservation point of view, was the erosion of intertidal SPA habitat that would be stimulated or aggravated as an indirect effect of the extraction. The inspector identified that Regulation 48(5) did not require a state

of absolute certainty but went on to say: "There must be some evidence for the adverse effect contended." He also identified a relationship between Regulation 48(5) and the precautionary principle more generally "which requires that a real risk should not be discounted because of lack of full scientific certainty". He was not convinced however on the balance of the evidence available to him that there was a real risk to the integrity of the site and felt able to ascertain to the degree of certainty required that there would be no adverse effect "as far as is reasonably foreseeable in the light of such information as can reasonably be obtained".

Planning Application, Blundell Sands:
Example of: Off site impacts, precautionary principle.
The case involved a planning application for a development which would have involved the loss of permanent, seasonally wet pasture. This pasture affected was not within the classified SPA but approximately 1.2 km away from the main designated feeding areas. It was agreed by a planning inspector in this case, adopting a precautionary approach, that due to the reduction in available feeding habitat to the population of birds for which the site was classified the possibility of the integrity of the SPA being adversely affected could not be precluded.

Appendix 2: Integrity Checklist from EC guidance document [(3)].

Conservation Objectives	
The plan or project has the potential to:	Yes/No
Cause delays in progress towards achieving the conservation objectives of the site?	
Interrupt progress towards achieving the conservation objectives of the site?	
Disrupt those factors that help to maintain the favourable conditions of the site?	
Interfere with the balance, distribution and density of key species that are indicators of the favourable condition of the site?	
Other Indicators	
The plan or project has the potential to:	Yes/No
Cause changes to the vital defining aspects (eg: nutrient balance) that determine how the site functions as a habitat or ecosystem?	
Change the dynamics of the relationship (between, for example, soil and water or plants and animals) that define the structure and function of the site?	
Interfere with predicted or expected natural changes at the site (such as water dynamics or chemical composition)	
Reduce the area of key habitats?	
Reduce the population of key species?	
Change the balance between key species?	
Reduce diversity of the site?	
Result in disturbance that could affect population size or density or the balance between key species?	
Result in fragmentation?	
Result in loss or reduction of key features (eg: tree cover, tidal exposure, annual flooding etc.)	

Landelijke Vereniging tot Behoud van de Waddenzee v Staatssecretaris van Landbouw, Natuurbeheer en Visserij

Court of Justice | September 7, 2004 | Celex No. 62002CJ0127

Search Details

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Judgment of the Court (Grand Chamber) of 7 September 2004. Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij. Reference for a preliminary ruling: Raad van State - Netherlands. Directive 92/43/EEC -Conservation of natural habitats and of wild flora and fauna - Concept of "plan&apos or "project&apos - Assessment of the implications of certain plans or projects for the protected site. Case C-127/02.

European Union Cases
Court
Court of Justice
Citation
EU: Case C-127/02
Celex No. 62002CJ0127
Where Reported
European Court Reports 2004 page I-07405

Text

1. Environment "Conservation of natural habitats and of wild fauna and flora "Directive 92/43 "Concept of ‘plan’ or ‘project’ on the protected site "Mechanical cockle fishing "Included "Conditions

(Council Directive 92/43, Art. 6(3))

2. Environment "Conservation of natural habitats and of wild fauna and flora "Directive 92/43 "Provisions laying down the procedure for authorisation of a plan or project on the protected site and a duty of general protection "Concomitant application "Not permissible

(Council Directive 92/43, Art. 6(2) and (3))

3. Environment "Conservation of natural habitats and of wild fauna and flora "Directive 92/43 "Authorisation of a plan or project on the protected site "Conditions "Appropriate assessment of its implications "Identification of aspects which can affect the site’s conservation objectives

(Council Directive 92/43, Art. 6(3), first sentence)

4. Environment "Conservation of natural habitats and of wild fauna and flora "Directive 92/43 "Failure to transpose "Determination by the national court of the lawfulness of an authorisation for a plan or project on the protected site "Whether permissible

(Council Directive 92/43, Art. 6(3))

SUMMARY

1. An activity such as mechanical cockle fishing which has been carried on for many years but for which a licence is granted annually for a limited period, with each licence entailing a new assessment both of the possibility of carrying on that activity and of the site where it may be carried on, falls within the concept of 'plan' or 'project' within the meaning of Article 6(3) of Council Directive 92/43 on the conservation of natural habitats and of wild fauna and flora.

(see para. 29, operative part 1)

2. Article 6(3) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora establishes, for protected sites, a procedure intended to ensure, by means of a preliminary examination, that a plan or project which is not directly connected with or necessary to the management of the protected site but likely to have a significant effect on it is authorised by the national authorities only to the extent that it will not adversely affect the integrity of that site, while Article 6(2) of that directive establishes an obligation of general protection consisting in avoiding deterioration and disturbances which could have significant effects in the light of the directive's objectives, and cannot be applicable concomitantly with Article 6(3).

(see para. 38, operative part 2)

3. The first sentence of Article 6(3) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that any plan or project not directly connected with or necessary to the management

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of the protected site is to be subject to an appropriate assessment of its implications for the site in view of the site's conservation objectives if it cannot be excluded, on the basis of objective information and, in particular, in the light of the characteristics and environmental conditions of that site, that it will have a significant effect on that site, either individually or in combination with other plans or projects. Such an assessment of the implications implies that, prior to the approval of the plan or project, all the aspects of the plan or project which can, by themselves or in combination with other plans or projects, affect the site's conservation objectives must be identified in the light of the best scientific knowledge in the field.

The competent national authorities, taking account of the appropriate assessment of the implications of the plan or project on the site concerned in the light of the site's conservation objectives, are to authorise that plan or project only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects.

(see paras 45, 49, 61, operative part 3-4)

4. Where a national court is called on to ascertain the lawfulness of an authorisation for a plan or project within the meaning of Article 6(3) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, it can determine whether the limits on the discretion of the competent national authorities set by that provision have been complied with, even though it has not been transposed into the legal order of the Member State concerned despite the expiry of the time-limit laid down for that purpose. The effectiveness of Directive 92/43 would be weakened if, in such a case, individuals were prevented from relying on it before their national courts, and if the latter were prevented from taking it into consideration.

(see paras 66, 70, operative part 5)

ISSUE 1

In Case C-127/02,

REFERENCE for a preliminary ruling under Article 234 EC

from the Raad van State (Netherlands), made by decision of

27 March 2002

, registered at the Court on

8 April 2002

, in the proceedings brought by

Landelijke Vereniging tot Behoud van de Waddenzee,

Nederlandse Vereniging tot Bescherming van Vogels

against

Staatssecretaris van Landbouw, Natuurbeheer en Visserij,

intervener:

Coöperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij UA,

THE COURT (Grand Chamber),

composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans, C. Gulmann (Rapporteur), J.-P. Puissochet and J.N. Cunha Rodrigues, Presidents of Chambers, R. Schintgen, S. von Bahr and R. Silva de Lapuerta, Judges,

Advocate General: J. Kokott,

Registrar: M.-F. Contet, Principal Administrator,

having regard to the written procedure and further to the hearing on 18 November 2003,

after considering the observations submitted on behalf of:

- Landelijke Vereniging tot Behoud van de Waddenzee, by C.A.M. Rombouts, advocaat,

- Nederlandse Vereniging tot Bescherming van Vogels, by A.J. Durville, advocaat,

- Coöperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij UA, by G. van der Wal, advocaat,

- the Netherlands Government, by H.G. Sevenster and N.A.J. Bel, acting as Agents,

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- the Commission of the European Communities, by G. Valero Jordana, acting as Agent, and J. Stuyck, avocat,

after hearing the Opinion of the Advocate General at the sitting on

29 January 2004,

gives the following

Judgment

GROUNDS

1. The reference for a preliminary ruling concerns the interpretation of Article 6 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 0007, 'the Habitats Directive').

2. The reference was made in proceedings between the Landelijke Vereniging tot Behoud van de Waddenzee (National association for conservation of the Waddenzee, 'the Waddenvereniging') and the Nederlandse Vereniging tot Bescherming van Vogels (Netherlands association for the protection of birds, 'the Vogelbeschermingsvereniging') on the one hand and the Staatssecretaris van Landbouw, Natuurbeheer en Visserij (Secretary of State for agriculture, nature conservation and fisheries, 'the Secretary of State') on the other in respect of licences which the latter issued to the Coöperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij UA (Cooperative producers' association of Netherlands cockle fisheries, 'the PO Kokkelvisserij') for the mechanical fishing of cockles in the special protection area (SPA) of the Waddenzee, classified within the meaning of Article 4 of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 0001) ('the Birds Directive').

Legal framework

The Birds Directive

3. Article 4(1) and (2) of the Birds Directive requires Member States to classify as SPAs the territories satisfying the ornithological criteria established by those provisions.

4. Article 4(4) of the Birds Directive provides:

'In respect of the protection areas referred to in paragraphs 1 and 2 above, Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this article. Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.'

The Habitats Directive

5. Article 6 of the Habitats Directive states:

'1. For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

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Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.'

6. Article 7 of the Habitats Directive states that 'obligations arising under Article 6(2), (3) and (4) of this Directive shall replace any obligations arising under the first sentence of Article 4(4) of [the Birds Directive] in respect of areas classified pursuant to Article 4(1) or similarly recognised under Article 4(2) thereof, as from the date of implementation of this Directive or the date of classification or recognition by a Member State under [the Birds Directive], where the latter date is later'.

National legislation

7. Under Article 12(1) of the Natuurbeschermingswet (Nature Conservation Law), it is prohibited to carry out, to have carried out or to allow actions which are harmful to the natural integrity or the scientific importance of a protected natural site or disfigure it, without authorisation by the Minister van Landbouw, Natuurbeheer en Visserij (Minister for Agriculture, nature conservation and fisheries, 'the Minister') or in breach of the conditions accompanying that authorisation. Under Article 12(2), activities harmful to the essential characteristics of a protected natural site, as set out in the designation decision, are always to be considered harmful to the natural integrity of such a site or its interest in natural science terms.

8. It is clear from the order of 17 November 1993 designating the Waddenzee as a national natural site and from the explanatory memorandum for that order, which is an integral part of it, that the policy of authorisations and revocations under the Natuurbeschermingswet is linked to that followed under the Planologische Kernbeslissing Waddenzee (Key planning decision for the Waddenzee, hereinafter 'the PKB Waddenzee'). According to that explanatory memorandum, applying the procedures of the Natuurbeschermingswet creates an adequate framework for controlling activities which might harm the main objective of the PKB Waddenzee, namely, sustainable protection and development of that sea as a natural site and, in particular, of feeding, nesting and resting areas for birds frequenting that site. Human activities for economic purposes are allowed subject to an adequate assessment in the light of the main objective. Activities envisaged in the Waddenzee must therefore be examined in the light of the abovementioned objective and policy guidelines and assessed in terms thereof.

9. The section in the PKB Waddenzee devoted to coastal fisheries management is implemented in the Government decision of 21 January 1993, namely, the Structuurnota Zee- en kustvisserij 'Vissen naar evenwicht' (Structure Document on Marine and Inshore Fisheries 'Fishing for equilibrium'). This establishes the policy for shellfish fishing, inter alia in the Waddenzee, for the years 1993 to 2003 and includes a number of restrictions as regards cockle fishing. Certain areas in the national natural site are permanently closed to cockle fishing and in years in which food is scarce, 60% of the average food requirement of birds in the form of cockles and mussels is reserved for them. While 100% of their average food requirement is not thus reserved, that is because they can also turn to alternative food sources (Baltic clams, surf clams and shore crabs).

10. Under the PKB Waddenzee, it follows from the precautionary principle that where the most reliable information available leaves obvious doubt as to the absence of possible significant adverse effects on the ecosystem, the benefit of the doubt will favour conservation of the Waddenzee. The order for reference makes clear that most of the available scientific studies consulted do not unequivocally indicate the existence of significant adverse effects on the ecosystem of the Waddenzee linked to mechanical cockle fishing.

The main action and the questions referred

11. By decisions of 1 July 1999 and 7 July 2000 ('the decisions at issue in the main action'), the Secretary of State issued licences to PO Kokkelvisserij, subject to certain conditions, to engage in mechanical cockle fishing in the Waddenzee SPA during the periods from 16 August to 25 November 1999 and 14 August to 30 November 2000 respectively.

12. The Waddenvereniging and the Vogelbeschermingsvereniging challenged those decisions before the Secretary of State, who, by decisions of 23 December 1999 and 19 February 2001, held that the complaints made against the decisions at issue in the main action were not founded and rejected the applications against them.

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13. Those nature protection associations brought an action against those rejections before the Raad van State (Council of State). They claimed in essence that cockle fishing, as authorised by the decisions at issue in the main action, causes permanent damage to the geomorphology, flora and fauna of the Waddenzee's seabed. They also submitted that such fishing reduces the food stocks of birds which feed on shellfish, causing a decline in their populations, in particular for oystercatchers and eider ducks. The Waddenvereniging and the Vogelbeschermingsvereniging also claimed that those decisions were contrary to the Habitats and Birds Directives.

14. As regards the correct transposition of Article 6(2) to 6(4) of the Habitats Directive into Netherlands law, the Raad van State states that Article 12 of the Natuurbeschermingswet, although not expressly intended to implement the obligations laid down in Article 6(2) of the Habitats Directive, may be interpreted in a manner consistent with that provision. Similarly, the Natuurbeschermingswet does not contain rules which implement Article 6(3) and (4) of that directive. Nor are there generally binding rules intended to implement the provisions of those two paragraphs which are otherwise applicable to the Waddenzee.

15. The national court also states that according to the Waddenvereniging and the Vogelbeschermingsvereniging, in view of the expansion of cockle fishing in the Waddenzee SPA, there is a 'plan or project' which should be subject to 'appropriate assessment' in accordance with Article 6(3) of the Habitats Directive whereas the Secretary of State contends that the activity in question, inasmuch as it has been carried on for many years without any intensification, falls within Article 6(2) of that directive.

16. As regards the relationship between Article 6(2) and 6(3) of the Habitats Directive, the Waddenvereniging and the Vogelbeschermingsvereniging submit that although the activity for which licences were granted must be described as a 'plan' or 'project' within the meaning of Article 6(3), it must nevertheless be examined in the light of Article 6(2). It is therefore appropriate to consider whether Article 6(3) must be regarded as a specific application of the rules in Article 6(2), so that those two paragraphs must be applied cumulatively, or as a provision with a separate, independent purpose, so that Article 6(2) relates to existing use while Article 6(3) applies to new plans or projects.

17. The Raad van State asks under what conditions an 'appropriate assessment' of the effect of the plan or project on the site concerned must be carried out. In addition, it asks what the criteria are on the basis of which it must be determined whether 'appropriate steps' or an 'appropriate assessment' are concerned, also in the light of the requirement laid down in Article 6(3) of the Habitats Directive for the competent authorities to agree to a plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned.

18. Finally, the national court considers it relevant to know whether Article 6(2) and (3) of the Habitats Directive has direct effect.

19. In those circumstances, the Raad van State decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. (a) Are the words plan or project in Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora to be interpreted as also covering an activity which has already been carried on for many years but for which an authorisation is in principle granted each year for a limited period, with a fresh assessment being carried out on each occasion as to whether, and if so in which sections of the area, the activity may be carried on?

(b) If the answer to Question 1(a) is in the negative, must the relevant activity be regarded as a plan or project if the intensity of this activity has increased over the years or an increase in it is made possible by the authorisations?

2. (a) If it follows from the answer to Question 1 that there is a plan or project within the meaning of Article 6(3) of the Habitats Directive, is Article 6(3) of the Habitats Directive to be regarded as a special application of the rules in Article 6(2) or as a provision with a separate, independent purpose in the sense that, for example:

(i) Article 6(2) relates to existing use and Article 6(3) to new plans or projects, or

(ii) Article 6(2) relates to management measures and Article 6(3) to other decisions, or

(iii) Article 6(3) relates to plans or projects and Article 6(2) to other activities?

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(b) If Article 6(3) of the Habitats Directive is to be regarded as a special application of the rules in Article 6(2), can the two subparagraphs be applicable cumulatively?

3. (a) Is Article 6(3) of the Habitats Directive to be interpreted as meaning that there is a plan or project once a particular activity is likely to have an effect on the site concerned (and an appropriate assessment must then be carried out to ascertain whether or not the effect is significant) or does this provision mean that an appropriate assessment has to be carried out only where there is a (sufficient) likelihood that a plan or project will have a significant effect?

(b) On the basis of which criteria must it be determined whether or not a plan or project within the meaning of Article 6(3) of the Habitats Directive not directly connected with or necessary to the management of the site is likely to have a significant effect thereon, either individually or in combination with other plans or projects?

4. (a) When Article 6(3) of the Habitats Directive is applied, on the basis of which criteria must it be determined whether or not there are appropriate steps within the meaning of Article 6(2) or an appropriate assessment, within the meaning of Article 6(3), in connection with the certainty required before agreeing to a plan or project?

(b) Do the terms appropriate steps or appropriate assessment have independent meaning or, in assessing these terms, is account also to be taken of Article 174(2) EC and in particular the precautionary principle referred to therein?

(c) If account must be taken of the precautionary principle referred to in Article 174(2) EC, does that mean that a particular activity, such as the cockle fishing in question, can be authorised where there is no obvious doubt as to the absence of a possible significant effect or is that permissible only where there is no doubt as to the absence of such an effect or where the absence can be ascertained?

5. Do Article 6(2) or Article 6(3) of the Habitats Directive have direct effect in the sense that individuals may rely on them in national courts and those courts must provide the protection afforded to individuals by the direct effect of Community law, as was held inter alia in Case C-312/93 Peterbroeck [1995] ECR I-4599?'

20. By order of 28 April 2004, the application by PO Kokkelvisserij to be allowed to submit written observations in response to the Advocate General's Opinionor otherwise to be given an opportunity to respond to that Opinion was rejected.

The questions referred

First question

Question 1(a)

21. By Question 1(a), the national court in essence asks whether mechanical cockle fishing which has been carried on for many years but for which a licence is granted annually for a limited period, with each licence entailing a new assessment both of the possibility of carrying on that activity and of the site where it may take place, falls within the concept of 'plan' or 'project' within the meaning of Article 6(3) of the Habitats Directive.

22. The 10th recital in the preamble to the Habitats Directive states that 'an appropriate assessment must be made of any plan or programme likely to have a significant effect on the conservation objectives of a site which has been designated or is designated in future'. That recital finds expression in Article 6(3) of the Directive, which provides inter alia that a plan or project likely to have a significant effect on the site concerned cannot be authorised without a prior assessment of its effects.

23. The Habitats Directive does not define the terms 'plan' and 'project'.

24. By contrast, Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 0040), the sixth recital in the preamble to which states that development consent for projects which are likely to have significant effects on the environment should be granted only after prior assessment of the likely significant environmental effects of these projects has been carried out, defines 'project' as follows in Article 1(2):

'- the execution of construction works or of other installations or schemes,

- other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources.'

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25. An activity such as mechanical cockle fishing is within the concept of 'project' as defined in the second indent of Article 1(2) of Directive 85/337.

26. Such a definition of 'project' is relevant to defining the concept of plan or project as provided for in the Habitats Directive, which, as is clear from the foregoing, seeks, as does Directive 85/337, to prevent activities which are likely to damage the environment from being authorised without prior assessment of their impact on the environment.

27. Therefore, an activity such as mechanical cockle fishing is covered by the concept of plan or project set out in Article 6(3) of the Habitats Directive.

28. The fact that the activity has been carried on periodically for several years on the site concerned and that a licence has to be obtained for it every year, each new issuance of which requires an assessment both of the possibility of carrying on that activity and of the site where it may be carried on, does not in itself constitute an obstacle to considering it, at the time of each application, as a distinct plan or project within the meaning of the Habitats Directive.

29. The answer to Question 1(a) must therefore be that mechanical cockle fishing which has been carried on for many years but for which a licence is granted annually for a limited period, with each licence entailing a new assessment both of the possibility of carrying on that activity and of the site where it may be carried on, falls within the concept of 'plan' or 'project' within the meaning of Article 6(3) of the Habitats Directive.

Question 1(b)

30. In the light of the reply to Question 1(a), there is no need to reply to Question 1(b).

Second question

31. By its second question, the national court in essence asks what the relationship is between Article 6(2) and Article 6(3) of the Habitats Directive.

32. It should be recalled that Article 6(2) of the Habitats Directive, in conjunction with Article 7 thereof, requires Member States to take appropriate steps to avoid, in SPAs, the deterioration of habitats and significant disturbance of the species for which the areas have been designated.

33. Article 6(3) of the Habitats Directive provides that the competent national authorities are to authorise a plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon only after having ascertained, by means of an appropriate assessment of the implications of that plan or project for the site, that it will not adversely affect the integrity of the site.

34. That provision thus establishes a procedure intended to ensure, by means of a preliminary examination, that a plan or project which is not directly connected with or necessary to the management of the site concerned but likely to have a significant effect on it is authorised only to the extent that it will not adversely affect the integrity of that site.

35. The fact that a plan or project has been authorised according to the procedure laid down in Article 6(3) of the Habitats Directive renders superfluous, as regards the action to be taken on the protected site under the plan or project, a concomitant application of the rule of general protection laid down in Article 6(2).

36. Authorisation of a plan or project granted in accordance with Article 6(3) of the Habitats Directive necessarily assumes that it is considered not likely adversely to affect the integrity of the site concerned and, consequently, not likely to give rise to deterioration or significant disturbances within the meaning of Article 6(2).

37. Nevertheless, it cannot be precluded that such a plan or project subsequently proves likely to give rise to such deterioration or disturbance, even where the competent national authorities cannot be held responsible for any error. Under those conditions, application of Article 6(2) of the Habitats Directive makes it possible to satisfy the essential objective of the preservation and protection of the quality of the environment, including the conservation of natural habitats and of wild fauna and flora, as stated in the first recital in the preamble to that directive.

38. The answer to the second question must therefore be that Article 6(3) of the Habitats Directive establishes a procedure intended to ensure, by means of a preliminary examination, that a plan or project which is not directly connected with or necessary to the management of the site concerned but likely to have a significant effect on it is authorised only to the extent that it will not adversely affect the integrity of that

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site, while Article 6(2) of the Habitats Directive establishes an obligation of general protection consisting in avoiding deterioration and disturbances which could have significant effects in the light of the Directive's objectives, and cannot be applicable concomitantly with Article 6(3).

Third question

Question 3(a)

39. According to the first sentence of Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, is to be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives.

40. The requirement for an appropriate assessment of the implications of a plan or project is thus conditional on its being likely to have a significant effect on the site.

41. Therefore, the triggering of the environmental protection mechanism provided for in Article 6(3) of the Habitats Directive does not presume - as is, moreover, clear from the guidelines for interpreting that article drawn up by the Commission, entitled 'Managing Natura 2000 Sites: The provisions of Article 6 of the Habitats Directive (92/43/EEC)' - that the plan or project considered definitely has significant effects on the site concerned but follows from the mere probability that such an effect attaches to that plan or project.

42. As regards Article 2(1) of Directive 85/337, the text of which, essentially similar to Article 6(3) of the Habitats Directive, provides that 'Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment... are made subject to an assessment with regard to their effects', the Court has held that these are projects which are likely to have significant effects on the environment (see to that effect Case C-117/02 Commission v Portugal [2004] ECR I-0000, paragraph 85).

43. It follows that the first sentence of Article 6(3) of the Habitats Directive subordinates the requirement for an appropriate assessment of the implications of a plan or project to the condition that there be a probability or a risk that the latter will have significant effects on the site concerned.

44. In the light, in particular, of the precautionary principle, which is one of the foundations of the high level of protection pursued by Community policy on the environment, in accordance with the first subparagraph of Article 174(2) EC, and by reference to which the Habitats Directive must be interpreted, such a risk exists if it cannot be excluded on the basis of objective information that the plan or project will have significant effects on the site concerned (see, by analogy, inter alia Case C-180/96 United Kingdom v Commission [1998] ECR I-2265, paragraphs 50, 105 and 107). Such an interpretation of the condition to which the assessment of the implications of a plan or project for a specific site is subject, which implies that in case of doubt as to the absence of significant effects such an assessment must be carried out, makes it possible to ensure effectively that plans or projects which adversely affect the integrity of the site concerned are not authorised, and thereby contributes to achieving, in accordance with the third recital in the preamble to the Habitats Directive and Article 2(1) thereof, its main aim, namely, ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora.

45. In the light of the foregoing, the answer to Question 3(a) must be that the first sentence of Article 6(3) of the Habitats Directive must be interpreted as meaning that any plan or project not directly connected with or necessary to the management of the site is to be subject to an appropriate assessment of its implications for the site in view of the site's conservation objectives if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects.

Question 3(b)

46. As is clear from the first sentence of Article 6(3) of the Habitats Directive in conjunction with the 10th recital in its preamble, the significant nature of the effect on a site of a plan or project not directly connected with or necessary to the management of the site is linked to the site's conservation objectives.

47. So, where such a plan or project has an effect on that site but is not likely to undermine its conservation objectives, it cannot be considered likely to have a significant effect on the site concerned.

48. Conversely, where such a plan or project is likely to undermine the conservation objectives of the site concerned,

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it must necessarily be considered likely to have a significant effect on the site. As the Commission in essence maintains, in assessing the potential effects of a plan or project, their significance must be established in the light, inter alia, of the characteristics and specific environmental conditions of the site concerned by that plan or project.

49. The answer to Question 3(b) must therefore be that, pursuant to the first sentence of Article 6(3) of the Habitats Directive, where a plan or project not directly connected with or necessary to the management of a site is likely to undermine the site's conservation objectives, it must be considered likely to have a significant effect on that site. The assessment of that risk must be made in the light inter alia of the characteristics and specific environmental conditions of the site concerned by such a plan or project.

Fourth question

50. By Questions 4(a) to 4(c), the national court in essence asks the Court to clarify the concepts of 'appropriate steps' within the meaning of Article 6(2) of the Habitats Directive and 'appropriate assessment' within the meaning of Article 6(3) thereof and the conditions under which an activity such as mechanical cockle fishing may be authorised.

51. In the light of the context of the main action, as well as the foregoing observations, and in particular the answers to the first two questions, there is no need, as stated in point 116 of the Advocate General's Opinion, to answer the fourth question as regards Article 6(2) of the Habitats Directive.

52. As regards the concept of 'appropriate assessment' within the meaning of Article 6(3) of the Habitats Directive, it must be pointed out that the provision does not define any particular method for carrying out such an assessment.

53. None the less, according to the wording of that provision, an appropriate assessment of the implications for the site concerned of the plan or project must precede its approval and take into account the cumulative effects which result from the combination of that plan or project with other plans or projects in view of the site's conservation objectives.

54. Such an assessment therefore implies that all the aspects of the plan or project which can, either individually or in combination with other plans or projects, affect those objectives must be identified in the light of the best scientific knowledge in the field. Those objectives may, as is clear from Articles 3 and 4 of the Habitats Directive, in particular Article 4(4), be established on the basis, inter alia, of the importance of the sites for the maintenance or restoration at a favourable conservation status of a natural habitat type in Annex I to that directive or a species in Annex II thereto and for the coherence of Natura 2000, and of the threats of degradation or destruction to which they are exposed.

55. As regards the conditions under which an activity such as mechanical cockle fishing may be authorised, given Article 6(3) of the Habitats Directive and the answer to the first question, it lies with the competent national authorities, in the light of the conclusions of the assessment of the implications of a plan or project for the site concerned, to approve the plan or project only after having made sure that it will not adversely affect the integrity of that site.

56. It is therefore apparent that the plan or project in question may be granted authorisation only on the condition that the competent national authorities are convinced that it will not adversely affect the integrity of the site concerned.

57. So, where doubt remains as to the absence of adverse effects on the integrity of the site linked to the plan or project being considered, the competent authority will have to refuse authorisation.

58. In this respect, it is clear that the authorisation criterion laid down in the second sentence of Article 6(3) of the Habitats Directive integrates the precautionary principle (see Case C-157/96 National Farmers' Union and Others [1998] ECR I2211, paragraph 63) and makes it possible effectively to prevent adverse effects on the integrity of protected sites as the result of the plans or projects being considered. A less stringent authorisation criterion than that in question could not as effectively ensure the fulfilment of the objective of site protection intended under that provision.

59. Therefore, pursuant to Article 6(3) of the Habitats Directive, the competent national authorities, taking account of the conclusions of the appropriate assessment of the implications of mechanical cockle fishing for the site concerned, in the light of the site's conservation objectives, are to authorise such activity only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects (see, by analogy, Case C-236/01 Monsanto Agricoltura Italia and Others [2003] ECR I-0000, paragraphs 106 and 113).

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60. Otherwise, mechanical cockle fishing could, where appropriate, be authorised under Article 6(4) of the Habitats Directive, provided that the conditions set out therein are satisfied.

61. In view of the foregoing, the answer to the fourth question must be that, under Article 6(3) of the Habitats Directive, an appropriate assessment of the implications for the site concerned of the plan or project implies that, prior to its approval, all the aspects of the plan or project which can, by themselves or in combination with other plans or projects, affect the site's conservation objectives must be identified in the light of the best scientific knowledge in the field. The competent national authorities, taking account of the appropriate assessment of the implications of mechanical cockle fishing for the site concerned in the light of the site's conservation objectives, are to authorise such an activity only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects.

Fifth question

62. In the light of the finding in paragraph 51 above, it is not necessary to consider the fifth question in so far as it relates to Article 6(2) of the Habitats Directive.

63. It is therefore appropriate to consider that question only in so far as it concerns Article 6(3) of the Habitats Directive.

64. By its fifth question, the national court asks in essence whether, when a national court is called on to ascertain the lawfulness of an authorisation for a plan or project within the meaning of Article 6(3) of the Habitats Directive, it may examine whether the limits of discretion of the competent national authorities laid down by that provision have been complied with even though it has not been transposed into the legal order of the Member State concerned despite the expiry of the time-limit laid down for that purpose.

65. It should be recalled that the obligation of a Member State to take all the measures necessary to achieve the result prescribed by a directive is a binding obligation imposed by the third paragraph of Article 249 EC and by the directive itself. That duty to take all appropriate measures, whether general or particular, is binding on all the authorities of Member States including, for matters within their jurisdiction, the courts (see Case C-72/95 Kraaijeveld and Others [1996] ECR I-5403, paragraph 55).

66. As regards the right of an individual to rely on a directive and of the national court to take it into consideration, it would be incompatible with the binding effect attributed to a directive by Article 249 EC to exclude, in principle, the possibility that the obligation which it imposes may be relied on by those concerned. In particular, where the Community authorities have, by directive, imposed on Member States the obligation to pursue a particular course of conduct, the effectiveness of such an act would be weakened if individuals were prevented from relying on it before their national courts, and if the latter were prevented from taking it into consideration as an element of Community law in order to rule whether the national legislature, in exercising the choice open to it as to the form and methods for implementation, has kept within the limits of its discretion set by the directive (see Kraaijeveld and Others, paragraph 56). That also applies to ascertaining whether, failing transposition into national law of the relevant provision of the directive concerned, the national authority which has adopted the contested measure has kept within the limits of its discretion set by that provision.

67. More particularly, as regards the limits of discretion set by Article 6(3) of the Habitats Directive, it follows from that provision that in a case such as that in the main action, the competent national authorities, taking account of the conclusions of the appropriate assessment of the implications of mechanical cockle fishing for the site concerned in the light of the site's conservation objectives, are to authorise such an activity only if they have made certain that it will not adversely affect the integrity of that site, that being the case if there remains no reasonable scientific doubt as to the absence of such effects (see paragraph 59 above).

68. Such a condition would therefore not be observed were the national authorities to authorise that activity in the face of uncertainty as to the absence of adverse effects for the site concerned.

69. It follows that Article 6(3) of the Habitats Directive may be taken into account by the national court in determining whether a national authority which has granted an authorisation relating to a plan or project has kept within the limits of the discretion set by the provision in question.

70. Consequently, the answer to the fifth question must be that where a national court is called on to ascertain the lawfulness

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of an authorisation for a plan or project within the meaning of Article 6(3) of the Habitats Directive, it can determine whether the limits on the discretion of the competent national authorities set by that provision have been complied with, even though it has not been transposed into the legal order of the Member State concerned despite the expiry of the time-limit laid down for that purpose.

COSTS

COSTS

71. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

RULING

On those grounds, the Court (Grand Chamber) rules as follows:

1. Mechanical cockle fishing which has been carried on for many years but for which a licence is granted annually for a limited period, with each licence entailing a new assessment both of the possibility of carrying on that activity and of the site where it may be carried on, falls within the concept of 'plan' or 'project' within the meaning of Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

2. Article 6(3) of Directive 92/43 establishes a procedure intended to ensure, by means of a preliminary examination, that a plan or project which is not directly connected with or necessary to the management of the site concerned but likely to have a significant effect on it is authorised only to the extent that it will not adversely affect the integrity of that site, while Article 6(2) of that directive establishes an obligation of general protection consisting in avoiding deterioration and disturbances which could have significant effects in the light of the Directive's objectives, and cannot be applicable concomitantly with Article 6(3).

3. (a) The first sentence of Article 6(3) of Directive 92/43 must be interpreted as meaning that any plan or project not directly connected with or necessary to the management of the site is to be subject to an appropriate assessment of its implications for the site in view of the site's conservation objectives if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects.

(b) Pursuant to the first sentence of Article 6(3) of Directive 92/43, where a plan or project not directly connected with or necessary to the management of a site is likely to undermine the site's conservation objectives, it must be considered likely to have a significant effect on that site. The assessment of that risk must be made in the light inter alia of the characteristics and specific environmental conditions of the site concerned by such a plan or project.

4. Under Article 6(3) of Directive 92/43, an appropriate assessment of the implications for the site concerned of the plan or project implies that, prior to its approval, all the aspects of the plan or project which can, by themselves or in combination with other plans or projects, affect the site's conservation objectives must be identified in the light of the best scientific knowledge in the field. The competent national authorities, taking account of the appropriate assessment of the implications of mechanical cockle fishing for the site concerned in the light of the site's conservation objectives, are to authorise such an activity only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects.

5. Where a national court is called on to ascertain the lawfulness of an authorisation for a plan or project within the meaning of Article 6(3) of Directive 92/43, it can determine whether the limits on the discretion of the competent national authorities set by that provision have been complied with, even though it has not been transposed into the legal order of the Member State concerned despite the expiry of the time-limit laid down for that purpose.

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A9 Raad van State, afdeling bestuursrechtspraak, uitspraak van 27/03/2002 (200000690/1 ; 200101670/1)
- Administratiefrechtelijke beslissingen ; Rechtspraak bestuursrecht 2002 nº 419 (*)
- Milieu en recht 2002 Jur. p.222-227 (*)
- Nederlands juristenblad 2002 p.803-806 (*)
- AB-Kort 2002 nº 301 (résumé)
- Verschuuren, J.M.: Milieu en recht 2002 Jur. p.227-228
- Backes, Ch.W.: Administratiefrechtelijke beslissingen ; Rechtspraak bestuursrecht 2002 nº 419*P1* Raad van State, afdeling bestuursrechtspraak, uitspraak van 22/12/2004 (200000690/1-A ; 200101670/1-A)
- Jurisprudentie bestuursrecht 2005 nº 60 (*)
- Milieu en recht 2005 p.93-94 (résumé)
- Nederlands juristenblad 2005 p.257-259
- AB Kort 2004 nº 61 (résumé)
- JURIFAST

Nationality
Netherlands

Commentary
10. Stokes, Elen R.: Liberalising the Threshold of Precaution - Cockle Fishing, the Habitats Directive, and Evidence of a New Understanding of "Scientific Uncertainty", Environmental Law Review 2005 Vol.7 p.206-214
2. Backes, Ch.W.: Administratiefrechtelijke beslissingen ; Rechtspraak bestuursrecht 2004 nº 365
3. Peeters, M.G.W.M.: Jurisprudentie bestuursrecht 2004 nº 384
11. Uylenburg, R.: Mechanische Kokkelvisserij en het Europese Hof van Justitie, Nederlands tijdschrift voor Europees recht 2005 p.74-79
12. Prinssen, J.M.: S.E.W. ; Sociaal-economische wetgeving 2005 p.382-383
9. Quimbert, Mikael: Natura 2000: un cadre juridique de plus en plus strict pour le développement des activités sur le littoral, Le droit maritime français 2005 p.161-167
4. García Ureta, Agustín ; Cubero Marcos, José Ignacio: Directiva de hábitats: principio de precaución y evaluación de planes y proyectos, Revista vasca de administración pública 2004 nº 70 p.361-381

© 2023 Thomson Reuters.

1. X: Minister en vissers mogen hun borst natmaken voor Habitat-uitspraak, Nederlandse staatscourant 2004 nº 35 p.4
7. Amirante, Domenico: La direttiva habitat fra valutazione di incidenza e principio precauzionale, Diritto pubblico comparato ed europeo 2005 p.488-491
8. Post, Harry: Waddenzeebeleid: Nederland teruggefloten door het EU Hof, Nederlands juristenblad 2005 p.1193-1194
6. Belorgey, Jean-Marc ; Gervasoni, Stéphane ; Lambert, Christian: Le droit matériel. Natura 2000: Difficultés françaises et jurisprudence récente, L'actualité juridique ; droit administratif 2005 p.309-313
5. Verschuuren, J.M.: Milieu en recht 2005 p.44-46

Additional info

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References

Celex number

62002CJ0127

Case citations

61996CJ0157: N 58
62002CJ0117: N 42
61995CJ0072: N 65 66
11997E174-P2L1: N 44
62001CJ0236: N 59
31992L0043-A06P4: N 60
31992L0043-A06P3: N 21 22 27 29 31 33 35 36 38 39 41 - 43 45 46 49 50 52 55 58 59 61 63 69 70
31992L0043-A03: N 54
31992L0043-A07: N 32
31992L0043-A02P1: N 45
31992L0043-A04P4: N 54
31992L0043-A06P2: N 31 32 35 - 38 50
31985L0337-A02P1: N 42
31985L0337: N 24
11997E249-L3: N 65
11997E249: N 66
61996CJ0180: N 44

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16 August 2005

GOVERNMENT CIRCULAR: BIODIVERSITY AND GEOLOGICAL CONSERVATION – STATUTORY OBLIGATIONS AND THEIR IMPACT WITHIN THE PLANNING SYSTEM

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GOVERNMENT CIRCULAR
ODPM Circular 06/2005
Defra Circular 01/2005
To accompany planning policy statement 9

Biodiversity and Geological conservation – Statutory obligations and their impact within the planning system

PURPOSE OF THE CIRCULAR

1. This Circular provides administrative guidance on the application of the law relating to planning and nature conservation as it applies in England. It complements the expression of national planning policy in Planning Policy Statement 9, Biodiversity and Geological Conservation (PPS9) and the accompanying Good Practice Guide. Although this Circular outlines how statutory obligations impact within the planning system, in some cases the legislation will have an equal bearing on other regimes e.g. Transport and Works Act 1992.

THE STRUCTURE OF THE CIRCULAR

2. The Circular is structured on a topic basis, bringing together advice on sources of legislation relevant to various nature conservation topics which may be encountered by planning authorities, rather than a statute-based approach. Part I deals with the conservation of internationally designated sites: Special Protection Areas (SPAs) classified under the EC Birds Directive[1], Special Areas of Conservation[2] (SACs) designated under the EC Habitats Directive[3], and Ramsar sites listed under the provisions of the Ramsar convention[4] on wetlands of international importance; Part II deals with Sites of Special Scientific Interest (SSSI) and the consultation and notification processes; Part III covers planning for nature conservation outside the designated sites; Part IV deals with the conservation of species and Part V provides advice on other duties and use of statutory powers.

[1] The text of the EC Birds Directive is at Annex E

[2] Sites are submitted to the European Commission as candidate Special Areas of Conservation (cSACs). Only following approval by the European Commission are they designated by the Member State as Special Areas of Conservation.

[3] The text of the EC Habitats Directive is at Annex F

[4] The text of the Ramsar convention is at Annex D

PART I

Internationally Designated Sites

Conservation of cSACs, SACs, pSPAs, SPAs and Ramsar Sites

A INTRODUCTION AND CONTEXT

3. The UK is bound by the terms of the EC Birds and Habitats Directives[5] and the Ramsar Convention[6]. The Conservation (Natural Habitats &c.) Regulations 1994[7] (the 'Habitats Regulations') provide for the protection of 'European sites'[8] , which are candidate Special Areas of Conservation (cSACs) and Special Areas of Conservation (SACs) designated pursuant to the Habitats Directive, and Special Protection Areas (SPAs) classified under the Birds Directive. The Regulations apply specific provisions of the Habitats Directive to cSACs, SACs and SPAs which require special considerations to be taken in respect of such sites.

4. Planning authorities should follow the procedures described below for SPAs, cSACs[9] and SACs, and, more generally, should have regard to the Directive in the exercise of their planning functions in order to fulfil the requirements of the Directive in respect of the land use planning system.[10]

5. **As a matter of policy, the Government has chosen to apply the procedures described below, unless otherwise specified, in respect of Ramsar sites and potential SPAs (pSPAs), even though these are not European sites as a matter of law[11]. This will assist the UK Government in fully meeting its obligations under the Birds Directive and Ramsar Convention.**

6. Prior to its submission to the European Commission as a cSAC, a proposed SAC (pSAC) is subject to wide consultation. At that stage it is not a European site and the Habitats Regulations do not apply as a matter of law or as a matter of policy. Nevertheless, planning authorities should take note of this potential designation in their consideration of any planning applications that may affect the site.

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[5] Council Directive on the conservation of wild birds of 2nd April 1979 (79/409/EEC) and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora of 21st May 1992

[6] Convention on wetlands of international importance especially as waterfowl habitat Ramsar, Iran 2/2/71 as amended by the Paris Protocol 3/12/92 and the Regina amendments adopted at the extraordinary conference of contracting parties at Regina, Saskatchewan, Canada between 28/5 and 3/6/87

[7] Statutory Instrument 1994/2716 which came into force on 30th October 1994

[8] Regulation 10 The Conservation (Natural Habitats &c.) Regulations 1994 as amended by the Conservation (Natural Habitats &c) (Amendment) (England) Regulations 2000 Statutory Instrument 2000/192

[9] There remain very few cSACs awaiting decisions regarding their designation as SACs, and the title will shortly cease to be of relevance. Therefore, for the sake of simplicity, the Circular will only refer to SACs where the procedures apply to both designations.

[10] Regulation 3(4) The Habitats Regulations 1994

[11] See Hansard 13 November 2000: Column 489W

7. The protection and management of internationally designated sites are achieved by a combination of the provisions in the Habitats Regulations and section 28 of the Wildlife and Countryside Act 1981, as amended by the Countryside and Rights of Way Act 2000. In respect of land above mean low water mark, European sites will already have been notified as Sites of Special Scientific Interest (SSSIs) under the provisions of section 28 of the Wildlife and Countryside Act 1981. Planning authorities are also notified of Ramsar sites under the provisions of section 37A of the Wildlife and Countryside Act 1981 as inserted by section 77 of the Countryside and Rights of Way Act 2000. A planning authority is required, under the General Development Procedure Order 1995 (the GDPO)[12], to consult English Nature[13] and, under the provisions of section 28I of the Wildlife and Countryside Act 1981, to notify English Nature before granting planning permission for development likely to damage a SSSI, even if the development is not located in the SSSI (see further Part II below).

8. In responding, English Nature will advise if the SSSI forms part of a European site or is otherwise of significance in terms of the Birds or Habitats Directives or the Ramsar Convention. English Nature will also advise whether, in its opinion, the proposed development would be likely to significantly affect the ecological value for which the site was notified as a SSSI or classified internationally, whether in connection with the proposal there may be reasonable steps that could be taken to further the conservation and enhancement of the SSSI and, if appropriate, will suggest what measures might be taken to avoid any damaging effects.

B CONSIDERATION OF NEW PLANS AND PROJECTS

9. Regulation 48 of the Habitats Regulations restricts the granting of planning permission for development which is likely to significantly affect a European site, and which is not directly connected with or necessary to the management of the site, by requiring that an appropriate assessment is first carried out of the implications of the development for the site's conservation objectives.

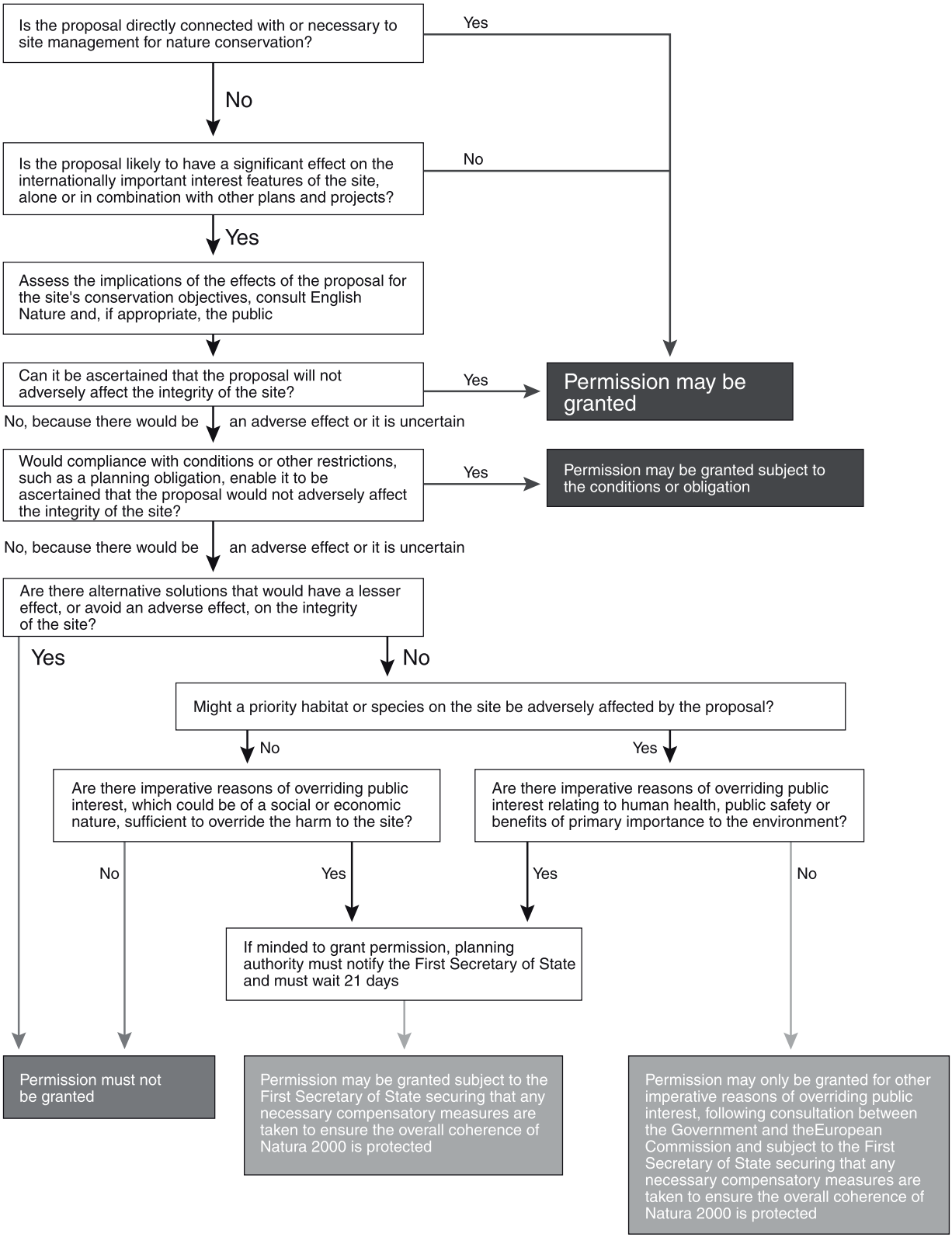
10. Regulation 49 requires an authority proposing to allow development that it can not be ascertained will not adversely affect a European site to notify the First Secretary of State. This will provide the opportunity for the First Secretary of State to consider whether the application falls within the criteria for call-in. Regulation 53 places a duty on the First Secretary of State to secure any necessary compensatory measures where planning permission is granted in accordance with regulation 49. The First Secretary of State will therefore expect to see, and be satisfied by, evidence that necessary compensatory measures will be secured when applications are referred to him under the provisions of regulation 49(5).

11. The approach to be taken in considering a development proposal that might affect a European site is set out below. This process is represented in the flow chart in Figure 1.

[12] See Article 10 and paragraph (u) of the Table in Town and Country Planning (General Development Procedure) Order 1995 Statutory Instrument 1995/419

[13] It is proposed in the Natural Environment and Rural Communities Bill that English Nature, most of the Rural Development Service and parts of the Countryside Agency will form a new agency to be known as 'Natural England'

Figure 1: **Consideration of development proposals affecting Internationally Designated Nature Conservation Sites**



12. The decision-taker must first establish whether the proposed development is directly connected with or necessary to nature conservation management[14] of a European site. Where a development is directly connected with, or the whole of the development is necessary for site management, it will not be subject to the further requirements of regulation 48.

Likely significant effect

13. If the proposed development is not directly connected with or necessary to site management, the decision-taker must determine whether the proposal is likely to have a significant effect[15] on a European site. The decision on whether an appropriate assessment is necessary should be made on a precautionary basis. An appropriate assessment is required where there is a probability or a risk that the plan or project will have significant effects on a site. This is in line with the ruling of the European Court of Justice in Case C-127/02 (the Waddenzee Judgment) which said "*any plan or project not directly connected with or necessary to the management of the site is to be subject to an appropriate assessment of its implications for the site in view of the site's conservation objectives if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects*".

14. The decision-taker should consider whether the effect of the proposal on the site, either individually or in combination with other projects[16], is likely to be significant in terms of the conservation objectives for which the site was classified. The European Commission has also issued guidance, which local planning authorities may wish to consider.[17]

15. It is important that the likelihood of a significant effect is assessed in respect of each interest feature for which the site is classified and for each designation where a site is classified under more than one international obligation. Planning authorities should ensure that the assessment takes into account the full range of Ramsar interests for which the site has been listed and their vulnerability to any effects of the proposed development[18]. English Nature will advise on a case-by-case basis.[19]

16. In considering the combined effects with other proposals it will normally be appropriate to take account of outstanding consents that are not fully implemented, ongoing activities or operations that are subject to continuing regulation (such as discharge consents or abstraction licences) and other proposals that are subject to a current application for any kind of authorisation, permission, licence or other consent. Thus, the assessment is not confined to proposals that require planning permission, but includes all relevant plans and projects.

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[14] Regulation 48(1)(b) The Habitats Regulations 1994.

[15] *ibid.* Regulation 48(1)(a)

[16] *ibid.* Regulation 48(1)(a)

[17] "Managing Natura 2000" April 2000

[18] In May 2005, in England, there were 70 Ramsar sites covering over 377,000 hectares. Of these, only 3 were completely outside the Natura 2000 network of sites. The remaining 67 were either coincident with or substantially overlapping SPAs or SACs. The Government does not envisage that the proportion of Ramsar sites outside the Natura 2000 network is likely to change substantially in the light of planned revisions to both site networks.

[19] See also the Good Practice Guide accompanying PPS9

The appropriate assessment

17. If the decision-taker concludes that a proposed development (not directly connected with or necessary to the management of the site) is likely to significantly affect a European site, they must make an appropriate assessment of the implications of the proposal for the site in view of the site's conservation objectives[20]. These relate to each of the interest features for which the site was classified and will be provided in more detail by English Nature, which should be consulted for the purposes of the assessment[21]. The scope and content of an appropriate assessment will depend on the nature, location, duration and scale of the proposed project and the interest features of the relevant site. It is important that an appropriate assessment is made in respect of each interest feature for which the site is classified; and for each designation where a site is classified under more than one international obligation. English Nature will advise on a case-by-case basis. The decision-taker can require the applicant to provide such information as may reasonably be required to undertake the assessment[22].

18. In the Waddenzee judgement[23], the European Court of Justice ruled that an appropriate assessment implies that all the aspects of the plan or project which can, by themselves or in combination with other plans and projects, affect the site's conservation objectives must be identified in light of the best scientific knowledge in the field.

19. As part of the assessment process, the decision-taker may consult the general public[24]. It is for the decision-taker to decide whether publicity and consultation in addition to that required under the planning or other regulatory procedures should be undertaken and could consider consulting organisations that may have relevant information or expertise, such as the Environment Agency, County Wildlife Trusts, Herpetological Conservation Trust, Plantlife, RSPB or The Butterfly Conservation Society. Where a plan or project may affect sites which are close to, or which straddle local authority boundaries, the relevant local planning authorities should liaise with each other.

Ascertaining the effect on site integrity

20. In the light of the conclusions of the assessment of the project's effects on the site's conservation objectives, the decision-taker must determine whether it can ascertain that the proposal will not adversely affect the integrity of the site(s)[25]. The integrity of a site is the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which it was classified. It is not for the decision-taker to show that the proposal would harm the site, in order to refuse the application or appeal. It is for the decision-taker to consider the likely and reasonably foreseeable effects and to ascertain that the proposal will not have an adverse effect on the integrity of the site before it may grant permission. If the proposal would adversely affect integrity, or the effects on

[20] Regulation 48(1) The Habitats Regulations 1994

[21] *ibid*. Regulation 48(3)

[22] *ibid*. Regulation 48(2)

[23] ECJ Case C-127/02

[24] Regulation 48(4) The Habitats Regulations 1994.

[25] *ibid*. Regulation 48(5)

integrity are uncertain but could be significant[26] the decision-taker should not grant permission, subject to the provisions of regulations 49 and 53 as described below.

21. In the Waddenzee judgment[27], the European Court of Justice ruled that a plan or project may be authorised only if a competent authority has made **certain** that the plan or project will not adversely affect the integrity of the site. "*That is the case where no reasonable scientific doubt remains as to the absence of such effects*". Competent national authorities must be ***"convinced"*** that there will not be an adverse affect and where doubt remains as to the absence of adverse affects, the plan or project must not be authorised, subject to the procedure outlined in Article 6(4) of the EC Habitats Directive regarding imperative reasons of overriding public interest[28].

Considering conditions or other restrictions

22. As part of the judgement on integrity, the decision-taker must consider the way in which it is proposed to carry out the project and whether conditions or other restrictions would help to ensure that site integrity was not adversely affected[29]. This is an important requirement of the Habitats Regulations and planning authorities should consider whether a consent could be issued in accordance with regulation 48 subject to conditions. In practice, this means that the planning authority should identify the potential risks so far as they may be reasonably foreseeable in light of such information as can reasonably be obtained, and put in place a legally enforceable framework with the aim of preventing the risks from materialising[30]. English Nature may suggest the scope of such conditions in its response to the consultation and can comment on the effectiveness of conditions proposed by the planning authority or the applicant. Regulation 54(4) of the Habitats Regulations prohibits the grant of outline planning permission unless the planning authority is satisfied, whether by reason of the conditions or limitations imposed on the permission, or otherwise, that no development likely to adversely affect the integrity of a European site could be carried out under the permission.

Alternative solutions

23. If the decision-taker is unable to conclude that the proposed development will not adversely affect the integrity of the site, and this effect, or possible effect, will not be removed by conditions or other restrictions, they must not grant planning permission except in the following closely defined circumstances.

24. They must first be satisfied that there are no alternative solutions[31]. If there are alternative solutions that would have no (or a lesser) effect on the site's integrity then

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[26] See ADT Auctions Ltd v Secretary of State Environment, Transport and the Regions and Hart District Council (2000) JPL 1155 at p. 1171 where it was held that, it was implicit in the wording of regulation 48(5) that the adverse effect on the integrity of the site had to be a significant adverse effect

[27] ECJ Case C-127/02

[28] Regulation 49 and paragraphs 25-28 The Habitats Regulations 1994.

[29] Regulation 48(6) The Habitats Regulations 1994

[30] *See WWF-UK Ltd and RSPB – v – Secretary of State for Scotland et al* [1999]1 C.M.L.R. 1021 [1999] Env. L.R. 632 opinion of Lord Nimmo-Smith

[31] Regulation 49(1) The Habitats Regulations 1994 and Dibden Bay decision (2004) (http://www.dft.gov.uk/stellent/groups/dft_shipping/documents/page/dft_shipping_028330.hcsp)

consent cannot be granted in accordance with the Habitats Regulations; permission must be refused or the appeal dismissed. If there are no alternative solutions that would have no (or a lesser) effect, on the site, then the decision-taker should proceed to consider whether there are imperative reasons of overriding public interest why the permission should be granted as described below. In assessing alternative solutions the decision-taker should consider whether there are or are likely to be suitable and available sites (or routes in the case of linear projects) which are alternatives for the proposed development, or different, practicable approaches which would have a lesser impact.

Imperative reasons of overriding public interest

25. If there is no alternative solution, the decision-taker should consider whether there are imperative reasons of overriding public interest to justify the grant of permission despite a potentially negative effect on site integrity. Different tests apply depending on whether the site hosts a priority natural habitat type or species[32].

26. If the site does not host a priority natural habitat type or species, planning permission can be granted if the proposed development has to be carried out for imperative reasons of overriding public interest, including those of a social or economic nature.[33] Such reasons would need to be sufficient to override the harm to the ecological importance of the designation.

27. If the site hosts a priority habitat or species, and there is no alternative solution, the only considerations which can justify the grant of planning permission are (a) those which relate to human health, public safety, or beneficial consequences of primary importance to the environment or (b) other imperative reasons of overriding public interest agreed by the European Commission[34]. The Government may obtain the opinion of the European Commission as to whether any particular reasons may be considered imperative and overriding in the public interest[35].

28. There will be few cases where it can be judged that imperative reasons of overriding public interest will allow a development to proceed which may have a potentially negative effect on the integrity of a European site. This applies equally to new proposals and to developments with extant permissions granted prior to the Habitats Regulations coming into force and/or the classification of the site. The judgement will involve an assessment of the importance of the development and whether it is sufficient to override the harm to the nature conservation importance of that site[36]. In many cases, it may be possible to negotiate a sustainable solution that would remove or reduce an apparent conflict. However, where the local planning authority are unable to conclude no adverse effect on the integrity of the site but consider that the proposed development should nevertheless be allowed to go ahead, regulation 49(5) of the Habitats

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[32] Priority habitats and species are indicated by an asterisk in Annexes I and II of the Habitats Directive. The citation, which is available from English Nature, indicating why the site was designated will show whether it hosts a priority habitat or species. There are no priority species listed in the Birds Directive.

[33] Regulation 49(1) The Habitats Regulations 1994

[34] *ibid* Regulation 49(2)

[35] *ibid* Regulation 49(3) and (4)

[36] See "*The Birds and Habitats Directives: Outline Government Position*" (May 1998) and the EC's guidance "Managing Natura 2000"

Regulations requires an authority to notify the First Secretary of State. Planning permission cannot then be granted for a period of 21 days unless the First Secretary of State notifies the authority otherwise. This notification procedure will enable the First Secretary of State to consider whether to call-in the application for his own determination and will also enable him to ascertain whether or not compensatory measures have been secured as required by regulation 53.

Compensatory measures

29. Where, in the absence of alternatives, the importance of the development is judged, in accordance with regulation 49, to outweigh the harm to a European site, compensatory measures must be taken to ensure that the overall coherence of the network of SPAs and SACs known as Natura 2000 is protected[37]. This may be costly and often technically difficult or ecologically untried. In certain cases the habitat affected may be irreplaceable. Agreement to such a plan or project that did not provide for compensatory measures to secure the coherence of the Natura 2000 network would be contrary to the requirements of the Directive, and harmful to the Government's commitment to halt the loss of biodiversity by 2010.

30. Classification of an alternative, existing area of bird habitat, as a SPA, will not normally meet the compensatory requirements in respect of the EC Birds Directive. This is because all of the most suitable territories should be classified as SPAs in any event. However, where new habitats are created as compensatory measures, the newly created habitats should be in place in time to provide fully the ecological functions that they are intended to compensate for. The newly created habitats should normally be included in the SPA network within a reasonable timescale.

31. Article 4(2) of the Ramsar Convention requires Contracting Parties that delete sites or restrict site boundaries to provide compensatory measures for the loss of conservation interests. The Convention refers to creating additional nature reserves for waterfowl and for the protection, either in the same area or elsewhere, of an adequate portion of the original type of habitat. Compensatory measures should provide, as a minimum, no net loss to the overall value of the national Ramsar site series either by way of quality or area.

32. The European Commission (and the Ramsar Bureau if relevant) will need to be notified by the First Secretary of State of any compensatory measures adopted[38].

Crown Exemption

33. The Government has put in place legislation to end Crown exemption from planning control through the Planning and Compulsory Purchase Act 2004. This does not include trunk road and motorway development, which is subject to separate procedures designed to produce the same effect as planning legislation. Regulation 69 of the Habitats Regulations applies regulations 48-51 to trunk road or motorway construction or improvement projects carried out by the Secretary of State for Transport under the Highways Act 1980. Pending implementation of the legislation ending Crown

[37] Regulation 53 The Habitats Regulations 1994

[38] Article 6(4) of the Habitats Directive.

exemption, local planning authorities will continue to be consulted about proposals for Crown development under the procedures in DOE Circular 18/84. Where such proposals are likely to affect a site of international importance, authorities should apply the same tests in framing their advice as under the Habitats Regulations. The First Secretary of State will do likewise in deciding whether planning clearance should be given for proposals which are the subject of unresolved objections from a local planning authority. Once the planning acts apply to the Crown, development by Crown bodies will be subject to the planning controls under the Habitats Regulations in the usual manner.

C REVIEW OF OUTSTANDING PLANNING PERMISSIONS AND DEEMED PLANNING PERMISSIONS

34. Local planning authorities should consider all extant planning permissions that may affect a European site (i.e. those permissions which have not been implemented at all, and those which have not been fully implemented). This requirement applies to Ramsar sites as a matter of policy, but not to pSPAs.

35. Regulations 50, 51, 55 and 56 of the Habitats Regulations require the local planning authority to review extant planning permissions, including outline permissions, granted by them that are likely to have a significant effect on a European site, either individually or in combination with other plans or projects, and, following that review, to affirm, modify or revoke such permissions. This includes all permissions that are valid but not yet commenced and permissions that have been started but are not yet complete[39]. Regulation 55 requires planning authorities to consider whether certain planning permissions deemed to be granted under section 90(1) of the Town and Country Planning Act 1990 should, in their opinion, be reviewed.

36. Local planning authorities must review permissions as soon as is reasonably practicable. They will often have identified any relevant permission during the consultation exercise in preparation for a site's classification. Since the response to the consultation, local planning authorities may also have granted further planning permissions, some of which may be likely to have a significant effect on the site. Any extant permissions affecting potential European sites, outstanding at the time they formally become European Sites, will need to be reviewed.

37. The review will need to ascertain whether implementation of any permission that is likely to have a significant effect on the site, and is not directly connected with or necessary to its management, may adversely affect its integrity. For the purposes of the review, the local planning authority must make an appropriate assessment of the implications of the implementation of the permission for the site, alone or in combination with other plans or projects. This assessment is the same as that required by Regulation 48. If it is not possible to conclude that no adverse effect will occur, the authority must take appropriate action to remove the potential for harm, unless there is no likelihood of the development being carried out or continued[40].

[39] Under regulation 57(5) of the Habitats Regulations 1994, an order made under section 97 of the TCPA 1990 in pursuance of regulation 55 shall not affect so much of the development authorised by the permission as was carried out prior to the order taking effect.

[40] Regulation 56(3) The Habitats Regulations 1994

38. If local planning authorities consider that planning obligations restricting or regulating the use of the land would safeguard the integrity of the site, they must invite those concerned to enter into them[41]. Otherwise, subject to regulation 49, they must modify or revoke the permission, or make a discontinuance order sufficient to avoid the potential threat to the integrity of the site[42]. They should also take such action if a developer proceeds with damaging development while the planning authority is endeavouring to secure a planning obligation. Regulation 57 provides that modification, revocation or discontinuance orders take effect when the appropriate notices are served. They must, however, be confirmed by the First Secretary of State. Where compensation is payable, the authority must refer the determination of the amount to the Lands Tribunal, unless the First Secretary of State indicates otherwise[43].

39. Where such review takes place, the relevant planning authority must consult English Nature[44]. The Government encourages English Nature to engage in discussions with the local planning authority (which may be a minerals planning authority) and developers in order to assist the authority in carrying out the review. The following possibilities arise:

i. The conclusion may be reached on the advice of English Nature that the permission is not likely to have a significant effect on the site, in which case the review will be completed without the need for an appropriate assessment or, following an assessment, that the permission will not have an adverse effect on site integrity. In such cases the permission may be affirmed and implemented as planned.

ii. A legal agreement or adaptation to the means of working might be adopted to remove the risk of an adverse effect on site integrity.

iii. An alternative location to that of the existing permission might be agreed for which planning permission could be given (subject to the normal planning processes and considerations) which would not be damaging to that or any other nature conservation site.

iv. Permissions might lapse through time expiry or, for minerals permissions, may cease to have effect if no scheme of conditions is submitted under the periodic review provisions of Schedule 13 to the Environment Act 1995. Minerals planning authorities are encouraged to exercise their powers under Schedule 9 to the Town and Country Planning Act 1990 to make orders prohibiting the resumption of mineral working in appropriate cases.

v. The developer might voluntarily relinquish all or part of the planning consent in recognition of the value of the site for nature conservation.

vi. If there are no alternative solutions and if the threat of damage to the site cannot be removed by any of the above means, in accordance with the Habitats

[41] Regulation 56(1) The Habitats Regulations 1994

[42] *ibid.* Regulation 56(1)

[43] *ibid.* Regulation 59

[44] *ibid.* Regulation 50(2)

Regulations, the permission may still be affirmed and implemented if there are imperative reasons of overriding public interest. All necessary compensatory measures must be taken to ensure that the coherence of the Natura 2000 network of SACs and SPAs is protected [45].

vii. If there are no imperative reasons of overriding public interest (see section A Part I above), the local planning authority is obliged, under the Habitats Regulations, to revoke or modify the permission or make a discontinuance order. In such cases, the local planning authority would be liable to pay any compensation due to the developer.

40. The Government stated in a written Parliamentary answer on 6 July 1994 that in cases where such compensation is payable, it would consider reimbursing the planning authority where costs were high and where the action taken was no more than necessary to remove the risk to the site. That remains the position. However, the Government would need to be satisfied in such cases that discussion and negotiation had explored all the possibilities set out in (i) – (v) above before agreeing to such reimbursement in order to minimise the cost to the public purse. Where it becomes apparent that compensation may become payable, then it is recommended that Defra (European Wildlife Division) is informed as early as possible.

41. PPS23, *Planning and Pollution Control*, advises that controls under the planning and pollution control regimes should complement rather than duplicate each other. Regulations 83, 84, 84A and 85[46] require the review of authorisations granted by local authorities for air pollution control and by the Environment Agency for integrated pollution control authorisations, pollution prevention and control permits, waste management licences and water discharge consents. If, in reviewing a planning permission, local planning authorities consider that action falls to be taken under these other regulations (83 – 85), they should only exercise planning powers under regulation 56 if powers under the other regimes are not available or if their exercise could not achieve what is required. In carrying out reviews and in exercising their own powers, local planning authorities should ensure that where they decide to affirm a permission, because other action to secure no adverse effect on the integrity of the site will be taken by them or another competent authority, that action should be the least onerous to those affected[47]. Where different competent authorities are considering separate permissions that alone or in combination may adversely affect a site, they should ensure that they liaise before determining the applications.

D RESTRICTIONS ON PERMITTED DEVELOPMENT

42. Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO) grants a general planning permission (subject to specified conditions and limitations) for the types of development set out in Schedule 2 to the GPDO. These permitted development rights largely apply to developments which are non-contentious, and which, if they were the subject of individual consideration, would

[45] Regulation 53(b) The Habitats Regulations 1994

[46] Regulations 83 – 85 The Habitats Regulations 1994 as amended by the Pollution Prevention and Control (England and Wales) Regulations 2000 Statutory Instrument 2000/1973

[47] *ibid*. Regulation 51(3)

place an unnecessary burden on householders or other developers and on local planning authorities. Other permitted development rights relate to developments that are controlled through other approval procedures, and to developments by statutory undertakers and local authorities in the performance of their statutory duties.

43. Regulation 60 imposes controls on all permissions granted under the GPDO to ensure that any permitted development is not in breach of the terms of Article 6 of the Habitats Directive[48]. This regulation prevents any development which is likely significantly to affect a European site, alone or in combination with other plans or projects, and is not directly connected with or necessary to the management of the site, from commencing unless the local planning authority has ascertained, after consulting English Nature, that such development would not adversely affect the integrity of the site[49]. It should be emphasised that the condition does not automatically withdraw permitted development rights for such developments, but instead requires them to be subject to a prior approval process. This regulation does not apply to pSPAs and Ramsar sites as a matter of policy.

44. The flow chart in Figure 2 explains the process developers should follow to ensure that permitted development rights are implemented in accordance with the Habitats Regulations. It identifies the role of the local planning authority and English Nature.

45. It should be noted that even if the development can proceed as permitted development after this process has been completed, the provisions of section 28(E) (obligations of owners and occupiers of SSSI land) and section 28(H) (obligations of public bodies relating to operations on SSSI land) of the Wildlife and Countryside Act 1981 still apply and, if the proposed development is listed in the SSSI notification as one that would constitute an operation likely to damage the nature conservation interest features of the site, notice must be given to English Nature before the development is undertaken (see Part II below).

46. Regulation 61 provides that a developer may obtain the opinion of English Nature as to whether it considers any particular proposed development that may benefit from permitted development rights would be likely to have a significant effect on a European site. Where English Nature has sufficient information to provide an opinion, it will notify the developer and the planning authority within 21 days from the receipt of all necessary information[50]. If the information provided is inadequate or incomplete, English Nature will advise what additional information it needs[51]. English Nature's opinion as to whether the development would be likely to have a significant effect will be conclusive[52].

47. The planning authority will normally enter the process at the point where either the developer or English Nature decides that the proposal would be likely to have a significant effect on the site. The developer may apply to the planning authority for

[48] Regulation 60 The Habitats Regulations 1994 and Article 3(1) The Town and Country Planning (General Permitted Development) Order 1995 Statutory Instrument 1995/418

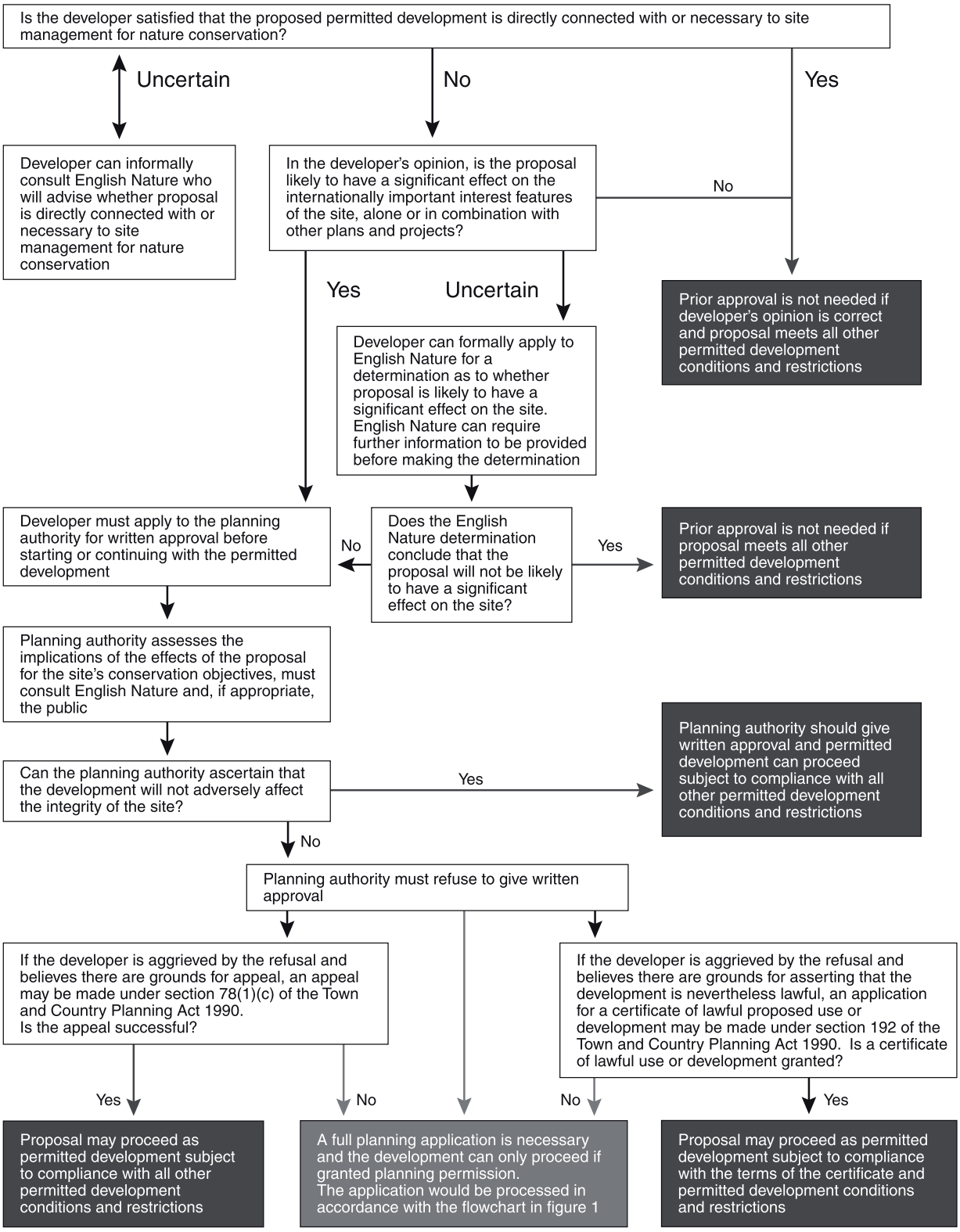
[49] Regulation 60(1) and (2) The Habitats Regulations 1994

[50] *ibid*. Regulation 61(3)

[51] *ibid*. Regulation 61(4)

[52] *ibid* Regulation 61(5)

Figure 2: **Permitted development rights potentially affecting Internationally Designated Conservation Sites**



written approval[53]. The planning authority must undertake an appropriate assessment of the implications of the proposal for the site's conservation objectives, including a formal consultation with English Nature[54]. Where English Nature has sufficient information to provide an opinion, it will respond to the consultation within 21 days from the receipt of all necessary information.

48. Where a developer has not previously sought the opinion of English Nature as to the likelihood of the development having a significant effect on the site, it will be the first time that English Nature comments on the proposal. Where, in its representations, English Nature states that the development would not be likely to have a significant effect on the site, the planning authority should send a copy of the representations to the applicant and the development may proceed without the prior written approval of the planning authority[55].

49. In all other cases, the planning authority should decide whether or not the proposal may adversely affect the integrity of the site. Where the planning authority can ascertain that the development, as proposed, would not adversely affect the integrity of the site they must give written approval and the development may proceed as permitted development. If the authority conclude that it would have such an effect, or the effects are uncertain but potentially significant, the planning authority are prohibited from granting prior approval. If the developer nevertheless wishes to proceed with the development a planning application will be required. Alternatively, if the developer is aggrieved by the decision of the planning authority he may appeal against the decision not to approve the development[56] or he may apply for a certificate of lawful development.

50. Regulation 63(2) provides for a fee to be paid to the planning authority for undertaking this assessment. Advice on likely significant effect, appropriate assessment and site integrity is provided in section A of Part I above[57].

E SPECIAL DEVELOPMENT ORDERS, ENTERPRISE ZONES AND SIMPLIFIED PLANNING ZONES

51. Regulations 64, 65 and 66 provide that existing Special Development Orders, Simplified Planning Zone schemes and Enterprise Zone schemes cease to have effect to grant planning permission for development that is likely to have a significant effect on a European site and which is not directly connected with or necessary to the management of the site. Existing Special Development Orders relate to Urban Development Corporations, former New Town Development Corporations, Atomic Energy Establishments and Telecommunications Networks on Railway Operational Land. The Regulations also prevent new Special Development Orders, Simplified Planning Zone schemes and Enterprise Zone schemes from granting planning permission for development that is likely significantly to affect a European site and which is not directly connected with or necessary to the management of the site.

[53] Regulation 62 (1) (2) and (3) The Habitats Regulations 1994

[54] *ibid.* Regulation 62(4)

[55] *ibid.* Regulation 62(5)

[56] *ibid.* Regulation 63(3)

[57] See also the Good Practice Guide accompanying PPS9

F FURTHER CONSIDERATIONS IN RESPECT OF RAMSAR SITES

52. Section 37A of the Wildlife and Countryside Act 1981[58] requires the Secretary of State for Environment, Food and Rural Affairs to notify English Nature when she has listed, under the Ramsar Convention, a wetland for inclusion in the list of wetlands of international importance. English Nature must then notify the planning authority as well as owners and occupiers of the land, and other relevant bodies.

53. Article 3(1) of the Ramsar Convention requires Contracting Parties to 'formulate and implement their planning so as to promote the conservation of the wetlands included in the List, and, as far as possible, the wise use of wetlands in their territory'.

G CONSIDERATION OF INTERNATIONAL NATURE CONSERVATION SITES IN DEVELOPMENT PLANS

54. Development plans are not subject to assessment under regulations 48, 49 or 53 of the Habitats Regulations 1994 because they are not considered to be plans or projects within the meaning of regulation 48[59]. European sites will be covered by the SEA Directive 2001/42/EC (on the assessment of the effects of certain plans and programmes on the environment), and this will require the assessment of proposals in development plans affecting such sites. In any event, planning authorities have a general duty under regulation 3(4) of the Habitats Regulations to have regard to the requirements of the Habitats Directive in exercising their functions, including their plan-making functions under the Town and Country Planning Act 1990.

55. Whilst it may not be possible to carry out an assessment at the development plan stage that would be as detailed as that required under regulation 48 for a specific project, for which consent is sought, local planning authorities should nevertheless adopt the precautionary principle and should undertake sufficient assessment of any proposal in a development plan likely significantly to affect a European site. If a proposal for a particular type of development on a particular location would be likely to adversely affect the integrity of a such a site, or the effects of the proposal on such a site are uncertain, planning authorities should not allocate the site for that type of development unless:

a) they are satisfied that any subsequent or current planning application for that proposal would be likely to pass the tests for derogations in regulation 49; and

b) there is a reasonable prospect that compensatory measures that may be required by regulation 53 can be secured such as to protect the coherence of the Natura 2000 network and meet the requirements of the Ramsar Convention where relevant.

[58] As inserted by section 77 of the Countryside and Rights of Way Act 2000

[59] The European Court of Justice is currently considering this matter and a ruling is expected later in 2005

PART II
Nationally Designated Sites
Conservation of Sites of Special Scientific Interest

A SUMMARY OF THE LEGISLATIVE REGIME GOVERNING SITES OF SPECIAL SCIENTIFIC INTEREST

56. Section 28 of the Wildlife and Countryside Act 1981 as inserted by section 75 and schedule 9 of the Countryside and Rights of Way Act 2000 sets out significantly improved provisions regarding the notification, protection and management of Sites of Special Scientific Interest (SSSIs). Existing SSSI notifications made to local authorities remain valid, with the exception of the very few remaining notifications under section 23 of the National Parks and Access to the Countryside Act 1949, which cease to have effect. English Nature will write to individual authorities about these sites.

57. The Wildlife and Countryside Act 1981, as amended, (hereafter referred to in this Part as "the Act") imposes an important general duty on a range of authorities exercising functions which are likely to affect SSSIs. This general and overarching duty requires an authority to take reasonable steps, consistent with the proper exercise of the authority's functions, to further the conservation and enhancement of the features for which sites are of special interest[60]. It applies whenever an authority is exercising its functions, including when it has the power to take action, and applies at every stage from the formulation of plans, to the carrying out of operations and the making of decisions.

58. Those authorities subject to this duty are called section 28G authorities and include Ministers, Government Departments, local authorities, statutory undertakers and any other public body[61]. The Act also sets out specific procedures that must be followed by these authorities when carrying out or authorising operations which are likely to damage the special interest features of SSSIs[62].

59. Planning authorities are section 28G authorities and as such have specific duties and responsibilities in respect of SSSIs. These are described below. Advice on the full regime, including the responsibilities of and controls on owners and occupiers and third parties which are not described in this document, can be found in the Code of Guidance *'Sites of Special Scientific Interest: Encouraging Positive Partnerships'* [63].

General duty to conserve and enhance SSSIs

60. A planning authority exercises many functions and in doing so will need to take into full account its duty to take reasonable steps to further the conservation and enhancement

[60] section 28G(2) Wildlife and Countryside Act 1981, as amended

[61] *ibid*, section 28G(3)

[62] *ibid*, sections 28H and 28I

[63] Published April 2003 and available at http://www.defra.gov.uk/wildlife-countryside/ewd/sssi/sssi-code.pdf

of the special interest features of SSSIs. It will need to decide what it considers are 'reasonable steps' to be taken and in doing so may wish to consult English Nature. At the strategic level, regional spatial strategies and local development documents must be prepared in accordance with this duty. At the local level, the duty applies to individual decisions on planning applications, including the consideration of whether to impose conditions on a planning decision, on the monitoring of compliance with planning obligations and any subsequent enforcement action a planning authority may consider necessary.

61. The Government expects all section 28G authorities, including planning authorities, to:

a) apply strict tests when carrying out any functions within or affecting SSSIs, to ensure that they avoid or at least minimise adverse effects;

b) adopt the highest standards of management in relation to SSSIs in their ownership, and to take appropriate action to prevent damage by third parties; and

c) as owners or otherwise to take positive steps, wherever possible, to conserve and enhance the special interest features of a SSSI where their activities may be affecting it, or as opportunities arise in the exercise of their functions. English Nature will advise on a case by case basis as to opportunities for enhancement.

Further guidance on how planning authorities, in particular, can comply with their duty is provided in the Good Practice Guide.

B OBLIGATIONS OF PLANNING AUTHORITIES CARRYING OUT OR AUTHORISING OPERATIONS LIKELY TO DAMAGE THE SPECIAL INTEREST OF SSSIs

62. In addition to the general duty under section 28G of the Act, specific obligations under section 28H and 28I apply to planning authorities (as they do to all section 28G authorities), when, having considered their general duty, they nevertheless propose to carry out or authorise operations likely to damage the special interest features of SSSIs (whether or not these will take place on land included in the SSSI)[64]. These provisions ensure that English Nature is able to provide full advice and information about the effects of an operation or authorisation on a SSSI and any steps that might mitigate them. This will enable the decision taker to make an informed decision about whether, and how, to go ahead with an operation or whether to grant an authorisation and, if so, on what terms. They also ensure that where English Nature's advice is not complied with, the decision taker must inform English Nature so that it has sufficient time to consider any further steps it may wish to take.

63. Planning authorities will usually need to be most concerned with these obligations when authorising or granting permission to carry out operations, e.g. determining planning applications. However there may be circumstances where a planning authority wishes to carry out an operation itself. Therefore the obligations for both situations are explained below. The Government expects all planning authorities to give very careful

[64] Section 28H(2) and 28I(3), Wildlife and Countryside Act 1981, as amended

consideration to whether an operation or authorisation is likely to damage the special interest features of a SSSI, and, where it is unsure, to consult English Nature. A planning authority should be able to demonstrate that it has clearly considered the likely effects of an operation, and therefore whether it is duty bound to formally notify English Nature as required by the Act.

64. The planning authority should bear in mind the possibility that certain developments may affect a site some distance away. For example, a wetland site might have its water table lowered as a result of water abstraction some considerable distance away; and a river SSSI might be affected by an upstream development.

65. A planning authority proposing to carry out operations likely to damage the special features of a SSSI must notify English Nature under section 28H of the Act. English Nature has 28 days within which to indicate whether or not it assents to the operation (with or without conditions)[65]. If English Nature does not assent, or does not respond within 28 days, but the planning authority decides to proceed with the operations, it must give English Nature further notice of not less than 28 days notice of the date when the operations will commence and must explain how, if at all, it has taken account of any advice received from English Nature[66]. These requirements also apply if a planning authority does not intend to comply with any conditions attached to English Nature's assent[67]. In addition, in carrying out the works it shall give rise to as little damage to the special interest features of the SSSI as is reasonably practicable, and if damage does occur, shall restore the site to its former condition, again in so far as is reasonably practicable[68]. It is an offence, liable to a penalty on summary conviction of a fine of up to £20,000, or on conviction on indictment an unlimited fine, if a public body fails to comply with the requirements of section 28H[69]. Figure 3 is a flow chart setting out the procedure.

66. Under section 28I of the Act, a planning authority authorising or granting permission for other parties to carry out operations likely to damage the special interest features of a SSSI, such as through the determination of a planning application, must notify English Nature before reaching its decision[70]. It must then allow 28 days before deciding whether to grant its consent unless English Nature has responded sooner[71]. The authority must take account of any advice from English Nature, including advice on attaching conditions to the consent[72]. If the authority decides that it will issue a permission against English Nature's advice, it must notify English Nature of the permission, the terms on which it is proposed to grant it and how, if at all, it has taken English Nature's advice into account. It must then allow a further period of 21 days before the operation can commence[73].This allows English Nature to consider any

[65] section 28H(3) Wildlife and Countryside Act 1981, as amended

[66] *ibid*, section 28H(5)

[67] *ibid* section 28H (4)

[68] *ibid* section 28H(6)

[69] *ibid* section 28P(2) and (3).

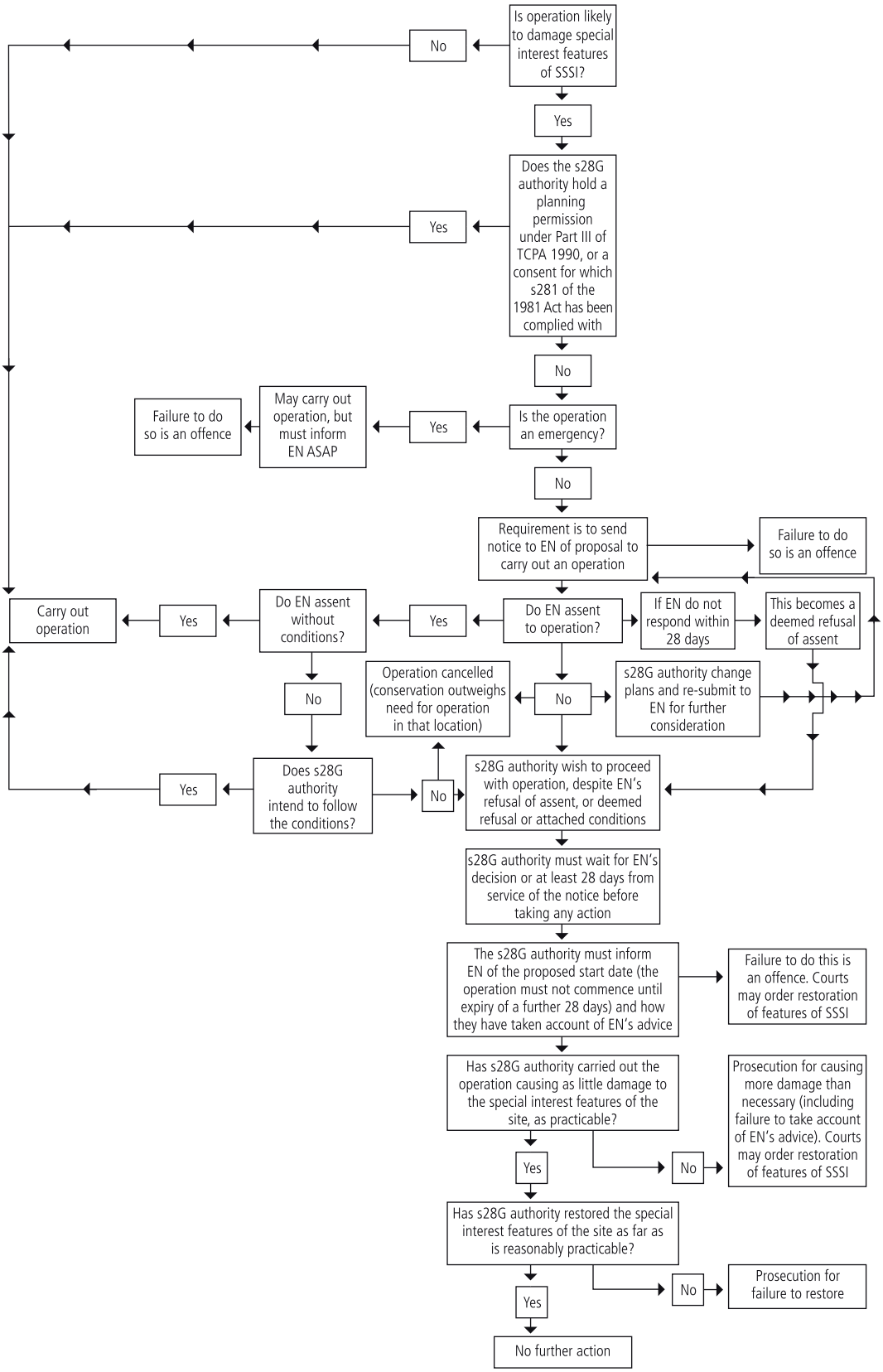
[70] *ibid* section 28I(2)

[71] *ibid* section 28I(4)

[72] *ibid* section 28I(5)

[73] *ibid* section 28I(6)

Figure 3: **Authority carrying out operations**



further action, such as, in exceptional circumstances, legal action challenging the validity of the permission. Figure 4 is a flow chart setting out the procedure.

67. Planning authorities should be aware that planning permission may be granted on an application under Part III of the Town and Country Planning Act 1990 to an owner or occupier of a SSSI for an operation which has been notified to them by English Nature as a potentially damaging operation to the special interest features of the site. The grant of planning permission constitutes a 'reasonable excuse' for carrying out the operation which would otherwise be unlawful without the consent of English Nature[74]. The Government expects proper observance by planning authorities of their obligations. Where both a planning permission and the consent from another section 28G authority is required for an operation, the reasonable excuse of having planning permission cannot be relied on unless both have been obtained[75].

C INTERACTION WITH OTHER CONSULTATION REQUIREMENTS IN RESPECT OF SSSIs

68. In addition to the notification requirements under the Act, other legislation, such as the General Development Procedure Order[76], imposes consultation requirements in respect of SSSIs. In these circumstances, the requirement for a planning authority to give English Nature notice under section 28I (see above) where granting permission for operations likely to damage the special interest features of the SSSI still stands. The other main consultation requirements in respect of SSSIs are set out in sections D and E below. In these circumstances, though the consultation periods may differ (for example 14 or 21 days, or any other period), the period of 28 days provided for in the Act takes precedence. However, the Government expects English Nature to respond to all consultations promptly and within the 28 days timescale wherever there is adequate information available to make the necessary assessments.

69. A planning authority should inform English Nature of decisions on all applications for the development of land about which it was consulted or notified.

D OTHER CONSULTATION REQUIREMENTS

General Development Procedure Order 1995

70. Under the provisions of Article 10 of the Town and Country Planning (General Development Procedure) Order 1995 (the GDPO), planning authorities have a duty to consult English Nature before granting planning permission for any development that:

- is in or likely to affect a SSSI[77]; or
- is within a consultation area around a SSSI notified to the planning authority by English Nature[78]; or

[74] section 28P(4), Wildlife and Countryside Act 1981, as amended

[75] *ibid* section 28P(5)

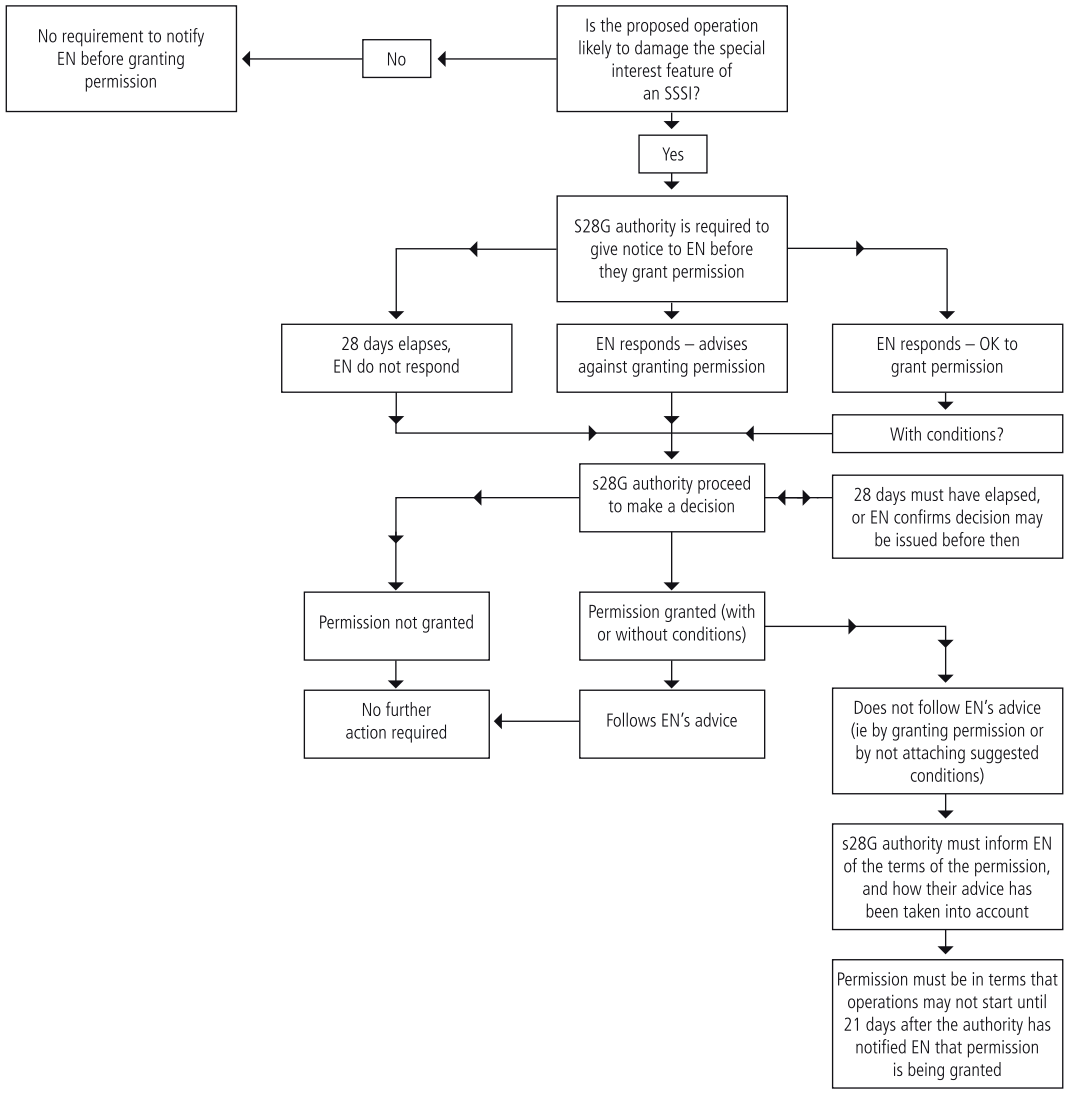
[76] The Town and Country Planning (General Development Procedure) Order 1995

[77] Article 10(1)(u)(i) of the Town and Country Planning (General Development Procedure) Order 1995 Statutory Instrument 1995/419

[78] *ibid.* Article 10(1)(u)(ii)

Figure 4: **Authority granting permission to carry out operations**

Note: permission includes any authorisation, consent or any other type of permission



- is in an area of particular natural sensitivity or interest which appears to a local planning authority may be affected by:

  i) development involving the siting of new establishments or the modification of existing ones which could have significant implications for major accident hazards[79];

  or

  ii) development in the vicinity of existing establishments such as to increase the risk or consequences of a major accident[80].

[79] Article 10(1)(zb)(i) and (ii) of the Town and Country Planning (General Development Procedure) Order 1995 Statutory Instruments 1995/419

[80] *ibid.* Article 10(1)(zb)(iii)

71. The GDPO also requires a planning authority to consult about planning applications in any consultation area around a SSSI defined by English Nature. English Nature will notify the boundaries of such consultation areas to local planning authorities. When notifying a consultation area English Nature may advise that it wishes to be consulted only about certain types of development (see further below in respect of 'standing advice'). It may also advise a planning authority that it would want to be consulted about other types of development (for example, a major industrial facility) beyond the 2 kilometres maximum for a consultation area. An authority is also required to consult where an application is for development that is likely to affect a SSSI, and the application site falls outside the SSSI and any consultation area. This is the case under both the terms of the GDPO and section 28I of the Act.

72. GDPO consultations relating to SSSIs should take place as soon as possible and local planning authorities may not determine any application that could affect such a site within 14 days of initiating consultation. However, as described in sections B and C above, the period in which English Nature now has to respond under section 28I of the Act is 28 days, and the longer timescale in this Act takes precedence[81]. The Government expects English Nature to respond as quickly as possible. Section 28I also requires the planning authority to notify English Nature if it intends to grant permission against its advice (see paragraph 65 above).

Exceptions to consultations under the GDPO

73. In respect of SSSI consultations, the GDPO provides that a planning authority need not consult English Nature, where:

i) English Nature has advised the authority that it does not wish to be consulted. This exception does not apply to consultations relating to major hazards[82].

ii) English Nature has provided 'standing advice' to a planning authority[83]. This exception does not apply to any application that is for EIA development, that is, an application for which an environmental impact statement must be submitted. More information on the provision of standing advice is in section G.

These provisions do not override the requirement under section 28I of the Act for a planning authority to give notice to English Nature before granting a planning permission for operations likely to damage the nature conservation interest features of a SSSI (see section C above). Nor do they override the requirement for a planning authority to consult English Nature in respect of plans and projects under the Habitats Regulations.

[81] See also the *Code of Guidance, Sites of Special Scientific Interest: Encouraging Positive Partnerships*, Defra 2003

[82] Article 10(1)(iii) of the Town and Country Planning (General Development Procedure) Order 1995

[83] Article 4 Town and Country Planning (General Development Procedure) (England) (Amendment) Order 2003 Statutory Instrument 2003/2047

Habitats Regulations 1994

74. The requirements described at sections A, B and C of Part I above will often overlap with a duty to consult in respect of SSSI interests because all terrestrial European sites will also be SSSI. However, the procedures relating to the Habitats Regulations relate to the integrity and conservation objectives of a European site (applying as a matter of policy to pSPAs and Ramsar sites) and may be narrower than the interest features of the SSSI. It will therefore be important for the planning authority and English Nature to clearly distinguish how the proposed development may affect the international interests and the interests of the SSSI in order to ensure that all the relevant legislative requirements are complied with.

E PERMITTED DEVELOPMENT AND SSSIs

75. Where an owner or occupier wishes to exercise permitted development rights on a SSSI, and the works involved are listed on the SSSI notification as operations likely to damage the special interest features, then they must apply to English Nature for consent under section 28E of the Act. If English Nature refuses consent for such works it will not be possible to exercise the permitted development rights, without committing an offence under section 28P of the Act. In such cases, or where English Nature attach conditions to a consent, the applicant may appeal to the Secretary of State for Environment, Food and Rural Affairs[84]. Alternatively, the owner or occupier may instead apply to the planning authority for planning permission under Part III of the Town and Country Planning Act 1990. If granted, such planning permission is a reasonable excuse for an owner or occupier carrying out the operation without English Nature's consent[85]. Indeed, where an owner or occupier is intending to carry out on a SSSI an operation which benefits from permitted development rights but which is likely to damage the special interest, there is nothing to stop him from submitting a full planning application to the local planning authority in the first instance. Such planning applications will be considered by local planning authorities in the normal way. Likewise, the normal arrangements would apply to any appeal against a planning authority's refusal of an application for planning permission, or against conditions attached to an approval.

76. Where a section 28G authority in the exercise of its function, wishes to exercise a permitted development right, as well as considering its section 28G duties, it must consider whether the exercise of the permitted development right is likely to damage the special interest features of a SSSI. Where the exercise of the permitted development right is likely to damage the special interest features of a SSSI that section 28G authority must ensure that it complies with the requirements in section 28H of the Act (see paragraph 64).

[84] Section 28(F) Wildlife and Countryside Act 1981 as amended

[85] *ibid*. Section 28P(4)

F LAWFUL DEVELOPMENT CERTIFICATES AND SSSIs

77. Section 28P of the Act provides that it is a 'reasonable excuse' for not having given notice to English Nature of operations likely to damage the special interest features of a SSSI if the operations were carried out in accordance with a valid planning permission granted on application[86]. Unauthorised development affecting a SSSI is not therefore, a reasonable excuse, and in addition to being a breach of planning control, may also be an offence under section 28P of the Act, in the absence of notice given to English Nature or if notice was given where consent has not been granted[87]. However, the planning legislation enables a developer to apply for a certificate of lawful development after the expiry of specified time limits. The planning authority must consider an application for a lawful development certificate on the facts of the case and, although it does not grant planning permission, the issue of a certificate would render the development immune from enforcement under planning legislation. Such a certificate would not provide a 'reasonable excuse' for an offence under section 28P of the 1981 Act.

G STANDING ADVICE

78. The requirement for local planning authorities to consult English Nature about a particular type of planning application under the GDPO is removed if English Nature has provided up-to-date standing advice. Where standing advice has been sent to local planning authorities, they must consult that standing advice instead, and take it into account in determining an application for planning permission. The introduction of standing advice will allow some planning applications to be processed more quickly.

79. English Nature must update its standing advice, or verify that the information is still up-to-date, at least every two years, or the advice cannot act as a substitute for consultation. If advice has not been updated or verified in time, the planning authority must consult English Nature. English Nature may withdraw standing advice at any time by writing to local planning authorities to inform them of the withdrawal.

80. On receipt of a planning application which requires consultation with English Nature, a planning authority should check whether any up-to-date standing advice has been provided which is relevant to the whole of the development described in the application. If it has, and provided the application is not for development requiring an Environmental Impact Assessment, is not likely to damage the features of a SSSI and will not be likely to have a significant effect on a European site (including pSPAs and Ramsar sites), the authority should not consult English Nature. Instead, it should refer to that standing advice.

81. Where standing advice covers only part of the proposed development, a planning authority is still required to consult English Nature. In such circumstances, English Nature could, as part of its response, refer the authority to the standing advice so far as it is relevant to the proposed development. Applications that are not covered by any standing advice should continue to be sent to English Nature.

[86] Section 28P(4) Wildlife and Countryside Act 1981 as amended

[87] *ibid* Section 28P(1)

82. In determining the application for development that is covered by up-to-date standing advice, a planning authority must take into account that standing advice. The standing advice will be a material consideration in the determination of the planning application in the same way as any advice received from a statutory consultee under the GDPO. It is up to the planning authority to decide the weight to be attached to the standing advice, in the same way as it would decide the weight to be attached to a response from a statutory consultee.

83. Where English Nature revises its standing advice, the new advice should be applied to any application that the planning authority is currently considering. Where English Nature withdraws standing advice, the planning authority should consult English Nature in the normal way on any application received after the date on which the planning authority received notification that the standing advice was withdrawn. The planning authority need not consult English Nature where it has already begun to consider an application on the basis of standing advice valid at the time the application was received.

PART III
Conservation of Habitats and Species outside Designated Sites

A HABITATS AND SPECIES IN UK AND LOCAL BIODIVERSITY ACTION PLANS

Habitats and species of principal importance in England

84. The potential effects of a development, on habitats or species listed as priorities in the UK Biodiversity Action Plan (BAP)[88], and by Local Biodiversity Partnerships, together with policies in the England Biodiversity Strategy[89], are capable of being a material consideration in the preparation of regional spatial strategies and local development documents and the making of planning decisions.

85. Section 74 of the Countryside and Rights of Way Act 2000 places new duties on Government Ministers and Departments in respect of the conservation of biodiversity. In exercising his duty, the First Secretary of State may include local authorities to promote the taking of steps by others to further the conservation of the habitat types and species of principal importance for biodiversity. In PPS9, the Government has indicated that local authorities should take steps to further the conservation of habitats and species of principal importance through their planning function (see PPS9 paragraphs 11 and 14). The lists of the habitat types and species subject to this duty were published by Defra in 2002[90] and comprise the list of species and habitats identified as priorities under the UK Biodiversity Action Plan. The lists are reproduced in Annex C.

86. The DETR circular on the Countryside and Rights of Way Act 2000[91] states that local authorities' responsibilities for preparing their own Local Biodiversity Action Plans do not rely on the provisions of this Act; outside London, these plans are amongst the elements local authorities should build upon when preparing the overarching Strategy required by section 4 of the Local Government Act 2000. Subsequent to Circular 04/2001, the Government identified Local Biodiversity Action Plans as one of the plans that can be 'subsumed' into Community Strategies, as part of the rationalisation of local authority plans. Authorities will need to demonstrate that the subsumed plans have been considered within their Community Strategy and that Community Strategies as a whole are informed by the purposes of biodiversity planning[92].

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[88] *Biodiversity The UK Action Plan, 1994*, Command 2428, and subsequent Habitat and Species Action Plans. See www.ukbap.org.uk for more information.

[89] Defra, 2002, *Working with the grain of nature: a biodiversity strategy for England*

[90] Defra, 2002, *Countryside and Rights of Way Act 2000 Section 74: List of habitats and species of principal importance in England*

[91] Department of Environment Transport and the Regions Circular 04/01, February 2001 *Countryside and Rights of Way Act 2000*

[92] Office of the Deputy Prime Minister circular letter to local authorities, 22 July 2003 – http://www.odpm.gov.uk/stellent/groups/odpm_localgov/documents/page/odpm_locgov_023229-01.hcsp

B BIODIVERSITY ACTION PLANS IN LONDON

87. In London, the Mayor's duties include the preparation of a state of the environment report[93] (which must include information on biodiversity) and a London Biodiversity Action Plan (the London BAP)[94]. The London BAP must contain information on the ecology, wildlife and habitats of Greater London, together with proposals for conserving and promoting biodiversity and the commitments of other bodies intended to achieve the London BAP objectives. The London BAP must have regard to any plans relating to biodiversity prepared by a London Borough Council or the Common Council of the City of London.

C LANDSCAPE FEATURES OF MAJOR IMPORTANCE FOR WILD FLORA AND FAUNA

88. Article 10 of the Habitats Directive requires Member States (where they consider it necessary) to endeavour to encourage the management of features of the landscape that are of major importance for wild flora and fauna. These features are those that, because of their linear and continuous structure or their function as stepping-stones, are essential for migration, dispersal and genetic exchange. Examples given in the Directive are rivers with their banks, traditional field boundary systems (such as hedgerows), ponds and small woods. Suitable planning conditions and obligations may serve to promote such management.

D LIMESTONE PAVEMENT

89. County or unitary planning authorities have powers under section 34 of the Wildlife and Countryside Act 1981 to make limestone pavement orders prohibiting the removal or disturbance of limestone on land covered by the order. Under section 78 of the Countryside and Rights of Way Act 2000, the penalty for an offence under such an order has been increased to £20,000, in line with the penalty for damaging SSSIs and emphasising the importance which the Secretary of State for Environment, Food and Rural Affairs attaches to this nationally important habitat.

E TREES AND WOODLANDS

90. When granting planning permission for any development, local planning authorities are under a duty, where appropriate, to impose planning conditions to ensure adequate provision is made for the protection or planting of trees, and to make Tree Preservation Orders (TPOs) as appear necessary in the circumstances.

91. Veteran and other substantial trees and many types of woodland, especially ancient semi-natural woodland, can be of importance for biodiversity conservation. When considering whether particular trees or woodlands merit a TPO in the interests of amenity, local planning authorities should, where appropriate, include consideration of their nature conservation value.

[93] Section 351 Greater London Authority Act 1999

[94] *ibid* Section 352

F HEDGEROWS

92. The Hedgerows Regulations 1997 (SI 1997/1160)[95] were made under section 97 of the Environment Act 1995. They aim to protect important hedgerows in the countryside by controlling their removal through a system of notification to local planning authorities (which administer the Regulations). The system applies to most countryside hedgerows in England and Wales, and covers hedgerows on, or adjoining land used for agriculture or forestry, the breeding or keeping of horses, ponies or donkeys, common land or village greens, SSSIs, or local nature reserves. They do not apply to garden hedges.

93. The Regulations set out the criteria to be used by local planning authorities, in determining whether a hedgerow is important. The criteria relates to the value of hedgerows from an archaeological, historical, landscape or wildlife perspective. Hedgerows should be at least 30 years old and meet any of the criteria in order to be deemed important.

94. Permission for removal of a hedgerow is not required if it is less than 20 metres long (unless both ends join with other hedgerows or it is part of a longer hedgerow), or is in, or borders a garden. Similarly permission to remove a hedgerow is not required in certain circumstances for emergency/access purposes.

G LOCAL SITES

95. Defra will be issuing separate guidance on sites of regional and local biodiversity and geological interest, which include Regionally Important Geological Sites, Local Nature Reserves and Local Sites[96]. The guidance will provide advice on the development and management of systems to identify these sites. It will propose frameworks and standards for their operation as well as for the selection, protection and management of the sites themselves.

[95] Further information available from 'The Hedgerows Regulations Your Questions Answered (WACD010) and 'The Hedgerows Regulations 1997: A Guide to the Law and Good Practice' available from Defra email : farmland.conservation @defra.gsi.gov.uk

[96] The guidance will be available from Defra's website – www.defra.gov.uk. Publication is anticipated to be in Autumn 2005.

PART IV
Conservation of Species Protected by Law

A INTRODUCTION

96. Particular species of flora and fauna within England are subject to special protection, normally because of their vulnerable conservation status. For example, a species may be endangered or suffering decline in numbers or range, either within the UK or the European Union, or may be the victim of persecution or cruelty (such as that inflicted on badgers or the collection of the eggs of birds).

97. The two principal pieces of legislation protecting wild species are Part I of the Wildlife and Countryside Act 1981 and the Habitats Regulations. Furthermore, some animals are protected under their own legislation (for example, the Protection of Badgers Act 1992).

98. The presence of a protected species is a material consideration when a planning authority is considering a development proposal that, if carried out, would be likely to result in harm to the species or its habitat. Local authorities should consult English Nature before granting planning permission. They should consider attaching appropriate planning conditions or entering into planning obligations under which the developer would take steps to secure the long-term protection of the species. They should also advise developers that they must comply with any statutory species' protection provisions affecting the site concerned. For European protected species (i.e. those species protected under the Habitats Regulations) further strict provisions apply, as explained below, to which planning authorities must have regard.

99. It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted. However, bearing in mind the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development. Where this is the case, the survey should be completed and any necessary measures to protect the species should be in place, through conditions and/or planning obligations, before the permission is granted. In appropriate circumstances the permission may also impose a condition preventing the development from proceeding without the prior acquisition of a licence under the procedure set out in section C below.

100. All species of wild birds are protected within Great Britain under the provisions of the Wildlife and Countryside Act 1981. A list of all protected species of animals and plants can be found at Table 2 of Annex A of this Circular.

101. The breach of protected species legislation can often give rise to a criminal offence. The Countryside and Rights of Way Act 2000 increased the penalties for offences under the Wildlife and Countryside Act 1981, relating to protected species, to a maximum fine of £5,000 and/or a custodial sentence of up to six months[97].

102. The sections below set out the strict controls which apply to European protected species and provide further explanation of the controls applying to other species of animals, plants and birds.

B PROTECTION AFFORDED TO SPECIES UNDER THE HABITATS REGULATIONS

103. The Habitats Regulations implement the requirements of the Habitats Directive for species listed in Annexe IV of the Directive (European protected species). Stricter provisions than those contained in the Wildlife and Countryside Act 1981 apply for these species and regulation 3(4) of the Habitats Regulations places a duty on local planning authorities, in the exercise of their functions, to have regard to the requirements of the Directive so far as they might be affected by those functions. All European protected species are also separately protected under the Wildlife and Countryside Act 1981.

a) European protected species of animals

104. European protected species of animals are identified with a 'Yes' in the 3rd column of Table 2 in Annex A of this Circular.

105. Under regulation 39 of the Habitats Regulations, subject to certain defences or in the absence of a licence (regulations 40 and 44), it is unlawful to:

a. deliberately kill[98]; or

b. deliberately capture[99]; or

c. deliberately disturb[100]; or

d. deliberately take or destroy the eggs of[101];

a wild animal of a European protected species or, to:

e. damage or destroy[102] a breeding site or resting place of;

a wild animal of a European protected species.

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[97] Section 81 Countryside and Rights of Way Act 2000

[98] Regulation 39(1)(a) the Habitats Regulations 1994

[99] *ibid* Regulation 39(1)(a)

[100] *ibid* Regulation 39(1)(b)

[101] *ibid* Regulation 39(1)(c)

[102] *ibid* Regulation 39(1)(d)

These offences apply to all stages of the life of the animal[103].

106. It is not an offence to deliberately disturb a wild animal of a European protected species, or to damage or destroy a breeding site or resting place of such an animal, where this takes place within a dwelling-house[104]. However, in relation to actions that may affect bats outside a living area in a dwelling-house (such as a loft), this exception only applies where English Nature has been pre-notified allowing them a reasonable time within which to advise on the proposed course of action.

107. It is also an offence to keep, transport, sell or exchange[105], or offer for sale or exchange[106], any live or dead wild animal of a European protected species, or any part of, or anything derived from, such an animal. These offences apply to all stages of the life of the animal[107].

108. Where European protected species are found at any stage during the development process, the protection provisions may be contravened either by the development work itself or by associated mitigation work designed to protect the species concerned, for example, capture and rescue or translocation of the protected species from the development site in advance of works commencing. In order to avoid an offence being committed here, a licence may be available under regulation 44 of the Habitats Regulations (see section C below).

b) European protected species of plants

109. European protected species of plants are those listed in the first part of Table 3 in Annex A of this Circular.

110. Article 13 of the Habitats Directive requires Member States to prohibit the deliberate picking, collecting, cutting, uprooting or destruction of any plant in the wild of a species listed in Annex IV(b), in their natural range throughout the biological cycle of the plants. Regulations 42 – 43 of the Habitats Regulations implement this.

111. It is also an offence to keep, transport, sell, exchange, or offer for sale or exchange, any live or dead wild plant of a European protected species, or any part of, or anything derived from, such a wild plant[108]. These offences also apply to all stages of the biological cycle of European protected species of plants[109].

c) Licences in respect of European protected species

112. Under the Habitats Directive, developments that would result in a breach of the protection afforded to European protected species of plants and animals require to be

[103] Regulation 39(3) The Habitats Regulations 1994

[104] *ibid* Regulation 40(4)

[105] *ibid* Regulation 39(2)

[106] *ibid* Regulation 39(2)

[107] *ibid* Regulation 39(3)

[108] *ibid* Regulation 43(2)

[109] *ibid* Regulation 43(3)

covered by a derogation under Article 16. Article 16 of the Directive is transposed by regulation 44 of the Habitats Regulations under which licences may be issued for certain prescribed purposes – which are listed in regulation 44(2)(a)-(g). As a regulation 44 licence is a specific form of derogation under Article 16 of the Directive, licences may only be granted where the licensing authority is satisfied that two tests are met, which are set out in regulation 44(3)(a) and (b). First, a licence must not be issued unless there is no satisfactory alternative. Secondly, it must not be issued unless the action authorised by the licence would not be detrimental to maintaining the population of the species concerned at a favourable conservation status in its natural range. Planning permission per se does not authorise development to proceed in contravention of any of the provisions of regulations 39 or 43. Instead, a licence obtained under regulation 44 may authorise this.

113. English Nature is the licensing authority for granting licences for the purposes in regulation 44(2)(a)-(d), which include "scientific or education purposes". This purpose would cover undertaking surveys for, or likely to affect, European protected species. In the case of survey work connected with the development, which is likely to result in an offence in regulation 39 or 43 of the Habitats Regulations being committed, it is recommended that a licence is first applied for and obtained from English Nature. Any person wishing to carry out survey work that could affect animals or plants that are a European protected species should contact the relevant local area team of English Nature listed in Annex B to this Circular.

114. Defra is the licensing authority for the purposes within regulation 44(2)(e)-(g). Regulation 44(2)(e) contains the purpose : " preserving public health or public safety, or for reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment". "Overriding public interest" is the purpose most likely to cover the implementation of planning permissions likely to affect an animal or plant that is a European protected species.

115. In practice, licence applications are determined by Defra following, and separately from, the granting of planning permission. Information is normally requested from the planning authority and the developer, in order to assist Defra in making a determination of whether there is 'no satisfactory alternative' to the issue of a derogation licence. The information required by Defra from planning authorities to determine these licence applications was outlined in Defra Circular 2/2002[110]. English Nature is asked to provide advice on whether the issue of a licence would be 'detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range'. The above tests are then applied by Defra with the benefit of the information provided.

116. When dealing with cases where a European protected species may be affected, a planning authority is a competent authority within the meaning of regulation 6 of the Habitats Regulations, and therefore has a statutory duty under regulation 3(4) to have regard to the requirements of the Habitats Directive in the exercise of its functions. So the Directive's provisions are clearly relevant in reaching planning decisions, and these

[110] Defra Circular 2/2002, *New Guidance for Local Planning Authorities on European Protected Species and Changes in Licensing Procedures*, 16 October 2002.

should be made in a manner which takes them fully into account. The Directive's requirements include a strict system of protection for European protected species, prohibiting deliberate killing, catching or disturbing of species, the taking of eggs etc and damage to or destruction of their breeding sites or resting places. Derogations from this strict protection are allowed only in certain limited circumstances and subject to certain tests being met (see para 112 above). Planning authorities should give due weight to the presence of a European protected species on a development site to reflect these requirements, in reaching planning decisions, and this may potentially justify a refusal of planning permission.

117. Guidance is also given in PPS9 on the consideration that should be given to protected species where they would be affected by proposed developments.

C PROTECTION AFFORDED TO SPECIES BY THE WILDLIFE AND COUNTRYSIDE ACT 1981

118. Part I of the Wildlife and Countryside Act 1981 sets out the protection that is afforded to all wild birds, and certain wild animals and plants. Section 25 places a duty on all local authorities to do what they consider expedient to bring the provisions of the Act relating to protected species to the attention of the public and particularly school children. Local authorities are also empowered to institute proceedings against any person committing an offence under Part I of the Act within their area.

119. Under section 16 of the Wildlife and Countryside Act 1981, licences may be issued, providing certain conditions are met, derogating from the protection afforded to species for listed reasons, such as public health and safety. However, there is no provision for licences to be granted for the purposes of development.

a) Protection of Birds

120. Part I of the Wildlife and Countryside Act 1981 (as amended) makes it an offence (with certain limited exceptions and in the absence of a licence) intentionally to kill, injure or take any wild bird, or intentionally to damage, take or destroy its nest whilst it is being built or is in use, or to take or destroy its eggs[111]. It is also an offence to possess any live or dead wild bird or egg, or anything derived from a wild bird or egg. Restrictions on trade and on advertising also apply. Consequently, even common birds such as blackbirds or robins, and their nests and eggs, are protected in this way. Further, the Act affords additional protection to specific species of birds listed in Schedule 1 of the Act. In respect of these species it is unlawful intentionally or recklessly to disturb such a bird whilst it is nest-building or is at or near a nest with eggs or young; or to disturb their dependent young[112]. Table 1 of Annex A of this Circular sets out the list of bird species in Schedule 1. Licences to enable surveys to be carried out may be granted by English Nature.

[111] section 1(1) Wildlife and Countryside Act 1981, as amended

[112] *ibid* section 1(5)

b) Protection of Animals

121. Part I of the Wildlife and Countryside Act 1981 (as amended) affords protection to specific species of animals listed in Schedule 5 (see Table 2, Annex A of this Circular). This provides overlapping but separate protection for European protected species covered by the Habitats Regulations. All local authorities are informed about changes to the Schedule. With certain exceptions detailed in Table 2, at Annex A in this Circular, and in the absence of a licence or a relevant defence, it is an offence in respect of any animal of a species listed in Schedule 5 to:

i. intentionally kill, injure or take any wild animal of such a listed species[113];

ii. intentionally or recklessly damage or destroy or obstruct access to any structure or place which any animal of a listed species uses for shelter or protection[114];

iii. intentionally or recklessly disturb an animal of a listed species whilst it is occupying such a structure or place which it uses for that purpose[115];

iv. trade[116] in an animal of a listed species whether alive or dead, or any part of it or anything derived from it[117];

v. intentionally or recklessly disturb a dolphin, whale or basking shark wherever it may be[118];

vi. possess or have in one's control a live or dead animal of a listed species, or any part of it or anything derived from it[119].

Some species are covered by one or more (but not all), of these provisions (as listed in Annex A, Table 2 below).

c) Protection of Plants

122. Part I of the Wildlife and Countryside Act 1981 (as amended) also affords protection to specific species of plants listed in Schedule 8. This also provides overlapping but separate protection for European protected species from the Habitats Regulations. Section 13 of the Wildlife and Countryside Act 1981 (as amended) gives legal protection to certain wild plants listed in Schedule 8. All local authorities are informed about changes to the Schedule. In the absence of a licence or a relevant defence, it is an offence to

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[113] section 9(1) Wildlife and Countryside Act 1981, as amended

[114] *ibid* section 9(4)(a) Schedule 12 para 5

[115] *ibid*. section 9(4)(b)

[116] Specifically to sell, offer or expose for sale, possess or transport for the purpose of sale, or publish or cause to be published any advertisement likely to be understood as conveying that the person buys or sells or intends to buy or sell, Section 9(5) Wildlife and Countryside Act 1981, as amended

[117] section 9(5) Wildlife and Countryside Act 1981, as amended

[118] *ibid*. section 9(4A)

[119] *ibid*. section 9(2)

i. intentionally pick, uproot or destroy a wild plant listed in Schedule 8;

ii. not being an authorised person, intentionally uproot any wild plant not included in Schedule 8; or

iii. sell, offer or expose for sale, or have possession of or to transport for the purpose of sale, any live or dead wild plant, or any part of or anything derived from a wild plant listed in Schedule 8.

iv. publish or cause to be published any advertisement likely to be understood as conveying that that person buys or sells, or intends to buy or sell, any live or dead wild plant, or any part of or anything derived from a wild plant listed in Schedule 8.

With the exception of the Bluebell, all plants listed are fully protected. The Bluebell is protected against sale only[120].

D PROTECTION OF BADGERS ACT 1992

123. Although the badger is not a rare animal over most of England, there is specific legislation for the protection of badgers under the Protection of Badgers Act 1992. It is widely known that badgers have been the victim of persecution and cruelty over many years. With certain exceptions it is unlawful to kill, injure, take or possess a badger, or attempt to do so[121]. It is also an offence to cruelly ill-treat a badger[122], and, with certain exceptions, to interfere with a badger sett[123]. English Nature is responsible for issuing licences under section 10(1)(d) of the Protection of Badgers Act 1992 where it is necessary to interfere with a badger sett in the course of development, which can include demolition, building, construction, mining and engineering operations and material changes of use.

124. The likelihood of disturbing a badger sett, or adversely affecting badgers' foraging territory, or links between them, or significantly increasing the likelihood of road or rail casualties amongst badger populations, are capable of being material considerations in planning decisions. Although consideration of the case for granting a licence is separate from the process of applying for planning permission, a planning authority should advise anyone submitting an application for development in an area where there are known to be badger setts that they must comply with the provisions of the Act. Local authorities and other public bodies (except central government) are generally likely to need a licence in respect of any development which they themselves carry out in any areas if it will involve them interfering with a badger sett.

[120] section 13(2) Wildlife and Countryside Act 1981, as amended and Schedule 8

[121] section 1 of the Protection of Badgers Act 1992

[122] *ibid* section 2

[123] *ibid* section 3

PART V
Other duties and use of statutory powers by planning authorities

A ENVIRONMENTAL IMPACT ASSESSMENT

125. Environmental impact assessment (EIA) is mandatory for projects that are 'EIA development' within the meaning of the Town and Country Planning (Environmental Impact Assessment) (England) Regulations 1999 (the EIA Regulations)[124]. Some schedule 2 projects will be screened as EIA development because of their likely significant effects on nature conservation interests. The potential effects on flora and fauna and on natural features and processes should always be carefully considered in the scoping of environmental impact statements to ensure compliance with the EIA Directive. Circular 2/99 provides further advice on the application of the Regulations to the planning system.

B STRATEGIC ENVIRONMENTAL ASSESSMENT

126. Directive 2001/42/EC "on assessment of the environmental effects of certain plans and programmes on the environment" (the Strategic Environmental Assessment or SEA Directive) applies to development plans. Its requirements are incorporated in mandatory sustainability appraisal of Local Development Documents under the Planning and Compulsory Purchase Act 2004. The effects of a plan on European sites would be considered in the Environmental Report which is produced as part of the SEA process (incorporated in the Sustainability Appraisal Report under the 2004 Act).

C WATER FRAMEWORK DIRECTIVE

127. Regulation 17 of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 requires each public body, in the exercise of its functions, to have regard to the river basin management plan for that river basin district and any supplementary plans.

128. The Water Framework Directive introduces a new high level water planning process – based on river basin districts (which are roughly the size of regions). Key aims of the Water Framework Directive in relation to nature conservation and the planning system are the promotion of sustainable water use and to establish a framework for the protection of surface and groundwaters which protects and enhances the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly dependent on the aquatic ecosystems.

129. Strategic planning decisions such as on the nature, size and location of development should take account of their impact on the aquatic environment and have regard to Environment Agency advice and standing guidance.

[124] SI No.1999/293 amended by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2000 SI No. 2000/2867

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MRS H J THOMPSON
Head of European Wildlife Division, Department for Environment, Food and Rural Affairs

Addressed to:
The Chief Executives of:
County Councils in England
District Councils in England
Unitary Authorities in England
London Borough Councils
Greater London Authority
Regional Planning Bodies
Regional Development Agencies
Council of the Isles of Scilly
The Town Clerk, City of London
The National Park Officer, National Park Authorities in England
The Chief Planning Officer, The Broads Authority

Annex A
Lists of species of animals and plants especially protected by law

Table 1
Birds Protected by Schedule 1 Wildlife and Countryside Act 1981 as amended

Avocet	Grebe, Slavonian	Sandpiper, Wood
Bee-eater	Greenshank	Scaup
Bittern	Gull, Little	Scoter, Common
Bittern, Little	Gull, Mediterranean	Scoter, Velvet
Bluethroat	Harriers (all species)	Serin
Brambling	Heron, Purple	Shorelark
Bunting, Cirl	Hobby	Shrike, Red-backed
Bunting, Lapland	Hoopoe	Spoonbill
Bunting, Snow	Kingfisher	Stilt, Black-winged
Buzzard, Honey	Kite, Red	Stint, Temminck's
Chough	Merlin	Swan, Bewick's
Corncrake	Oriole, Golden	Swan, Whooper
Crake, Spotted	Osprey	Tern, Black
Crossbills (all species)	Owl, Barn	Tern, Little
Curlew, Stone	Owl, Snowy	Tern, Roseate
Divers (all species)	Peregrine	Tit, Bearded
Dotterel	Petrel, Leach's	Tit, Crested
Duck, Long-tailed	Phalarope, Red-necked	Treecreeper, Short-toed
Eagle, Golden	Plover, Kentish	Warbler, Cetti's
Eagle, White-tailed	Plover, Little Ringed	Warbler, Dartford
Falcon, Gyr	Quail, Common	Warbler, Marsh
Fieldfare	Redstart, Black	Warbler, Savi's
Firecrest	Redwing	Whimbrel
Garganey	Rosefinch, Scarlet	Woodlark
Godwit, Black-tailed	Ruff	Wryneck
Goshawk	Sandpiper, Green	
Grebe, Black-necked	Sandpiper, Purple	

Table 2

Animals Protected by Schedule 5 Wildlife and Countryside Act 1981 as amended and Regulation 39 Habitats Regulations 1994 (European protected animal species)

Key to Table 2

EPS = European Protected Species

9(1) = S.9(1) intentionally kill, injure or take any wild animal of such a listed species;

9(4)(a) = S.9(4)(a) intentionally or recklessly damage or destroy or obstruct access to any structure or place which any animal of a listed species uses for shelter or protection (at any time even when the animal is not there);

9(4)(b) = S.9(4)(b) intentionally or recklessly disturb an animal of a listed species whilst it is occupying such a structure or place which it uses for that purpose;

9(5) = S.9(5) sell, transport or trade in an animal of a listed species whether alive or dead, or any part of it or anything derived from it;

9(4A) = S.9(4A) intentionally or recklessly disturb a dolphin, whale or basking shark wherever it may be;

9(2) = S.9(2) possess or control a live or dead animal of a listed species, or any part of it or anything derived from it.

• = Denotes that only partial protection is afforded under section 9(1) for this species. The Adder, Viviparous Lizard, Slow-worm and Grass Snake, are only protected under section 9(1) from being killed or injured and the Atlantic Stream Crayfish is only protected under section 9(1) from being taken.

Common Name	*Scientific Name*	*EPS*	*9(1)*	*9(4)(a)*	*9(4)(b)*	*9(5)*	*9(4A)*	*9(2)*
Adder	*Vipera berus*		•*			•		
Allis Shad	*Alosa alosa*		•	•				
Anemone, Ivell's Sea	*Edwardsia ivelli*		•	•	•	•		•
Anemone, Starlet Sea	*Nematosella vectensis*		•	•	•	•		•
Apus	*Triops cancriformis*		•	•	•	•		•
Atlantic Stream Crayfish	*Austropotamobius pallipes*		•*			•		
Bats, Horseshoe	*Rhinolophidae* (all species)	Yes	•	•	•	•		•
Bats, Typical	*Vespertilionidae* (all species)	Yes	•	•	•	•		•
Beetle	*Graphoderus zonatus*		•	•	•	•		•
Beetle	*Hypebaeus flavipes*		•	•	•	•		•
Beetle	*Paracymus aeneus*		•	•	•	•		•
Beetle, Lesser Silver Water	*Hydrochara caraboides*		•	•	•	•		•
Beetle, Mire Pill	*Curimopsis nigrita*			•				
Beetle, Rainbow Leaf	*Chrysolina cerealis*		•	•	•	•		•
Beetle, Stag	*Lucanus cervus*					•		
Beetle, Violet Click	*Limoniscus violaceus*		•	•	•	•		•
Burbot	*Lota lota*		•	•	•	•		•
Butterflies								
Heath Fritillary	*Mellicta athalia (Melitaea athalia)*		•	•	•	•		•
Large Blue	*Maculinea arion*	Yes	•	•	•	•		•
Swallowtail	*Papilio machaon*		•	•	•	•		•
Northern Brown Argus	*Aricia artaxerxes*					•		
Adonis Blue	*Lysandra bellargus*					•		
Chalkhill Blue	*Lysandra coridon*					•		
Silver-studded Blue	*Plebejus argus*					•		
Small Blue	*Cupido minimus*					•		
Large Copper	*Lycaena dispar*		•	•	•	•		•
Purple Emperor	*Apatura iris*					•		
Duke of Burgundy Fritillary	*Hamearis lucina*					•		
Glanville Fritillary	*Melitaea cinxia*					•		

continued

Table 2 – *continued*

Common Name	*Scientific Name*	*EPS*	*9(1)*	*9(4)(a)*	*9(4)(b)*	*9(5)*	*9(4A)*	*9(2)*
High Brown Fritillary	*Argynnis adippe*					•		
Marsh Fritillary	*Eurodryas aurinia*		•	•	•	•		•
Pearl-bordered Fritillary	*Boloria euphrosyne*					•		
Black Hairstreak	*Strymonidia pruni*					•		
Brown Hairstreak	*Thecla betulae*					•		
White Letter Hairstreak	*Stymonida w-album*					•		
Large Heath	*Coenonympha tullia*					•		
Mountain Ringlet	*Erebia epiphron*					•		
Chequered Skipper	*Carterocephalus palaemon*					•		
Lulworth Skipper	*Thymelicus acteon*					•		
Silver Spotted Skipper	*Hesperia comma*					•		
Large Tortoiseshell	*Nymphalis polychloros*					•		
Wood White	*Leptidea sinapis*					•		
Cat, Wild	*Felis silvestris*	Yes	•	•	•	•		•
Cicada, New Forest	*Cicadetta montana*		•	•	•	•		•
Cricket, Field	*Gryllus campestris*		•	•	•	•		•
Cricket, Mole	*Gryllotalpa gryllotalpa*		•	•	•	•		•
Damselfly, Southern	*Coenagrion mercuriale*		•	•	•	•		•
Dolphins	*Cetacea* (all species)	Yes	•	•	•	•	•	•
Dormouse	*Muscardinus avellanarius*	Yes	•	•	•	•		•
Dragonfly, Norfolk Aeshna	*Aeshna isosceles*		•	•	•	•		•
Frog, Common	*Rana temporaria*					•		
Goby, Couch's	*Gobius couchii*		•	•	•	•		•
Goby, Giant	*Gobius cobitis*		•	•	•	•		•
Grasshopper, Wart-biter	*Decticus verrucivorus*		•	•	•	•		•
Hatchet Shell, Northern	*Thyasira gouldi*		•	•	•	•		•
Hydroid, Marine	*Clavopsella navis*		•	•	•	•		•
Lagoon Snail	*Paludinella littorina*		•	•	•	•		•
Lagoon Snail, De Folin's	*Caecum armoricum*		•	•	•	•		•
Lagoon Worm, Tentacled	*Alkmaria romijni*		•	•	•	•		•
Leech, Medicinal	Hirudo medicinalis		•	•	•	•		•
Lizard, Sand	Lacerta agilis	Yes	•	•	•	•		•
Lizard, Viviparous	Lacerta vivipara		•*			•		
Marten, Pine	Martes martes		•	•	•	•		•
Mat, Trembling Sea	Victorella pavida		•	•	•	•		•
Moth, Barberry Carpet	Pareulype berberata		•	•	•	•		•
Moth, Black-veined	Siona lineata (Idaea lineata)		•	•	•	•		•
Moth, Essex Emerald	*Thetidia smaragdaria*		•	•	•	•		•
Moth, Fiery Clearwing	*Bembecia chrysidiformis*		•	•	•	•		•
Moth, Fisher's Estuarine	*Gortyna borelii*		•	•	•	•		•
Moth, New Forest Burnet	*Zygaena viciae*		•	•	•	•		•
Moth, Reddish Buff	*Acosmetia caliginosa*		•	•	•	•		•
Moth, Sussex Emerald	*Thalera fimbrialis*		•	•	•	•		•
Mussel, Fan	*Atrina fragilis*		•			•		•

continued

Table 2 – *continued*

Common Name	*Scientific Name*	*EPS*	*9(1)*	*9(4)(a)*	*9(4)(b)*	*9(5)*	*9(4A)*	*9(2)*
Mussel, Freshwater Pearl	*Margaritifera margaritifera*		•	•	•	•		•
Newt, Great Crested (Warty newt)	*Triturus cristatus*	Yes	•	•	•	•		•
Newt, Palmate	*Triturus helveticus*					•		
Newt, Smooth	*Triturus vulgaris*					•		
Otter, Common	*Lutra lutra*	Yes	•	•	•	•	•	•
Porpoises	*Cetacea* (all species)	Yes	•	•	•	•		•
Sandworm, Lagoon	*Armandia cirrhosa*		•	•	•	•		•
Sea Fan, Pink	*Eunicella verrucosa*		•			•		•
Sea Slug, Lagoon	*Tenellia adspersa*		•	•	•	•		•
Shad, Twaite	*Alosa Fallax*			•				
Shark, Basking	*Cetorhinus maximus*		•	•	•	•	•	•
Shrimp, Fairy	*Chirocephalus diaphanus*		•	•	•	•		•
Shrimp, Lagoon Sand	*Gammarus insensibilis*		•	•	•	•		•
Slow-worm	*Anguis fragilis*		•*			•		
Snail, Glutinous	*Myxas glutinosa*		•	•	•	•		•
Snail, Sandbowl	*Catinella arenaria*		•	•	•	•		•
Snake, Grass	*Natrix helvetica*		•*			•		
Snake, Smooth	*Coronella austriaca*	Yes	•	•	•	•		•
Spider, Fen Raft	*Dolomedes plantarius*		•	•	•	•		•
Spider, Ladybird	*Eresus niger*		•	•	•	•		•
Squirrel, Red	*Sciurus vulgaris*		•	•	•	•		•
Sturgeon	*Acipenser sturio*	Yes	•	•	•	•		•
Toad, Common	*Bufo bufo*					•		
Toad, Natterjack	*Bufo calamita*	Yes	•	•	•	•		•
Turtles, Marine	*Caretta caretta* *Chelonia mydas* *Lepidochelys kempii* *Eretmochelys imbricata* *Dermochelys coriacea*	Yes	•	•	•	•		•
Vendace	*Coregonus albula*		•	•	•	•		•
Vole, Water	*Arvicola terrestris*			•	•			
Walrus	*Odobenus rosmarus*		•	•	•	•		•
Whale	*Cetacea* (all species)	Yes	•	•	•	•	•	•
Whitefish	*Coregonus lavaretus*		•	•	•	•		•

Table 3

Plants Protected by Schedule 8 Wildlife and Countryside Act 1981 as amended and Regulation 42 Habitats Regulations 1994 (European protected plant species)

Dock, Shore	*Rumex rupestris*	Naiad, Slender	*Najas flexilis*
Fern, Killarney	*Trichomanes speciosum*	Orchid, Fen	*Liparis loeselii*
Gentian, Early	*Gentianella anglica*	Plantain, Floating-leaved Water	*Luronium natans*
Lady's-slipper	*Cyprepedium calceolus*	Saxifrage, Yellow Marsh	*Saxifraga hirculus*
Marshwort, Creeping	*Apium repens*		

Plants Protected by Schedule 8 Wildlife and Countryside Act 1981 as amended

Adder's-tongue, Least	*Ophioglossum lusitanicum*	Frostwort, Pointed	*Gymnomitrion apiculatum*
Alison, Small	*Alyssum alyssoides*	Fungus, Hedgehog	*Hericium erinaceum*
Anomodon, Long-leaved	*Anomodon longifolius*	Galingale, Brown	*Cyperus fuscus*
Beech-lichen, New Forest	*Enterographa elaborata*	Gentian, Alpine	*Gentiana nivalis*
Blackwort	*Southbya nigrella*	Gentian, Dune	*Gentianella uliginosa*
Bluebell	*Hyacinthoides non-scripta* (in respect of s.13(2) only)	Gentian, Fringed	*Gentianella ciliata*
		Gentian, Spring	*Gentiana verna*
Bolete, Royal	*Boletus regius*	Germander, Cut-leaved	*Teucrium botrys*
Broomrape, Bedstraw	*Orobanche caryophyllacea*	Germander, Water	*Teucrium scordium*
Broomrape, Oxtongue	*Orobanche loricata*	Gladiolus, Wild	*Gladiolus illyricus*
Broomrape, Thistle	*Orobanche reticulata*	Goblin Lights	*Catolechia wahlenbergii*
Cabbage, Lundy	*Rhynchosinapis wrightii*	Goosefoot, Stinking	*Chenopodium vulvaria*
Calamint, Wood	*Calamintha sylvatica*	Grass-poly	*Lythrum hyssopifolia*
Caloplaca, Snow	*Caloplaca nivalis*	Grimmia, Blunt-leaved	*Grimmia unicolor*
Catapyrenium, Tree	*Catapyrenium psoromoides*	Gyalecta, Elm	*Gyalecta ulmi*
Catchfly, Alpine	*Lychnis alpina*	Hare's-ear, Sickle-leaved	*Bupleurum falcatum*
Catillaria, Laurer's	*Catellaria laureri*	Hare's-ear, Small	*Bupleurum baldense*
Centaury, Slender	*Centaurium tenuiflorum*	Hawk's-beard, Stinking	*Crepis foetida*
Cinquefoil, Rock	*Potentilla rupestris*	Hawkweed, Northroe	*Hieracium northroense*
Cladonia, Convoluted	*Cladonia convoluta*	Hawkweed, Shetland	*Hieracium zetlandicum*
Cladonia, Upright Mountain	*Cladonia stricta*	Hawkweed, Weak-leaved	*Hieracium attenuatifolium*
Clary, Meadow	*Salvia pratensis*	Heath, Blue	*Phyllodoce caerulea*
Club-rush, Triangular	*Scirpus triquetrus*	Helleborine, Red	*Cephalanthera rubra*
Colt's-foot, Purple	*Homogyne alpina*	Helleborine, Young's	*Epipactis youngiana*
Cotoneaster, Wild	*Cotoneaster integerrimus*	Horsetail, Branched	*Equisetum ramosissimum*
Cottongrass, Slender	*Eriophorum gracile*	Hound's-tongue, Green	*Cynoglossum germanicum*
Cow-wheat, Field	*Melampyrum arvense*	Knawel, Perennial	*Scleranthus perennis*
Crocus, Sand	*Romulea columnae*	Knotgrass, Sea	*Polygonum maritimum*
Crystalwort, Lizard	*Riccia bifurca*	Lecanactis, Churchyard	*Lecanactis hemisphaerica*
Cudweed, Broad-leaved	*Filago pyramidata*	Lecanora, Tarn	*Lecanora archariana*
Cudweed, Jersey	*Gnaphalium luteoalbum*	Lecidea, Copper	*Lecidea inops*
Cudweed, Red-tipped	*Filago lutescens*	Leek, Round-headed	*Allium sphaerocephalon*
Cut-grass	*Leersia oryzoides*	Lettuce, Least	*Lactuca saligna*
Deptford Pink	*Dianthus armeria*	Lichen, Arctic Kidney	*Nephroma arcticum*
Diapensia	*Diapensia lapponica*	Lichen, Ciliate Strap	*Heterodermia leucomelos*
Earwort, Marsh	*Jamesoniella undulifolia*	Lichen, Coralloid Rosette	*Heterodermia propagulifera*
Eryngo, Field	*Eryngium campestre*	Lichen, Ear-lobed Dog	*Peltigera lepidophora*
Feather-moss, Polar	*Hygrohypnum polare*	Lichen, Forked Hair	*Bryoria furcellata*
Fern, Dickie's Bladder	*Cystopteris dickieana*	Lichen, Golden Hair	*Teloschistes flavicans*
Flapwort, Norfolk	*Leiocolea rutheana*	Lichen, Orange Fruited Elm	*Caloplaca luteoalba*
Fleabane, Alpine	*Erigeron borealis*	Lichen, River Jelly	*Collema dichotomum*
Fleabane, Small	*Pulicaria vulgaris*	Lichen, Scaly Breck	*Squamarina lentigera*

Table 3

Plants Protected by Schedule 8 Wildlife and Countryside Act 1981 as amended – *continued*

Lichen, Stary Breck	*Buellia asterella*
Lily, Snowdon	*Lloydia serotina*
Liverwort	*Petallophyllum ralfsi*
Liverwort, Lindenberg's Leafy	*Adelanthus lindenbergianus*
Marsh-mallow, Rough	*Althaea hirsuta*
Milk-parsley, Cambridge	*Selinum carvifolia*
Moss	*Drepanocladius vernicosus*
Moss, Alpine Copper	*Mielichoferia mielichoferi*
Moss, Baltic Bog	*Sphagnum balticum*
Moss, Blue Dew	*Saelania glaucescens*
Moss, Blunt-leaved Bristle	*Orthotrichum obtusifolium*
Moss, Bright Green Cave	*Cyclodictyon laetevirens*
Moss, Cordate Beard	*Barbula cordata*
Moss, Cornish Path	*Ditrichum cornubicum*
Moss, Derbyshire Feather	*Thamnobryum angustifolium*
Moss, Dune Thread	*Bryum mamillatum*
Moss, Flamingo	*Desmatodon cernuus*
Moss, Glaucous Beard	*Barbula glauca*
Moss, Green Shield	*Buxbaumia viridis*
Moss, Hair Silk	*Plagiothecium piliferum*
Moss, Knothole	*Zygodon forsteri*
Moss, Large Yellow Feather	*Scorpidium turgescens*
Moss, Millimetre	*Micromitrium tenerum*
Moss, Multifruited River	*Cryphaea lamyana*
Moss, Nowell's Limestone	*Zygodon gracilis*
Moss, Rigid Apple	*Bartramia stricta*
Moss, Round-leaved Feather	*Rhyncostegium rotundifolium*
Moss, Schleicher's Thread	*Bryum schleicheri*
Moss, Triangular Pygmy	*Acaulon triquetrum*
Moss, Vaucher's Feather	*Hypnum vaucheri*
Mudwort, Welsh	*Limosella australis*
Naiad, Holly-leaved	*Najas marina*
Orache, Stalked	*Halimione pedunculata*
Orchid, Early Spider	*Ophrys sphegodes*
Orchid, Ghost	*Epipogium aphyllum*
Orchid, Lapland Marsh	*Dactylorhiza lapponica*
Orchid, Late Spider	*Ophrys fuciflora*
Orchid, Lizard	*Himantoglossum hircinum*
Orchid, Military	*Orchis militaris*
Orchid, Monkey	*Orchis simia*
Pannaria, Caledonia	*Pannaria ignobilis*
Parmelia, New Forest	*Parmelia minarum*
Parmentaria, Oil Stain	*Parmentaria chilensis*
Pear, Plymouth	*Pyrus cordata*
Penny-cress, Perfoliate	*Thlaspi perfoliatum*
Pennyroyal	*Mentha pulegium*
Pertusaria, Alpine Moss	*Pertusaria bryontha*
Physcia, Southern Grey	*Physcia tribacioides*
Pigmyweed	*Crassula aquatica*
Pine, Ground	*Ajuga chamaepitys*
Pink, Cheddar	*Dianthus gratianopolitanus*
Pink, Childling	*Petroraghia nanteuilii*
Polypore, Oak	*Buglossoporus pulvinus*
Pseudocyphellaria, Ragged	*Pseudocyphellaria lacerata*
Psora, Rusty Alpine	*Psora rubiformis*
Puffball, Sandy Stilt	*Battarraea phalloides*
Ragwort, Fen	*Senecio paludosus*
Ramping-fumitory, Martin's	*Fumaria martinii*
Rampion, Spiked	*Phyteuma spicatum*
Restharrow, Small	*Ononis reclinata*
Rock-cress, Alpine	*Arabis alpina*
Rock-cress, Bristol	*Arabis stricta*
Rustworth, Western	*Marsupella profunda*
Sandwort, Norwegian	*Arenaria norvegica*
Sandwort, Teesdale	*Minuartia stricta*
Saxifrage, Drooping	*Saxifraga cernua*
Saxifrage, Tufted	*Saxifraga cespitosa*
Solomon's-seal, Whorled	*Polygonatum verticillatum*
Solenopsora, Serpentine	*Solenopsora liparina*
Sow-thistle, Alpine	*Cicerbita alpina*
Spearwort, Adder's-tongue	*Ranunculus ophioglossifolius*
Speedwell, Fingered	*Veronica triphyllos*
Speedwell, Spiked	*Veronica spicata*
Spike-rush, Dwarf	*Eleocharis parvula*
Stack Fleawort, South	*Tephroseris integrifolia* (ssp. maritima)
Star-of-Bethlehem, Early	*Gagea bohemica*
Starfruit	*Damasonium alisma*
Stonewort, Bearded	*Chara canescens*
Stonewort, Foxtail	*Lamprothamnium papulosum*
Strapwort	*Corrigiola litoralis*
Sulphur-tresses, Alpine	*Alectoria ochroleuca*
Threadmoss, Long-leaved	*Bryum neodamense*
Turpswort	*Geocalyx graveolens*
Violet, Fen	*Viola persicifolia*
Viper's-grass	*Scorzonera humilis*
Water-plantain, Ribbon Leaved	*Alisma gramineum*
Wood-sedge, Starved	*Carex depauperata*
Woodsia, Alpine	*Woodsia alpina*
Woodsia, Oblong	*Woodsia ilvensis*
Wormwood, Field	*Artemisia campestris*
Woundwort, Downy	*Stachys germanica*
Woundwort, Limestone	*Stachys alpina*
Yellow-rattle, Greater	*Rhinanthus serotinus*

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Annex C

Habitat types and species of principal importance in England

(Section 74 Countryside and Rights of Way Act 2000)

Habitats of Principal Importance	
Ancient and/or species-rich hedgerows	Mesotrophic standing water
Aquifer fed naturally fluctuating water bodies	*Modiolus modiolus* beds
Blanket bog	Mud habitats in deep water
Cereal field margins	Mudflats
Chalk rivers	Native pine woodlands
Coastal and floodplain grazing marsh	Purple moor grass and rush pastures
Coastal saltmarsh	Reedbeds
Coastal sand dunes	*Sabellaria alveolata* reefs
Coastal vegetated shingle	*Sabellaria spinulosa* reefs
Eutrophic standing waters	Saline lagoons
Fens	Seagrass beds
Limestone pavements	Serpulid reefs
Littoral and sublittoral chalk	Sheltered muddy gravels
Lophelia pertusa reefs	Sublittoral sands and gravels
Lowland beech and yew woodland	Tidal rapids
Lowland calcareous grassland	Upland calcareous grassland
Lowland dry acid grassland	Upland hay meadows
Lowland heathland	Lowland mixed deciduous woodland
Lowland meadows	Upland heathland
Lowland raised bog	Upland mixed ashwoods
Lowland wood-pasture and parkland	Upland oakwood
Machair	Upland birch woodland
Maerl beds	Wet woodland
Maritime cliff and slopes	

Species of Principal Importance

Vertebrates

Amphibian	*Bufo calamita*	Natterjack toad
Amphibian	*Rana lessonae*	Pool frog
Amphibian	*Triturus cristatus*	Great crested newt
Bird	*Acrocephalus paludicola*	Aquatic warbler
Bird	*Acrocephalus palustris*	Marsh warbler
Bird	*Alauda arvensis*	Skylark
Bird	*Botaurus stellaris*	Bittern
Bird	*Burhinus oedicnemus*	Stone curlew
Bird	*Caprimulgus europaeus*	Nightjar
Bird	*Carduelis cannabina*	Linnet
Bird	*Crex crex*	Corncrake
Bird	*Emberiza cirlus*	Cirl bunting
Bird	*Emberiza schoeniclus*	Reed bunting
Bird	*Jynx torquilla*	Wryneck
Bird	*Lanius collurio*	Red-backed shrike
Bird	*Loxia scotica*	Scottish crossbill
Bird	*Lullula arborea*	Woodlark
Bird	*Melanitta nigra*	Common scoter
Bird	*Miliaria calandra*	Corn bunting
Bird	*Muscicapa striata*	Spotted flycatcher
Bird	*Passer montanus*	Tree sparrow
Bird	*Perdix perdix*	Grey partridge
Bird	*Phalaropus lobatus*	Red-necked phalarope
Bird	*Pyrrhula pyrrhula*	Bullfinch
Bird	*Sterna dougallii*	Roseate tern
Bird	*Streptopelia turtur*	Turtle dove
Bird	*Tetrao tetrix*	Black grouse
Bird	*Tetrao urogallus*	Capercaillie
Bird	*Turdus philomelos*	Song thrush
Fish	*Alosa alosa*	Allis shad
Fish	*Alosa fallax*	Twaite shad
Fish	*Cetorhinus maximus*	Basking shark
Fish	*Coregonus albula*	Vendace
Fish	*Coregonus autumnalis*	Pollan
Fish	*Lota lota*	Burbot
Fish	*Raja batis*	Common skate
Fish	Commercial Fish species	
	Gadus morhua	Cod
	Merluccius merluccius	Hake
	Clupea harengus	Herring
	Trachurus trachurus	Horse mackerel
	Scomber scombrus	Mackerel
	Pleuronectes platessa	Plaice
	Pollachius virens	*Saithe*
	Solea solea	*Sole*
	Merlangius merlangus	Whiting
Fish	Deep water fish species	
	Raja hyperborea	Artic skate
	Aphanopus carbo	Black scabbardfish
	Molva dypterygia	Blue ling
	Reinhardtius hippoglossoides	Greenland halibut
	Merluccius merluccius	Hake
	Molva molva	Ling
	Lophius piscatorius	Sea monkfish/ Angler fish
	Hoplostethus atlanticus	Orange roughy
	Sebastes spp.	Redfish
	Coryphaenoides rupestris	Roundnose grenadier
	Brosme brosme	Torsk
	Macrourus berglax	Roughhead grenadier
	Argentina silus	Argentine/Greater silver smelt
	Micromesistius poutassou	Blue whiting
	Chaceon (Geryon) affinis	Deep-water red crab
Mammal	*Arvicola terrestris*	Water vole
Mammal	*Barbastella barbastellus*	Barbastelle bat
Mammal	*Lepus europaeus*	Brown hare
Mammal	*Lutra lutra*	European otter
Mammal	*Muscardinus avellanarius*	Dormouse
Mammal	*Myotis bechsteinii*	Bechstein's bat
Mammal	*Myotis myotis*	Greater mouse-eared bat
Mammal	*Phocoena phocoena*	Harbour porpoise
Mammal	*Pipistrellus pipistrellus*	Pipistrelle bat
Mammal	*Rhinolophus ferrumequinum*	Greater horseshoe bat
Mammal	*Rhinolophus hipposideros*	Lesser horseshoe bat
Mammal	*Sciurus vulgaris*	Red squirrel
Mammal	Baleen Whale species	
	Balaenoptera musculus	Blue whale
	Balaenoptera physalus	Fin whale
	Balaenoptera borealis	Sei whale
	Balaenoptera acutorostrata	Minke whale
	Megaptera novaeangliae	Humpback whale
	Eubalaena glacialis	Northern right whale
Mammal	Small dolphin species	
	Tursiops truncatus	Bottlenose dolphin
	Grampus griseus	Risso's dolphin
	Lagenorhynchus albirostris	White-beaked dolphin
	Lagenorhynchus acutus	Atlantic white-side dolphin
	Delphinus delphis	Common dolphin
	Stenella coeruleoalba	Striped dolphin
Mammal	Toothed whale species	

Species of Principal Importance – *continued*

	Hyperoodon ampullatus	Northern bottlenose whale
	Ziphius cavirostris	Cuvier's beaked whale
	Mesoplodon bidens	Sowerby's beaked whale
	Mesoplodon mirus	True's beaked whale
	Orcinus orca	Killer whale
	Globicephala melas	Long-finned pilot whale
	Physeter macrocephalus	Sperm whale
Reptile	*Lacerta agilis*	Sand lizard
Reptile	Marine turtle species	
	Dermochelys coriacea	Leatherback turtle
	Caretta caretta	Loggerhead turtle
	Lepidochelys kempii	Kemp's ridley turtle
	Chelonia mydas	Green turtle
	Eretmochelys imbricata	Hawksbill turtle

Invertebrates

Ant	*Anergates atratulus*	Dark guest ant
Ant	*Formica aquilonia*	Scottish wood ant
Ant	*Formica exsecta*	Narrow-headed ant
Ant	*Formica pratensis (= Formica nigricans)*	Black-backed meadow ant
Ant	*Formica rufibarbis*	Red-barbed ant
Ant	*Formica transkaucasica (= Formica candida)*	Bog ant
Bee	*Andrena ferox*	A mining bee
Bee	*Andrena gravida*	Banded mining bee
Bee	*Andrena lathyri*	A mining bee
Bee	*Bombus distinguendus*	Great yellow bumble bee
Bee	*Bombus humilis*	Brown-banded carder bee
Bee	*Bombus ruderatus*	Large garden bumble bee
Bee	*Bombus subterraneus*	Short haired bumble bee
Bee	*Bombus sylvarum*	Shrill carder bee
Bee	*Colletes floralis*	Northern colletes
Bee	*Nomada armata*	A cuckoo bee
Bee	*Nomada errans*	A cuckoo bee
Bee	*Osmia inermis*	A mason bee
Bee	*Osmia parietina*	A mason bee
Bee	*Osmia uncinata*	A mason bee
Bee	*Osmia xanthomelana*	A mason bee
Beetle	*Agabus brunneus*	A water beetle
Beetle	*Amara famelica*	A ground beetle
Beetle	*Anisodactylus poeciloides*	A ground beetle
Beetle	*Anostirus castaneus*	Chestnut coloured click beetle
Beetle	*Aphodius niger*	Beaulieu dung beetle
Beetle	*Bembidion argenteolum*	A ground beetle
Beetle	*Bidessus minutissimus*	A water beetle
Beetle	*Bidessus unistriatus*	A water beetle
Beetle	*Byctiscus populi*	Aspen leaf-rolling weevil
Beetle	*Carabus intricatus*	Blue ground beetle
Beetle	*Cathormiocerus britannicus*	Lizard weevil
Beetle	*Cicindela germanica*	Cliff tiger beetle
Beetle	*Cicindela hybrida*	Northern dune tiger beetle
Beetle	*Cicindela sylvatica*	Heath tiger beetle
Beetle	*Cryptocephalus coryli*	Hazel pot beetle
Beetle	*Cryptocephalus exiguus*	Pashford pot beetle
Beetle	*Cryptocephalus nitidulus*	Shining pot beetle
Beetle	*Cryptocephalus primarius*	A pot beetle
Beetle	*Cryptocephalus sexpunctatus*	Six-spotted pot beetle
Beetle	*Curimopsis nigrita*	Mire pill beetle
Beetle	*Donacia aquatica*	A reed beetle
Beetle	*Donacia bicolora*	A reed beetle
Beetle	*Ernoporus tiliae*	Bast bark beetle
Beetle	*Gastrallus immarginatus*	Maple wood-boring beetle
Beetle	*Gnorimus nobilis*	Noble chafer
Beetle	*Graphoderus zonatus*	Spangled water beetle
Beetle	*Harpalus froelichi*	A ground beetle
Beetle	*Helophorus laticollis*	A water beetle
Beetle	*Hydrochara caraboides*	Lesser silver water beetle
Beetle	*Hydroporus rufifrons*	A water beetle
Beetle	*Laccophilus obsoletus*	A water beetle
Beetle	*Limoniscus violaceus*	Violet click beetle
Beetle	*Lucanus cervus*	Stag beetle
Beetle	*Malachius aeneus*	Scarlet malachite beetle
Beetle	*Melanapion minimum*	Sallow guest weevil
Beetle	*Melanotus punctolineatus*	A click beetle
Beetle	*Oberea oculata*	Eyed longhorn beetle
Beetle	*Pachytychius haematocephalus*	Gilkicker weevil
Beetle	*Panagaeus cruxmajor*	Crucifix ground beetle
Beetle	*Paracymus aeneus*	Bembridge beetle
	Paratachys edmondsi (=Tachys edmondsi)	Edmonds' ground beetle
Beetle	*Procas granulicollis*	Climbing cordydalis weevil
Beetle	*Psylliodes sophiae*	Flixweed flea beetle
Beetle	*Pterostichus aterrimus*	A ground beetle
Beetle	*Pterostichus kugelanni*	Kugelann's ground beetle

Species of Principal Importance – *continued*

Beetle	*Rhynchaenus testaceus*	Alder flea weevil
Beetle	*Stenus palposus*	A rove beetle
Beetle	*Synaptus filiformis*	Hairy click beetle
Beetle	River shingle beetle species	
	Bembidion testaceum	A ground beetle
	Lionychus quadrillium	A ground beetle
	Hydrochus nitidicollis	A water beetle
	Meotica anglica	A water beetle
	Perileptus areolatus	A ground beetle
	Thinobius newberyi	A rove beetle
Bryozoa	*Lophopus crystallinus*	A freshwater bryozoan
Butterfly	*Argynnis adippe*	High brown fritillary
Butterfly	*Boloria euphrosyne*	Pearl-bordered fritillary
Butterfly	*Carterocephalus palaemon*	Chequered skipper
Butterfly	*Eurodryas aurinia (= Euphydryas aurinia)*	Marsh fritillary
Butterfly	*Hesperia comma*	Silver-spotted skipper
Butterfly	*Lycaena dispar*	Large copper
Butterfly	*Lysandra bellargus*	Adonis blue
Butterfly	*Maculinea arion*	Large blue
Butterfly	*Mellicta athalia*	Heath fritillary
Butterfly	*Plebejus argus*	Silver-studded blue
Coral	*Eunicella verricosa*	Pink sea-fan
Coral	*Leptopsammia pruvoti*	Sunset cupcoral
Cricket/ Grasshopper	*Decticus verrucivorus*	Wart-biter grasshopper
Cricket/ Grasshopper	*Gryllotalpa gryllotalpa*	Mole cricket
Cricket / Grasshopper	*Gryllus campestris*	Field cricket
Cricket / Grasshopper	*Stethophyma grossum*	Large marsh grasshopper
Crustacean	*Austropotamobius pallipes*	White-clawed crayfish
Crustacean	*Triops cancriformis*	Tadpole shrimp
Damsel/ Dragonfly	*Coenagrion mercuriale*	Southern damselfly
Fly	*Asilus crabroniformis*	Hornet robberfly
Fly	*Blera fallax*	A hoverfly
Fly	*Bombylius discolor*	Dotted beefly
Fly	*Bombylius minor*	Heath beefly
Fly	*Callicera spinolae*	Golden hoverfly
Fly	*Chrysotoxum octomaculatum*	A hoverfly
Fly	*Cliorismia rustica*	A stiletto fly
Fly	Doros conopseus	A hoverfly
Fly	*Dorycera graminum*	A picture-winged fly
Fly	*Eristalis cryptarum*	Bog hoverfly
Fly	*Hammerschmidtia ferruginea*	A hoverfly
Fly	*Lipsothrix ecucullata*	A cranefly
Fly	*Lipsothrix nervosa*	A cranefly
Fly	*Lipsothrix nigristigma*	A cranefly
Fly	*Odontomyia hydroleon*	A soldier fly
Fly	*Thereva lunulata*	A stiletto fly
Fly	*Thyridanthrax fenestratus*	Mottled beefly
Mollusc	*Anisus vorticulus*	Little ramshorn whirlpool snail
Mollusc	*Atrina fragilis*	Fan mussel
Mollusc	*Catinella arenaria*	Sandbowl snail
Mollusc	*Margaritifera margaritifera*	Freshwater pearl mussel
Mollusc	*Myxas glutinosa*	Glutinous snail
Mollusc	*Ostrea edulis*	Native oyster
Mollusc	*Pisidium tenuilineatum*	Fine-lined pea mussel
Mollusc	*Pseudanodonta complanata*	Depressed river mussel
Mollusc	*Segmentina nitida*	Shining ramshorn snail
Mollusc	*Thyasira gouldi*	Northern hatchet shell
Mollusc	*Vertigo angustior*	Narrow-mouthed whorl snail
Mollusc	*Vertigo genesii*	Round-mouthed whorl snail
Mollusc	*Vertigo geyeri*	Geyer's whorl snail
Mollusc	*Vertigo moulinsiana*	Desmoulin's whorl snail
Moth	*Acosmetia caliginosa*	Reddish buff
Moth	*Aspitates gilvaria gilvaria*	Straw belle
Moth	*Athetis pallustris*	Marsh moth
Moth	*Catocala promissa*	Light crimson underwing
Moth	*Catocala sponsa*	Dark crimson underwing
Moth	*Coleophora tricolor*	A case-bearing moth
Moth	*Coscinia cribraria bivittata*	Speckled footman
Moth	*Cosmia diffinis*	White-spotted pinion
Moth	*Cyclophora pendularia*	Dingy mocha
Moth	*Dicycla oo*	Heart moth
Moth	*Epione vespertaria (= Epione paralellaria)*	Dark bordered beauty
Moth	*Eustroma reticulata*	Netted carpet
Moth	*Heliophobus reticulata*	Bordered gothic
Moth	*Hemaris tityus*	Narrow-bordered bee hawk
Moth	*Hydrelia sylvata*	Waved carpet
Moth	*Hypena rostralis*	Buttoned snout
Moth	*Idaea dilutaria*	Silky wave
Moth	*Idaea ochrata cantiata*	Bright wave
Moth	*Jodia croceago*	Orange upperwing
Moth	*Lycia zonaria britannica*	Belted beauty

Species of Principal Importance – *continued*

Moth	*Macaria carbonia (=Semiothisa carbonaria)*	Netted mountain moth
Moth	*Mythimna turca*	Double line
Moth	*Noctua orbona*	Lunar yellow underwing
Moth	*Oria musculosa*	Brighton wainscot
Moth	*Pareulype berberata*	Barberry carpet
Moth	*Pechipogon strigilata*	Common fan-foot
Moth	*Polia bombycina*	Pale shining brown
Moth	*Pyropteron chrysidiformis (= Bembecia chrysidiformis)*	Fiery clearwing
Moth	*Rheumaptera hastata*	Argent and sable
Moth	*Shargacucullia lychnitis (= Cucullia lychnitis)*	Striped lychnis
Moth	*Siona lineata*	Black-veined moth
Moth	*Trichopteryx polycommata*	Barred toothed stripe
Moth	*Tyta luctuosa*	Four-spotted moth
Moth	*Xestia rhomboidea*	Square-spotted clay
Moth	*Xylena exsoleta*	Sword grass
Moth	*Zygaena loti scotica*	Slender Scotch burnet
Moth	*Zygaena viciae argyllensis*	New Forest burnet moth
Sea Anemone	*Amphianthus dohrnii*	Sea fan anemone
Sea Anemone	*Edwardsia ivelli*	Ivell's sea anemone
Sea Anemone	*Nematostella vectensis*	Starlet sea anemone
Spider	*Clubiona rosserae*	A spider
Spider	*Dolomedes plantarius*	Fen raft spider
Spider	*Eresus cinnaberinus (= Eresus sandaliatus, E. niger)*	Ladybird spider
Stone Fly	*Brachyptera putata*	A stonefly
Cicada	*Cicadetta montana*	New Forest cicada
Wasp	*Cerceris quadricincta*	A solitary wasp
Wasp	*Cerceris quinquefasciata*	A solitary wasp
Wasp	*Chrysis fulgida*	A ruby-tailed wasp
Wasp	*Homonotus sanguinolentus*	A spider wasp
Wasp	*Pseudepipona herrichii*	Purbeck mason wasp

Lower Plants

Alga	*Anotrichium barbatum*	Bearded anotrichium
Alga	*Ascophyllum nodosum ecad mackaii*	Knotted wrack
Fungus	*Armillaria ectypa*	An agaric
Fungus	*Battarraea phalloides*	A phalloid
Fungus	*Boletus regius*	Royal bolete
Fungus	*Boletus satanas*	Devil's bolete
Fungus	*Buglossoporus pulvinus (= Buglossoporus quercinus)*	Oak polypore
Fungus	*Hericium erinaceum*	Tree hedgehog fungus
Fungus	*Hygrocybe calyptraeformis*	Pink meadow cap
Fungus	*Hygrocybe spadicea*	Date coloured waxcap
Fungus	*Hypocreopsis rhododendri*	An ascomycete
Fungus	*Microglossum olivaceum*	An earth tongue
Fungus	*Poronia punctata*	Nail fungus
Fungus	*Tulostoma niveum*	A stalked puffball
Fungus	Threatened tooth fungi species	
	Bankera fuligineoalba	A tooth fungus
	Hydnellum aurantiacum	A tooth fungus
	Hydnellum caeruleum	A tooth fungus
	Hydnellum concrescens	A tooth fungus
	Hydnellum ferrugineum	A tooth fungus
	Hydnellum peckii	A tooth fungus
	Hydnellum scrobiculatum	A tooth fungus
	Hydnellum spongiosipes	A tooth fungus
	Phellodon confluens	A tooth fungus
	Phellodon melaleucus	A tooth fungus
	Phellodon tomentosus	A tooth fungus
	Sarcodon glaucopus	A tooth fungus
	Sarcodon imbricatus	A tooth fungus
	Sarcodon scabrosus	A tooth fungus
Lichen	*Alectoria ochroleuca*	Alpine sulphur-tresses
Lichen	*Arthothelium dictyosporum*	A lichen
Lichen	*Arthothelium macounii (= Arthothelium reagens)*	A lichen
Lichen	*Bacidia incompta*	A lichen
Lichen	*Belonia calcicola*	A lichen
Lichen	*Biatoridium monasteriense*	A lichen
Lichen	*Bryoria smithii*	A lichen
Lichen	*Buellia asterella*	Starry Breck-lichen
Lichen	*Calicium corynellum*	A lichen
Lichen	*Caloplaca aractina*	A lichen
Lichen	*Caloplaca luteoalba*	Orange-fruited elm-lichen
Lichen	*Catapyrenium psoromoides*	Tree catapyrenium
Lichen	*Cladonia botrytes*	Stump lichen
Lichen	*Cladonia mediterranea*	A reindeer lichen
Lichen	*Cladonia peziziformis*	A lichen
Lichen	*Chaenotheca phaeocephala*	A lichen
Lichen	*Collema dichotomum*	River jelly lichen
Lichen	*Enterographa elaborata*	A lichen
Lichen	*Enterographa sorediata*	A lichen
Lichen	*Graphina pauciloculata*	A lichen

Species of Principal Importance – *continued*

Lichen	*Gyalecta ulmi*	Elm gyalecta
Lichen	*Gyalideopsis scotica*	A lichen
Lichen	*Halecania rhypodiza*	A lichen
Lichen	*Heterodermia leucomelos*	Ciliate strap-lichen
Lichen	*Lecanactis hemisphaerica*	Churchyard lecanactis
Lichen	*Opegrapha paraxanthodes*	A lichen
Lichen	*Peltigera lepidophora*	Ear-lobed dog-lichen
Lichen	*Pseudocyphellaria aurata*	A lichen
Lichen	*Pseudocyphellaria norvegica*	A lichen
Lichen	*Schismatomma graphidioides*	A lichen
Lichen	*Squamarina lentigera*	Scaly Breck-lichen
Lichen	*Teloschistes chrysophthalmus*	A lichen
Lichen	*Thelenella modesta*	A lichen
Liverwort	*Acrobolbus wilsonii*	Wilson's pouchwort
Liverwort	*Adelanthus lindenbergianus*	Lindenberg's leafy liverwort
Liverwort	*Cephaloziella nicholsonii*	Greater copperwort
Liverwort	*Herbertus borealis*	Nothern prongwort
Liverwort	*Jamesoniella undulifolia*	Marsh earwort
Liverwort	*Lejeunea mandonii*	Alantic lejeunea
Liverwort	*Leiocolea rutheana*	Norfolk flapwort
Liverwort	*Marsupella profunda*	Western rustwort
Liverwort	*Pallavicinia lyellii*	Veilwort
Liverwort	*Petalophyllum ralfsii*	Petalwort
Liverwort	*Riccia huebeneriana*	Violet crystalwort
Moss	*Acaulon triquetrum*	Triangular pigmy moss
Moss	*Andreaea frigida*	Icy rock-moss
Moss	*Bartramia stricta*	Rigid apple moss
Moss	*Brachythecium appleyardiae*	Appleyard's feather moss
Moss	*Bryoerythrophyllum caledonicum*	Scottish beard-moss
Moss	*Bryum mamillatum*	Dune thread moss
Moss	*Bryum neodamense*	Long-leaved thread moss
Moss	*Bryum warneum*	Sea bryum
Moss	*Buxbaumia viridis*	Green shield moss
Moss	*Cryphaea lamyana*	Multi-fruited river moss
Moss	*Ditrichum cornubicum*	Cornish path moss
Moss	*Didymodon glauca (= Barbula glauca)*	Glaucous beard-moss
Moss	*Didymodon mamillosus (=Barbula mamillosa)*	Perthshire beard-moss
Moss	*Didymodon tomaculosus (= Barbula tomaculosa)*	Sausage beard-moss
Moss	*Ditrichum plumbicola*	Lead moss
Moss	*Drepanocladus vernicosus (= Hamatocaulis vernicosus)*	Slender green feather-moss
Moss	*Ephemerum stellatum*	Starry earth-moss
Moss	*Fissidens exiguus*	Tiny fern-moss
Moss	*Leptodontium gemmascens*	Thatch moss
Moss	*Orthodontium gracile*	Slender thread-moss
Moss	*Orthotrichum obtusifolium*	Blunt-leaved bristle-moss
Moss	*Orthotrichum pallens*	Pale bristle-moss
Moss	*Pohlia scotica*	Scottish pohlia
Moss	*Rhynchostegium rotundifolium*	Round-leaved feather-moss
Moss	*Seligeria carniolica (=Trochobryum carniolicum)*	Water rock-bristle
Moss	*Sematophyllum demissum*	Prostrate feather moss
Moss	*Sphagnum balticum*	Baltic bog moss
Moss	*Thamnobryum angustifolium*	Derbyshire feather-moss
Moss	*Thamnobryum cataractarum*	Yorkshire feather moss
Moss	*Tortula cernua (= Desmatodon cernuus)*	Flamingo moss
Moss	*Tortula freibergii*	Freiberg's screw-moss
Moss	*Weissia multicapsularis*	A moss
Moss	*Weissia rostellata*	Beaked beardless-moss
Moss	*Zygodon forsteri*	Knothole moss
Moss	*Zygodon gracilis*	Nowell's limestone moss
Stonewort	*Chara connivens*	Convergent stonewort
Stonewort	*Chara curta*	Lesser bearded stonewort
Stonewort	*Chara muscosa*	Mossy stonewort
Stonewort	*Nitella gracilis*	Slender stonewort
Stonewort	*Nitella tenuissima*	Dwarf stonewort
Stonewort	*Nitellopsis obtusa*	Starry stonewort
Stonewort	*Tolypella intricata*	Tassel stonewort
Stonewort	*Tolypella prolifera*	Great tassel stonewort

Higher Plants

Vascular Plant	*Alchemilla minima*	An alchemilla
Vascular Plant	*Alisma gramineum*	Ribbon-leaved water-plantain
Vascular Plant	*Apium repens*	Creeping marshwort
Vascular Plant	*Arabis glabra*	Tower mustard
Vascular Plant	*Artemisia norvegica*	Norwegian mugwort
Vascular Plant	*Asparagus officinalis prostratus*	Wild asparagus

Species of Principal Importance – *continued*

Vascular Plant	*Athyrium flexile*	Newman's lady-fern
Vascular Plant	*Bromus interruptus*	Interrupted brome
Vascular Plant	*Calamagrostis scotica*	Scottish small-reed
Vascular Plant	*Carex muricata muricata*	Prickly sedge
Vascular Plant	*Carex vulpine*	True fox-sedge
Vascular Plant	*Centaurea cyanus*	Cornflower
Vascular Plant	*Cerastium nigrescens*	Shetland mouse-ear
Vascular Plant	*Cochlearia micacea*	Mountain scurvy-grass
Vascular Plant	*Coincya wrightii*	Lundy cabbage
Vascular Plant	*Cotoneaster cambricus*	Wild cotoneaster
Vascular Plant	*Crepis foetida*	Stinking hawk's-beard
Vascular Plant	*Cypripedium calceolus*	Lady's-slipper orchid
Vascular Plant	*Damasonium alisma*	Starfruit
Vascular Plant	*Dianthus armeria*	Deptford pink
Vascular Plant	*Epipactis youngiana*	Young's helleborine
Vascular Plant	Endemic eyebright species	
	Euphrasia cambrica	An eyebright
	Euphrasia campbelliae	An eyebright
	Euphrasia heslop-harrisonii	An eyebright
	Euphrasia rivularis	An eyebright
	Euphrasia rotundifolia	An eyebright
	Euphrasia vigursii	An eyebright
Vascular Plant	*Filago lutescens*	Red-tipped cudweed
Vascular Plant	*Filago pyramidata*	Broad-leaved cudweed
Vascular Plant	*Fumaria occidentalis*	Western ramping-fumitory
Vascular Plant	*Fumaria purpurea*	Purple ramping-fumitory
Vascular Plant	*Galeopsis angustifolia*	Red hemp-nettle
Vascular Plant	*Galium tricornutum*	Corn cleavers
Vascular Plant	*Gentianella anglica*	Early gentian
Vascular Plant	*Gentianella uliginosa*	Dune gentian
Vascular Plant	*Hieracium* Sect. *Alpestria*	Hawkweeds
Vascular Plant	*Juncus pygmaeus*	Pygmy rush
Vascular Plant	*Juniperus communis*	Juniper
Vascular Plant	*Leersia oryzoides*	Cut-grass
Vascular Plant	Rock sea-lavender species	
	Limonium britannicum	A rock sea-lavander
	Limonium dodartiforme	A rock sea-lavander
	Limonium loganicum	A rock sea-lavander
	Limonium paradoxum	A rock sea-lavander
	Limonium parvum	A rock sea-lavander
	Limonium procerum	A rock sea-lavander
	Limonium recurvum	A rock sea-lavander
	Limonium transwillianum	A rock sea-lavander
Vascular Plant	*Linnaea borealis*	Twinflower
Vascular Plant	*Liparis loeselii*	Fen orchid
Vascular Plant	*Luronium natans*	Floating water plantain
Vascular Plant	*Lycopodiella inundata*	Marsh clubmoss
Vascular Plant	*Melampyrum sylvaticum*	Small cow-wheat
Vascular Plant	*Mentha pulegium*	Pennyroyal
Vascular Plant	*Najas flexilis*	Slender naiad
Vascular Plant	*Najas marina*	Holly-leaved naiad
Vascular Plant	*Pilularia globulifera*	Pillwort
Vascular Plant	*Potamogeton compressus*	Grass-wrack pondweed
Vascular Plant	*Potamogeton rutilus*	Shetland pondweed
Vascular Plant	*Ranunculus tripartitus*	Three-lobed water-crowfoot
Vascular Plant	*Rumex rupestris*	Shore dock
Vascular Plant	*Salix lanata*	Woolly willow
Vascular Plant	*Saxifraga hirculus*	Yellow marsh saxifrage
Vascular Plant	*Scandix pecten-veneris*	Shepherd's needle
Vascular Plant	*Schoenoplectus triqueter*	Triangular club-rush
Vascular Plant	*Scleranthus perennis prostratus*	Prostrate perennial knawel
Vascular Plant	*Silene gallica*	Small-flowered catchfly
Vascular Plant	*Sium latifolium*	Greater water-parsnip
Vascular Plant	*Sorbus leyana*	A whitebeam
Vascular Plant	*Spiranthes romanzoffiana*	Irish lady's tresses
Vascular Plant	*Thlaspi perfoliatum*	Perfoliate pennycress
Vascular Plant	*Torilis arvensis*	Spreading hedge-parsley
Vascular Plant	*Trichomanes speciosum*	Killarney fern
Vascular Plant	*Valerianella rimosa*	Broad-fruited corn salad
Vascular Plant	*Woodsia ilvensis*	Oblong woodsia

Annex D
Convention on Wetlands of International Importance Especially as Waterfowl Habitat

Ramsar 2.2.1971: as amended by the Protocol of 3.12.1982

The Contracting Parties,

Recognizing the interdependence of Man and his environment;

Considering the fundamental ecological functions of wetlands as regulators of water regimes and as habitats supporting a characteristic flora and fauna, especially waterfowl;

Being convinced that wetlands constitute a resource of great economic, cultural, scientific, and recreational value, the loss of which would be irreparable;

Desiring to stem the progressive encroachment on and loss of wetlands now and in the future;

Recognizing that waterfowl in their seasonal migrations may transcend frontiers and so should be regarded as an international resource;

Being confident that the conservation of wetlands and their flora and fauna can be ensured by combining far-sighted national policies with co-ordinated international action;

Have agreed as follows:

Article 1

1 For the purpose of this Convention wetlands are areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres.

2 For the purpose of this Convention waterfowl are birds ecologically dependent on wetlands.

Article 2

1 Each Contracting Party shall designate suitable wetlands within its territory for inclusion in a List of Wetlands of International Importance, hereinafter referred to as 'the list' which is maintained by the bureau established under Article 8. The boundaries of each wetland shall be precisely described and also delimited on a map and they may incorporate riparian and coastal zones adjacent to the wetlands, and islands or bodies of marine water deeper than six metres at low tide lying within the wetlands, especially where these have importance as waterfowl habitat.

2 Wetlands should be selected for the List on account of their international significance in terms of ecology, botany, zoology, limnology or hydrology. In the first instance wetlands of international importance to waterfowl at any season should be included.

3 The inclusion of a wetland in the list does not prejudice the exclusive sovereign rights of the Contracting Party in whose territory the wetland is suited.

4 Each Contracting Party shall designate at least one wetland to be included in the List when signing this Convention or when depositing its instrument of ratification or accession as provided in Article 9.

5 Any Contracting Party shall have the right to add to the List further wetlands situated within its territory, to extend the boundaries of those wetlands already included by it in the List, or, because of its urgent national interests, to delete or restrict the boundaries of wetlands already included by it in the List and shall, at the earliest possible time, inform the organization or government responsible for the continuing bureau duties specified in Article 8 of any such changes.

6 Each Contracting Party shall consider its international responsibilities for the conservation, management and wise use of migratory stocks of waterfowl, both when designating entries for the List and when exercising its right to change entries in the List relating to wetlands within its territory.

Article 3

1 The Contracting Parties shall formulate and implement their planning so as to promote the conservation of the wetlands included in the List, and as far as possible the wise use of wetlands in their territory.

2 Each Contracting Party shall arrange to be informed at the earliest possible time if the ecological character of any wetland in its territory and included in the List has changed, is changing or is likely to change as the result of technological developments, pollution or other human interference. Information on such changes shall be passed without delay to the organization or government responsible for the continuing bureau duties specified in Article 8.

Article 4

1 Each Contracting Party shall promote the conservation of wetlands and waterfowl by establishing nature reserves on wetlands, whether they are included in the List or not, and provide adequately for their wardening.

2 Where a Contracting Party in its urgent national interest, deletes or restricts the boundaries of a wetland included in the List, it should as far as possible compensate for any loss of wetland resources, and in particular it should create additional nature reserves for waterfowl and for the protection, either in the same area or elsewhere, of an adequate portion of the original habitat.

3 The Contracting Parties shall encourage research and the exchange of data and publications regarding wetlands and their flora and fauna.

4 The Contracting Parties shall endeavour through management to increase waterfowl populations on appropriate wetlands.

5 The Contracting Parties shall promote the training of personnel competent in the fields of wetland research, management and wardening.

Article 5

1 The Contracting Parties shall consult with each other about implementing obligations arising from the Convention especially in the case of a wetland extending over the territories of more than one Contracting Party or where a water system is shared by Contracting Parties. They shall at the same time endeavour to co-ordinate and support present and future policies and regulations concerning the conservation of wetlands and their flora and fauna.

Article 6

1 The Contracting Parties shall, as the necessity arises, convene Conferences on the Conservation of Wetlands and Waterfowl.

2 The Conferences shall have an advisory character and shall be competent, inter alia:

a. to discuss the implementation of this Convention

b. to discuss additions to and changes in the List;

c. to consider information regarding changes in the ecological character of wetlands included in the List provided in accordance with paragraph 2 of Article 3;

d. to make general or specific recommendations to the Contracting Parties regarding the conservation, management and wise use of wetlands and their flora and fauna;

e. to request relevant international bodies to prepare reports and statistics on matters which are essentially international in character affecting wetlands;

3 The Contracting Parties shall ensure that those responsible at all levels for wetlands management shall be informed of, and take into consideration, recommendations of such Conferences concerning the conservation, management and wise use of wetlands and their flora and fauna.

Article 7

1 The representatives of the Contracting Parties at such Conferences should include persons who are experts on wetlands or waterfowl by reason of knowledge and experience gained in scientific, administrative or other appropriate capacities.

2 Each of the Contracting Parties represented at a Conference shall have one vote, recommendations being adopted by a simple majority of the votes cast, provided that not less than half the Contracting Parties cast votes.

Article 8

1 The International Union for Conservation of Nature and Natural Resources shall perform the continuing bureau duties under this Convention until such time as another organization or government is appointed by a majority of two-thirds of all Contracting Parties.

2 The continuing bureau duties shall be, *inter alia*:

a. to assist in the convening and organizing of Conferences specified in Article 6;

b. to maintain the List of Wetlands of International Importance and to be informed by the Contracting Parties of any additions, extensions, deletions or restrictions concerning wetlands included in the List provided in accordance with paragraph 5 of Article 2;

c. to be informed by the Contracting Parties of any changes in the ecological character of wetlands included in the List provided in accordance with paragraph 2 of Article 3;

d. to forward notification of any alterations to the List, or changes in character of wetlands included therein, to all Contracting Parties and to arrange for these matters to be discussed at the next Conference;

e. to make known to the Contracting Party concerned, the recommendations of the Conferences in respect of such alterations to the List or of changes in the character of wetlands included therein.

Article 9

1 This Convention shall remain open for signature indefinitely.

2 Any member of the United Nations or of one of the Specialized Agencies or of the International Atomic Energy Agency or Party to the Statute of the International Court of Justice may become a Party to this Convention by:

a. signature without reservation as to ratification

b. signature subject to ratification followed by ratification

c. accession.

3 Ratification or accession shall be effected by the deposit of an instrument of ratification or accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization (hereinafter referred to as 'the Depositary').

Article 10

1 This Convention shall enter into force four months after seven States have become Parties to this Convention in accordance with paragraph 2 of Article 9.

2 Thereafter this Convention shall enter into force for each Contracting Party four months after the day of its signature without reservation as to ratification, or its deposit of an instrument of ratification or accession.

Article 10 bis

1 The Convention may be amended at a meeting of the Contracting Parties convened for that purpose in accordance with this article.

2 Proposals for amendment may be made by any Contracting Party.

3 The text of any proposed amendments and the reasons for it shall be communicated to the organization or government performing the continuing bureau duties under the Convention (hereinafter referred to as 'the Bureau') and shall promptly be communicated by the Bureau to all Contracting Parties. Any comments on the text by the Contracting Parties shall be communicated to the Bureau within three months of the date on which the amendments were communicated to the Contracting Parties by the Bureau. The Bureau shall, immediately after the last day for submission of comments, communicate to the Contracting Parties all comments submitted by that day.

4 A meeting of Contracting Parties to consider an amendment communicated in accordance with paragraph 3 shall be convened by the Bureau upon the written request of one third of the Contracting Parties. The Bureau shall consult the Parties concerning the time and venue of the meeting.

5 Amendments shall be adopted by a two-thirds majority of the Contracting Parties present and voting.

6 An amendment adopted shall enter into force for the Contracting Parties which have accepted it on the first day the fourth month following the date on which two thirds of the Contracting Parties have deposited an instrument of acceptance with the Depositary. For each Contracting Party, which deposits an instrument of acceptance after the date on which two thirds of the Contracting Parties have deposited an instrument of acceptance, the amendment shall enter into force the first day of the fourth month following the date of the deposit of its instrument of acceptance.

Article 11

1 This Convention shall continue in force for an indefinite period.

2 Any Contracting Party may denounce this Convention after a period of five years from the date on which it entered into force for that Party by giving written notice thereof to the Depository. Denunciation shall take effect four months after the day on which notice thereof is received by the Depository.

Article 12

1 The Depositary shall inform all States that have signed and acceded to this Convention as soon as possible of:

a. signatures to the Convention;

b. deposits of instruments of ratification of this Convention;

c. deposits of instruments of accession to this Convention;

d. the date of entry into force of this Convention;

e. notifications of denunciation of this Convention.

2 When this Convention has entered into force, the Depository shall have it registered with the Secretariat of the United Nations in accordance with Article 102 of the Charter.

In WITNESS WHEREOF, the undersigned, being duly authorized to that effect, have signed this Convention.

DONE at Ramsar this 2nd day of February 1971, in a single original in the English, French, German and Russian languages, all texts being equally authentic which shall be deposited with the Depositary which shall send true copies thereof to all Contracting Parties.

Articles 6 and 7 of the Convention on Wetlands of International Importance especially as Waterfowl Habitat as amended by the Conference of the Parties on 28.5.1987

(amendments are reproduced below in italics)

Article 6

1 *There shall be established a Conference of the Contracting Parties to review and promote the implementation of this Convention. The Bureau referred to in Article 8, paragraph 1, shall convene ordinary meetings of the Conference of the Contracting Parties at intervals of not more than three years, unless the Conference decides otherwise, and extraordinary meetings at the written requests of at least one third of the Contracting Parties. Each ordinary meeting of the Conference of the Contracting Parties shall determine the time and venue of the next ordinary meeting.*

2 *The Conference of the Contracting Parties shall be competent:*

a. to discuss the implementation of this Convention;

b. to discuss additions to and changes in the List;

c. to consider information regarding changes in the ecological character of wetlands included in the List provided in accordance with paragraph 2 of Article 3;

d. to make general or specific recommendations to the Contracting Parties regarding the conservation, management and wise use of wetlands and their flora and fauna;

e. to request relevant international bodies to prepare reports and statistics on matters which are essentially international in character affecting wetlands;

f. to adopt other recommendations, or resolutions, to promote the functioning of this Convention.

3 The Contracting Parties shall ensure that those responsible at all levels for wetlands management shall be informed of, and take into consideration, recommendations of such Conferences concerning the conservation, management and wise use of wetlands and their flora and fauna.

4 *The Conference of the Contracting Parties shall adopt rules of procedure for each of its meetings.*

5 *The Conference of the Contracting Parties shall establish and keep under review the financial regulations of this Convention. At each of its ordinary meetings, it shall adopt the budget for the next financial period by a two-third majority of Contracting Parties present and voting.*

6 *Each Contracting Party shall contribute to the budget according to a scale of contributions adopted by unanimity of the Contracting Parties present and voting at a meeting of the ordinary Conference of the Contracting Parties.*

Article 7

1 The representatives of the Contracting Parties at such Conferences should include persons who are experts on wetlands or waterfowl by reason of knowledge and experience gained in scientific, administrative or other appropriate capacities.

2 *Each of the Contracting Parties represented at a Conference shall have one vote, recommendations, resolutions and decisions being adopted by a simple majority of the Contracting Parties present and voting, unless otherwise provided for in this Convention.*

Annex E
Council Directive of 2 April 1979 on the Conservation of Wild Birds (79/409/EEC)

The Council of the European Communities

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission[1]

Having regard to the opinion of the European Parliament[2]

Having regard to the opinion of the Economic and Social Committee[3]

Whereas the Council declaration of 22 November 1973 on the programme of action of the European Communities on the environment[4] calls for specific action to protect birds, supplemented by the resolution of the Council of the European Communities and of the representatives of the Governments of the Member States meeting within the Council of 17 May 1977 on the continuation and implementation of a European Community policy and action programme on the environment[5];

Whereas a large number of species of wild birds naturally occurring in the European territory of the Member States are declining in number, very rapidly in some cases; whereas this decline represents a serious threat to the conservation of the natural environment, particularly because of the biological balances threatened thereby;

Whereas the species of wild birds naturally occurring in the European territory of the Member States are mainly migratory species; whereas such species constitute a common heritage and whereas effective bird protection is typically a trans-frontier environment problem entailing common responsibilities;

Whereas the conditions of life for birds in Greenland are fundamentally different from those in the other regions of the European territory of the Member States on account of the general circumstances and in particular the climate, the low density of population and the exceptional size and geographical situation of the island;

Whereas therefore this Directive should not apply to Greenland;

Whereas the conservation of the species of wild birds naturally occurring in the European territory of the Member States is necessary to attain, within the operation of the common market, of the Community's objectives regarding the improvement of living conditions, a harmonious development of economic activities throughout the Community and a continuous and balanced expansion, but the necessary specific powers to act have not been provided for in the Treaty;

1 OJ No C 24, 1.2.1977, p. 3; OJ No C 201, 23.8.1977, p. 2.
2 OJ No C 163, 11.7.1977, p. 28.
3 OJ No C 152, 29.6.1977, p. 3.
4 OJ No C 112, 20.12.1973, p. 40.
5 OJ No C 139, 13.6.1977, p. 1.

Whereas the measures to be taken must apply to the various factors which may affect the numbers of birds, namely the repercussions of man's activities and in particular the destruction and pollution of their habitats, capture and killing by man and the trade resulting from such practices; whereas the stringency of such measures should be adapted to the particular situation of the various species within the framework of a conservation policy;

Whereas conservation is aimed at the long-term protection and management of natural resources as an integral part of the heritage of the peoples of Europe; whereas it makes it possible to control natural resources and governs their use on the basis of the measures necessary for the maintenance and adjustment of the natural balances between species as far as is reasonably possible;

Whereas the preservation, maintenance or restoration of a sufficient diversity and area of habitats is essential to the conservation of all species of birds; whereas certain species of birds should be the subject of special conservation measures concerning their habitats in order to ensure their survival and reproduction in their area of distribution; whereas such measures must also take account of migratory species and be coordinated with a view to setting up a coherent whole;

Whereas, in order to prevent commercial interests from exerting a possible harmful pressure on exploitation levels it is necessary to impose a general ban on marketing and to restrict all derogation to those species whose biological status so permits, account being taken of the specific conditions obtaining in the different regions;

Whereas, because of their high population level, geographical distribution and reproductive rate in the Community as a whole, certain species may be hunted, which constitutes acceptable exploitation; where certain limits are established and respected, such hunting must be compatible with maintenance of the population of these species at a satisfactory level;

Whereas the various means, devices or methods of large-scale or non-selective capture or killing and hunting with certain forms of transport must be banned because of the excessive pressure which they exert or may exert on the numbers of the species concerned;

Whereas, because of the importance which may be attached to certain specific situations, provision should be made for the possibility of derogations on certain conditions and subject to monitoring by the Commission;

Whereas the conservation of birds and, in particular, migratory birds still presents problems which call for scientific research; whereas such research will also make it possible to assess the effectiveness of the measures taken;

Whereas care should be taken in consultation with the Commission to see that the introduction of any species of wild bird not naturally occurring in the European territory of the Member States does not cause harm to local flora and fauna;

Whereas the Commission will every three years prepare and transmit to the Member States a composite report based on information submitted by the Member States on the application of natural provisions introduced pursuant to this Directive;

Whereas it is necessary to adapt certain Annexes rapidly in the light of technical and scientific progress; whereas, to facilitate the implementation of the measures needed for this purpose,

provision should be made for a procedure establishing close cooperation between the Member States and the Commission in a Committee for Adaptation to Technical and Scientific Progress,

Has Adopted this Directive:

Article 1

1 This Directive relates to the conservation of all species of naturally occurring birds in the wild state in the European territory of the Member States to which the Treaty applies. It covers the protection, management and control of these species and lays down rules for their exploitation.

2 It shall apply to birds, their eggs, nests and habitats.

3 This Directive shall not apply to Greenland.

Article 2

Member States shall take the requisite measures to maintain the population of the species referred to in Article 1 at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level.

Article 3

1 In the light of the requirements referred to in Article 2, Member States shall take the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats for all the species of birds referred to in Article 1.

2 The preservation, maintenance and re-establishment of biotopes and habitats shall include primarily the following measures:

a. creation of protected areas;

b. upkeep and management in accordance with the ecological needs of habitats inside and outside the protected zones;

c. re-establishment of destroyed biotopes;

d. creation of biotopes.

Article 4

1 The species mentioned in Annex I shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution.

In this connection, account shall be taken of:

a. species in danger of extinction;

b. species vulnerable to specific changes in their habitat;

c. species considered rare because of small populations or restricted local distribution;

d. other species requiring particular attention for reasons of the specific nature of their habitat.

Trends and variations in population levels shall be taken into account as a background for evaluations.

Member States shall classify in particular the most suitable territories in number and size as special protection areas for the conservation of these species, taking into account their protection requirements in the geographical sea and land area where this Directive applies.

2 Member States shall take similar measures for regularly occurring migratory species not listed in Annex I, bearing in mind their need for protection in the geographical sea and land area where this Directive applies, as regards their breeding, moulting and wintering areas and staging posts along their migration routes. To this end, Member States shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance.

3 Member States shall send the Commission all relevant information so that it may take appropriate initiatives with a view to the coordination necessary to ensure that the areas provided for in paragraphs 1 and 2 above form a coherent whole which meets the protection requirements of these species in the geographical sea and land area where this Directive applies.

4 In respect of the protection areas referred to in paragraphs 1 and 2 above, Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.

Article 5

Without prejudice to Articles 7 and 9, Member States shall take the requisite measures to establish a general system of protection for all species of birds referred to in Article 1, prohibiting in particular:

1. deliberate killing or capture by any method;

2. deliberate destruction of, or damage to, their nests and eggs or removal of their nests;

3. taking their eggs in the wild and keeping these eggs even if empty;

4. deliberate disturbance of these birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of this Directive;

5. keeping birds of species the hunting and capture of which is prohibited.

Article 6

1 Without prejudice to the provisions of paragraphs 2 and 3, Member States shall prohibit, for all the bird species referred to in Article 1, the sale, transport for sale, keeping for sale and the

offering for sale of live or dead birds and of any readily recognisable parts or derivatives of such birds.

2 The activities referred to in paragraph 1 shall not be prohibited in respect of the species referred to in Annex III/1, provided that the birds have been legally killed or captured or otherwise legally acquired.

3 Member States may, for the species listed in Annex III/2, allow within their territory the activities referred to in paragraph 1, making provision for certain restrictions, provided the birds have been legally killed or captured or otherwise legally acquired.

Member States wishing to grant such authorisation shall first of all consult the Commission with a view to examining jointly with the latter whether the marketing of specimens of such species would result or could reasonably be expected to result in the population levels, geographical distribution or reproductive rate of the species being endangered throughout the Community. Should this examination prove that the intended authorisation will, in the view of the Commission, result in any one of the aforementioned species being thus endangered or in the possibility of their being thus endangered, the Commission shall forward a reasoned recommendation to the Member State concerned stating its opposition to the marketing of the species in question. Should the Commission consider that no such risk exists, it will inform the Member State concerned accordingly.

The Commission's recommendation shall be published in the *Official Journal of the European Communities*.

Member States granting authorisation pursuant to this paragraph shall verify at regular intervals that the conditions governing the granting of such authorisation continue to be fulfilled.

4 The Commission shall carry out studies on the biological status of the species listed in Annex III/3, and on the effects of marketing on such status.

It shall submit, at the latest four months before the time limit referred to in Article 18(1) of this Directive, a report and its proposals to the Committee referred to in Article 16, with a view to a decision on the entry of such species in Annex III/2.

Pending this decision, the Member States may apply existing national rules to such species without prejudice to paragraph 3 hereof.

Article 7

1 Owing to their population level, geographical distribution and reproductive rate throughout the Community, the species listed in Annex II may be hunted under national legislation. Member States shall ensure that the hunting of these species does not jeopardise conservation efforts in their distribution area.

2 The species referred to in Annex II/1 may be hunted in the geographical sea and land area where this Directive applies.

3 The species referred to in Annex II/2 may be hunted only in the Member States in respect of which they are indicated.

4 Member States shall ensure that the practice of hunting, including falconry if practised, as carried on in accordance with the national measures in force, complies with the principles of wise use and ecologically balanced control of the species of birds concerned and that this practice is compatible as regards the population of these species, in particular migratory species, with the measures resulting from Article 2. They shall see in particular that the species to which hunting laws apply are not hunted during the rearing season nor during the various stages of reproduction. In the case of migratory species, they shall see in particular that the species to which hunting regulations apply are not hunted during their period of reproduction or during their return to their rearing grounds. Member States shall send the Commission all relevant information on the practical application of their hunting regulations.

Article 8

1 In respect of the hunting, capture or killing of birds under this Directive, Member States shall prohibit the use of all means, arrangements or methods used for the large-scale or non-selective capture or killing of birds or capable of causing the local disappearance of a species, in particular the use of those listed in Annex IV (a).

2 Moreover, Member States shall prohibit any hunting from the modes of transport and under the conditions mentioned in Annex IV (b).

Article 9

1 Member States may derogate from the provisions of Articles 5, 6, 7 and 8, where there is no other satisfactory solution, for the following reasons:

a.
- in the interests of public health and safety,
- in the interests of air safety,
- to prevent serious damage to crops, livestock, forests, fisheries and water,
- for the protection of flora and fauna;

b. for the purposes of research and teaching, of re-population, of re-introduction and for the breeding necessary for these purposes;

c. to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers.

2 The derogations must specify:

- the species which are subject to the derogations,
- the means, arrangements or methods authorised for capture or killing,
- the conditions of risk and the circumstances of time and place under which such derogations may be granted,
- the authority empowered to declare that the required conditions obtain and to decide what means, arrangements or methods may be used, within what limits and by whom,
- the controls which will be carried out.

3 Each year the Member States shall send a report to the Commission on the implementation of this Article.

4 On the basis of the information available to it, and in particular the information communicated to it pursuant to paragraph 3, the Commission shall at all times ensure that the consequences of these derogations are not incompatible with this Directive. It shall take appropriate steps to this end.

Article 10

1 Member States shall encourage research and any work required as a basis for the protection, management and use of the population of all species of bird referred to in Article 1.

2 Particular attention shall be paid to research and work on the subjects listed in Annex V. Member States shall send the Commission any information required to enable it to take appropriate measures for the coordination of the research and work referred to in this Article.

Article 11

Member States shall see that any introduction of species of bird which do not occur naturally in the wild state in the European territory of the Member States does not prejudice the local flora and fauna. In this connection they shall consult the Commission.

Article 12

1 Member States shall forward to the Commission every three years, starting from the date of expiry of the time limit referred to in Article 18(1), a report on the implementation of national provisions taken thereunder.

2 The Commission shall prepare every three years a composite report based on the information referred to in paragraph 1. That part of the draft report covering the information supplied by a Member State shall be forwarded to the authorities of the Member State in question for verification. The final version of the report shall be forwarded to the Member States.

Article 13

Application of the measures taken pursuant to this Directive may not lead to deterioration in the present situation as regards the conservation of species of birds referred to in Article 1.

Article 14

Member States may introduce stricter protective measures than those provided for under this Directive.

Article 15

Such amendments as are necessary for adapting Annexes I and V to this Directive to technical and scientific progress and the amendments referred to in the second paragraph of Article 6(4) shall be adopted in accordance with the procedure laid down in Article 17.

Article 16

1 For the purposes of the amendments referred to in Article 15 of this Directive, a Committee for the Adaptation to Technical and Scientific Progress (hereinafter called 'the Committee'), consisting of representatives of the Member States and chaired by a representative of the Commission, is hereby set up.

Article 17

1 The Commission shall be assisted by the Committee for the Adaptation to Technical and Scientific Progress.

2 Where reference is amde to this Article, Articles 5 and 7 of Decision 1999/468/EC (1) shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3 The committee shall adopt its rules of procedure.

Article 18

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within two years of its notification. They shall forthwith inform the Commission thereof.

2 Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

Article 19

This Directive is addressed to the Member States.

Done at Luxembourg, 2 April 1979.

For the Council

The President

J. François-Poncet

1 OJ L 184, 17.7.1999, p.23

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

The Council of the European Communities

Having regard to the Treaty establishing the European Economic Community, and in particular Article 130s thereof,

Having regard to the proposal from the Commission[1]

Having regard to the opinion of the European Parliament[2]

Having regard to the opinion of the Economic and Social Committee[3]

Whereas the preservation, protection and improvement of the quality of the environment, including the conservation of natural habitats and of wild fauna and flora, are an essential objective of general interest pursued by the Community, as stated in Article 130r of the Treaty;

Whereas the European Community policy and action programme on the environment (1987 to 1992)[4] makes provision for measures regarding the conservation of nature and natural resources;

Whereas, the main aim of this Directive being to promote the maintenance of biodiversity, taking account of economic, social, cultural and regional requirements, this Directive makes a contribution to the general objective of sustainable development; whereas the maintenance of such biodiversity may in certain cases require the maintenance, or indeed the encouragement, of human activities;

Whereas, in the European territory of the Member States, natural habitats are continuing to deteriorate and an increasing number of wild species are seriously threatened; whereas given that the threatened habitats and species form part of the Community's natural heritage and the threats to them are often of a transboundary nature, it is necessary to take measures at Community level in order to conserve them;

Whereas, in view of the threats to certain types of natural habitat and certain species, it is necessary to define them as having priority in order to favour the early implementation of measures to conserve them;

Whereas, in order to ensure the restoration or maintenance of natural habitats and species of Community interest at a favourable conservation status, it is necessary to designate special areas of conservation in order to create a coherent European ecological network according to a specified timetable;

1 OJ No C 247, 21.9.1988, p. 3; and OJ No C 195, 3.8.1990, p. 1.
2 OJ No C 75, 20.3.1991, p. 12.
3 OJ No C 31, 6.2.1991, p. 25.
4 OJ No C 328, 7.12.1987, p. 1.

Whereas all the areas designated, including those classified now or in the future as special protection areas pursuant to Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds[5], will have to be incorporated into the coherent European ecological network;

Whereas it is appropriate, in each area designated, to implement the necessary measures having regard to the conservation objectives pursued;

Whereas sites eligible for designation as special areas of conservation are proposed by the Member States but whereas a procedure must nevertheless be laid down to allow the designation in exceptional cases of a site which has not been proposed by a Member State but which the Community considers essential for either the maintenance or the survival of a priority natural habitat type or a priority species;

Whereas an appropriate assessment must be made of any plan or programme likely to have a significant effect on the conservation objectives of a site which has been designated or is designated in future;

Whereas it is recognised that the adoption of measures intended to promote the conservation of priority natural habitats and priority species of Community interest is a common responsibility of all Member States; whereas this may, however, impose an excessive financial burden on certain Member States given, on the one hand, the uneven distribution of such habitats and species throughout the Community and, on the other hand, the fact that the 'polluter pays' principle can have only limited application in the special case of nature conservation;

Whereas it is therefore agreed that, in this exceptional case, a contribution by means of Community co-financing should be provided for within the limits of the resources made available under the Community's decisions;

Whereas land-use planning and development policies should encourage the management of features of the landscape which are of major importance for wild fauna and flora;

Whereas a system should be set up for surveillance of the conservation status of the natural habitats and species covered by this Directive;

Whereas a general system of protection is required for certain species of flora and fauna to complement Directive 79/409/EEC; whereas provision should be made for management measures for certain species, if their conservation status so warrants, including the prohibition of certain means of capture or killing, whilst providing for the possibility of derogations on certain conditions;

Whereas, with the aim of ensuring that the implementation of this Directive is monitored, the Commission will periodically prepare a composite report based, *inter alia*, on the information sent to it by the Member States regarding the application of national provisions adopted under this Directive;

5 OJ No L 103, 25.4.1979, p. 1. Directive as last amended by Directive 91/244/EEC (OJ No L 115, 8.5.1991, p. 41).

Whereas the improvement of scientific and technical knowledge is essential for the implementation of this Directive; whereas it is consequently appropriate to encourage the necessary research and scientific work;

Whereas technical and scientific progress mean that it must be possible to adapt the Annexes; whereas a procedure should be established whereby the Council can amend the Annexes;

Whereas a regulatory committee should be set up to assist the Commission in the implementation of this Directive and in particular when decisions on Community co-financing are taken;

Whereas provision should be made for supplementary measures governing the re-introduction of certain native species of fauna and flora and the possible introduction of non-native species;

Whereas education and general information relating to the objectives of this Directive are essential for ensuring its effective implementation,

Has Adopted This Directive:

Definitions

Article 1

For the purpose of this Directive:

(a) *conservation* means a series of measures required to maintain or restore the natural habitats and the populations of species of wild fauna and flora at a favourable status as defined in (e) and (i);

(b) *natural habitats* means terrestrial or aquatic areas distinguished by geographic, abiotic and biotic features, whether entirely natural or semi-natural;

(c) *natural habitat types of Community interest* means those which, within the territory referred to in Article 2:

i. are in danger of disappearance in their natural range;

or

ii. have a small natural range following their regression or by reason of their intrinsically restricted area;

or

iii. present outstanding examples of typical characteristics of one or more of the seven following biogeographical regions: Alpine, Atlantic, Boreal, Continental, Macaronesian, Mediterranean and Pannonian.

Such habitat types are listed or may be listed in Annex I;

(d) *priority natural habitat types* means natural habitat types in danger of disappearance, which are present on the territory referred to in Article 2 and for the conservation of which the Community has particular responsibility in view of the proportion of their natural range which falls within the territory referred to in Article 2; these priority natural habitat types are indicated by an asterisk (*) in Annex I;

(e) *conservation status of a natural habitat* means the sum of the influences acting on a natural habitat and its typical species that may affect its long-term natural distribution, structure and functions as well as the long-term survival of its typical species within the territory referred to in Article 2.

The conservation status of a natural habitat will be taken as 'favourable' when:

- its natural range and areas it covers within that range are stable or increasing, and
- the species structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and
- the conservation status of its typical species is favourable as defined in (i);

(f) *habitat of a species* means an environment defined by specific abiotic and biotic factors, in which the species lives at any stage of its biological cycle;

(g) *species of Community interest* means species which, within the territory referred to in Article 2, are:

i. endangered, except those species whose natural range is marginal in that territory and which are not endangered or vulnerable in the western palearctic region;

ii. vulnerable, i.e. believed likely to move into the endangered category in the near future if the causal factors continue operating; or

iii. rare, i.e. with small populations that are not at present endangered or vulnerable, but are at risk. The species are located within restricted geographical areas or are thinly scattered over a more extensive range; or

iv. endemic and requiring particular attention by reason of the specific nature of their habitat and/or the potential impact of their exploitation on their habitat and/or the potential impact of their exploitation on their conservation status.

Such species are listed or may be listed in Annex II and/or Annex IV or V;

(h) *priority species* means species referred to in (g)(i) for the conservation of which the Community has particular responsibility in view of the proportion of their natural range which falls within the territory referred to in Article 2; these priority species are indicated by an asterisk (*) in Annex II;

(i) *conservation status of a species* means the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations within the territory referred to in Article 2;

The *conservation status* will be taken as 'favourable' when:

- population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and
- the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and
- there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis;

(j) *site* means a geographically defined area whose extent is clearly delineated;

(k) *site of Community importance* means a site which, in the biogeographical region or regions to which it belongs, contributes significantly to the maintenance or restoration at a favourable conservation status of a natural habitat type in Annex I or of a species in Annex II and may also contribute significantly to the coherence of Natura 2000 referred to in Article 3, and/or contributes significantly to the maintenance of biological diversity within the biogeographic region or regions concerned.

For animal species ranging over wide areas, sites of Community importance shall correspond to the places within the natural range of such species which present the physical or biological factors essential to their life and reproduction;

(l) *special area of conservation* means a site of Community importance designated by the Member States through a statutory, administrative and/or contractual act where the necessary conservation measures are applied for the maintenance or restoration, at a favourable conservation status, of the natural habitats and/or the populations of the species for which the site is designated;

(m) *specimen* means any animal or plant, whether alive or dead, of the species listed in Annex IV and Annex V, any part or derivative thereof, as well as any other goods which appear, from an accompanying document, the packaging or a mark or label, or from any other circumstances, to be parts or derivatives of animals or plants of those species;

(n) *the committee* means the committee set up pursuant to Article 20.

Article 2

1 The aim of this Directive shall be to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies

2 Measures taken pursuant to this Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest

3 Measures taken pursuant to this Directive shall take account of economic, social and cultural requirements and regional and local characteristics.

Conservation of natural habitats and habitats of species

Article 3

1 A coherent European ecological network of special areas of conservation shall be set up under the title Natura 2000. This network, composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II, shall enable the natural habitat types and the species' habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range.

The Natura 2000 network shall include the special protection areas classified by the Member States pursuant to Directive 79/409/EEC.

2 Each Member State shall contribute to the creation of Natura 2000 in proportion to the representation within its territory of the natural habitat types and the habitats of species referred to in paragraph 1. To that effect each Member State shall designate, in accordance with Article 4, sites as special areas of conservation taking account of the objectives set out in paragraph 1.

3 Where they consider it necessary, Member States shall endeavour to improve the ecological coherence of Natura 2000 by maintaining, and where appropriate developing, features of the landscape which are of major importance for wild fauna and flora, as referred to in Article 10.

Article 4

1 On the basis of the criteria set out in Annex III (Stage 1) and relevant scientific information, each Member State shall propose a list of sites indicating which natural habitat types in Annex I and which species in Annex II that are native to its territory the sites host. For animal species ranging over wide areas these sites shall correspond to the places within the natural range of such species which present the physical or biological factors essential to their life and reproduction. For aquatic species which range over wide areas, such sites will be proposed only where there is a clearly identifiable area representing the physical and biological factors essential to their life and reproduction. Where appropriate, Member States shall propose adaptation of the list in the light of the results of the surveillance referred to in Article 11.

The list shall be transmitted to the Commission, within three years of the notification of this Directive, together with information on each site. That information shall include a map of the site, its name, location, extent and the data resulting from application of the criteria specified in Annex III (Stage 1) provided in a format established by the Commission in accordance with the procedure laid down in Article 21.

2 On the basis of the criteria set out in Annex III (Stage 2) and in the framework both of each of the seven biogeographical regions referred to in Article 1(c)(iii) and of the whole of the territory referred to in Article 2(1), the Commission shall establish, in agreement with each Member State, a draft list of sites of Community importance drawn from the Member States' lists identifying those which host one or more priority natural habitat types or priority species.

Member States whose sites hosting one or more priority natural habitat types and priority species represent more than 5% of their national territory may, in agreement with the

Commission, request that the criteria listed in Annex III (Stage 2) be applied more flexibly in selecting all the sites of Community importance in their territory.

The list of sites selected as sites of Community importance, identifying those which host one or more priority natural habitat types or priority species, shall be adopted by the Commission in accordance with the procedure laid down in Article 21.

3 The list referred to in paragraph 2 shall be established within six years of the notification of this Directive.

4 Once a site of Community importance has been adopted in accordance with the procedure laid down in paragraph 2, the Member State concerned shall designate that site as a special area of conservation as soon as possible and within six years at most, establishing priorities in the light of the importance of the sites for the maintenance or restoration, at a favourable conservation status, of a natural habitat type in Annex I or a species in Annex II and for the coherence of Natura 2000, and in the light of the threats of degradation or destruction to which those sites are exposed.

5 As soon as a site is placed on the list referred to in the third subparagraph of paragraph 2 it shall be subject to Article 6(2),(3) and (4).

Article 5

1 In exceptional cases where the Commission finds that a national list as referred to in Article 4(1) fails to mention a site hosting a priority natural habitat type or priority species which, on the basis of relevant and reliable scientific information, it considers to be essential for the maintenance of that priority natural habitat type or for the survival of that priority species, a bilateral consultation procedure shall be initiated between that Member State and the Commission for the purpose of comparing the scientific data used by each.

2 If, on expiry of a consultation period not exceeding six months, the dispute remains unresolved, the Commission shall forward to the Council a proposal relating to the selection of the site as a site of Community importance.

3 The Council, acting unanimously, shall take a decision within three months of the date of referral.

4 During the consultation period and pending a Council decision, the site concerned shall be subject to Article 6(2).

Article 6

1 For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

2 Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the

species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

3 Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

4 If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Whereas the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.

Article 7

Obligations arising under Article 6(2),(3) and (4) of this Directive shall replace any obligations arising under the first sentence of Article 4(4) of Directive 79/409/EEC in respect of areas classified pursuant to Article 4(1) or similarly recognised under Article 4(2) thereof, as from the date of implementation of this Directive or the date of classification or recognition by a Member State under Directive 79/409/EEC, where the latter date is later.

Article 8

1 In parallel with their proposals for sites eligible for designation as special areas of conservation, hosting priority natural habitat types and/or priority species, the Member States shall send, as appropriate, to the Commission their estimates relating to the Community co-financing which they consider necessary to allow them to meet their obligations pursuant to Article 6(1).

2 In agreement with each of the Member States concerned, the Commission shall identify, for sites of Community importance for which co-financing is sought, those measures essential for the maintenance or re-establishment at a favourable conservation status of the priority natural habitat types and priority species on the sites concerned, as well as the total costs arising from those measures.

3 The Commission, in agreement with the Member States concerned, shall assess the financing, including co-financing, required for the operation of the measures referred to in paragraph 2, taking into account, amongst other things, the concentration on the Member State's territory of priority natural habitat types and/or priority species and the relative burdens which the required measures entail.

4 According to the assessment referred to in paragraphs 2 and 3, the Commission shall adopt, having regard to the available sources of funding under the relevant Community instruments and according to the procedure set out in Article 21, a prioritised action framework of measures involving co-financing to be taken when the site has been designated under Article 4(4).

5 The measures which have not been retained in the action framework for lack of sufficient resources, as well as those included in the above mentioned action framework which have not received the necessary co-financing or have only been partially co-financed, shall be reconsidered in accordance with the procedure set out in Article 21, in the context of the two-yearly review of the action framework and may, in the meantime, be postponed by the Member States pending such review. This review shall take into account, as appropriate, the new situation of the site concerned.

6 In areas where the measures dependent on co-financing are postponed, Member States shall refrain from any new measures likely to result in deterioration of those areas.

Article 9

The Commission, acting in accordance with the procedure laid down in Article 21, shall periodically review the contribution of Natura 2000 towards achievement of the objectives set out in Article 2 and 3. In this context, a special area of conservation may be considered for declassification where this is warranted by natural developments noted as a result of the surveillance provided for in Article 11.

Article 10

Member States shall endeavour, where they consider it necessary, in their land-use planning and development policies and, in particular, with a view to improving the ecological coherence of the Natura 2000 network, to encourage the management of features of the landscape which are of major importance for wild fauna and flora.

Such features are those which, by virtue of their linear and continuous structure (such as rivers with their banks or the traditional systems for marking field boundaries) or their function as stepping stones (such as ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species.

Article 11

Member States shall undertake surveillance of the conservation status of the natural habitats and species referred to in Article 2 with particular regard to priority natural habitat types and priority species.

Protection of species

Article 12

1 Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) in their natural range, prohibiting:

a. all forms of deliberate capture or killing of specimens of these species in the wild;

b. deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;

c. deliberate destruction or taking of eggs from the wild;

d. deterioration or destruction of breeding sites or resting places.

2 For the species, Member States shall prohibit the keeping, transport and sale or exchange, and offering for sale or exchange, of specimens taken from the wild, except for those taken legally before this Directive is implemented.

3 The prohibition referred to in paragraph 1 (a) and (b) and paragraph 2 shall apply to all stages of life of the animals to which this Article applies.

4 Member States shall establish a system to monitor the incidental capture and killing of the animal species listed in Annex IV(a). In the light of the information gathered, Member States shall take further research or conservation measures as required to ensure that incidental capture and killing does not have a significant negative impact on the species concerned.

Article 13

1 Member States shall take the requisite measures to establish a system of strict protection for the plant species listed in Annex IV(b), prohibiting:

a. the deliberate picking, collecting, cutting, uprooting or destruction of such plants in their natural range in the wild;

b. the keeping, transport and sale or exchange and offering for sale or exchange of specimens of such species taken in the wild, except for those taken legally before this Directive is implemented.

2 The prohibitions referred to in paragraph 1 (a) and (b) shall apply to all stages of the biological cycle of the plants to which this Article applies.

Article 14

1 If, in the light of the surveillance provided for in Article 11, Member States deem it necessary, they shall take measures to ensure that the taking in the wild of specimens of species of wild fauna and flora listed in Annex V as well as their exploitation is compatible with their being maintained at a favourable conservation status.

2 Where such measures are deemed necessary, they shall include continuation of the surveillance provided for in Article 11. Such measures may also include in particular:

- regulations regarding access to certain property,
- temporary or local prohibition of the taking of specimens in the wild and exploitation of certain populations,
- regulation of the periods and/or methods of taking specimens,

- application, when specimens are taken, of hunting and fishing rules which take account of the conservation of such populations,
- establishment of a system of licences for taking specimens or of quotas,
- regulation of the purchase, sale, offering for sale, keeping for sale or transport for sale of specimens,
- breeding in captivity of animal species as well as artificial propagation of plant species, under strictly controlled conditions, with a view to reducing the taking of specimens from the wild,
- assessment of the effect of the measures adopted.

Article 15

In respect of the capture or killing of species of wild fauna listed in Annex V(a) and in cases where, in accordance with Article 16, derogations are applied to the taking, capture or killing of species listed in Annex IV(a), Member States shall prohibit the use of all indiscriminate means capable of causing local disappearance of, or serious disturbance to, populations of such species, and in particular:

a. use of the means of capture and killing listed in Annex VI(a);

b. any form of capture and killing from the modes of transport referred to in Annex VI(b).

Article 16

1 Provided that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range, Member States may derogate from the provisions of Articles 12, 13, 14 and 15 (a) and (b):

a. in the interest of protecting wild fauna and flora and conserving natural habitats;

b. to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property;

c. in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment;

d. for the purpose of research and education, of repopulating and re-introducing these species and for the breeding operations necessary for these purposes, including the artificial propagation of plants;

e. to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species listed in Annex IV in limited numbers specified by the competent national authorities.

2 Member States shall forward to the Commission every two years a report in accordance with the format established by the Committee on the derogations applied under paragraph 1. The

Commission shall give its opinion on these derogations within a maximum time limit of 12 months following receipt of the report and shall give an account to the Committee.

3 The reports shall specify:

a. the species which are subject to the derogations and the reason for the derogation, including the nature of the risk, with, if appropriate, a reference to alternatives rejected and scientific data used;

b. the means, devices or methods authorised for the capture or killing of animal species and the reasons for their use;

c. the circumstances of when and where such derogations are granted;

d. the authority empowered to declare and check that the required conditions obtain and to decide what means, devices or methods may be used, within what limits and by what agencies, and which persons are to carry out the task;

e. the supervisory measures used and the results obtained.

Information

Article 17

1 Every six years from the date of expiry of the period laid down in Article 23, Member States shall draw up a report on the implementation of the measures taken under this Directive. This report shall include in particular information concerning the conservation measures referred to in Article 6(1) as well as evaluation of the impact of those measures on the conservation status of the natural habitat types of Annex I and the species in Annex II and the main results of the surveillance referred to in Article 11. The report, in accordance with the format established by the committee, shall be forwarded to the Commission and made accessible to the public.

2 The Commission shall prepare a composite report based on the reports referred to in paragraph 1. This report shall include an appropriate evaluation of the progress achieved and, in particular, of the contribution of Natura 2000 to the achievement of the objectives set out in Article 3. A draft of the part of the report covering the information supplied by a Member State shall be forwarded to the Member State in question for verification. After submission to the committee, the final version of the report shall be published by the Commission, not later than two years after receipt of the reports referred to in paragraph 1, and shall be forwarded to the Member States, the European Parliament, the Council and the Economic and Social Committee.

3 Member States may mark areas designated under this Directive by means of Community notices designed for that purpose by the committee.

Research

Article 18

1 Member States and the Commission shall encourage the necessary research and scientific work having regard to the objectives set out in Article 2 and the obligation referred to in Article 11. They shall exchange information for the purposes of proper coordination of research carried out at Member State and at Community level.

2 Particular attention shall be paid to scientific work necessary for the implementation of Articles 4 and 10, and trans-boundary cooperative research between Member States shall be encouraged.

Procedure for amending the Annexes

Article 19

Such amendments as are necessary for adapting Annexes I, II, III, V and VI to technical and scientific progress shall be adopted by the Council acting by qualified majority on a proposal from the Commission.

Such amendments as are necessary for adapting Annex IV to technical and scientific progress shall be adopted by the Council acting unanimously on a proposal from the Commission.

Committee

Article 20

The Commission shall be assisted by a committee.

Article 21

1 Where reference is made to this Article, Articles 5 and 7 of Decision 1999/468/EC [1] shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

2 The Committee shall adopt its rules of procedure.

1 Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p.23).

Supplementary provisions

Article 22

In implementing the provisions of this Directive, Member States shall:

a. study the desirability of re-introducing species in Annex IV, that are native to their territory where this might contribute to their conservation, provided that an investigation, also taking into account experience in other Member States or elsewhere, has established that such re-introduction contributes effectively to re-establishing these species at a favourable conservation status and that it takes place only after proper consultation of the public concerned:

b. ensure that the deliberate introduction into the wild of any species which is not native to their territory is regulated so as not to prejudice natural habitats within their natural range or the wild native fauna and flora and, if they consider it necessary, prohibit such introduction. The results of the assessment undertaken shall be forwarded to the committee for information;

c. promote education and general information on the need to protect species of wild fauna and flora and to conserve their habitats and natural habitats.

Final provisions

Article 23

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within two years of its notification. They shall forthwith inform the Commission thereof.

2 When Member States adopt such measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

3 Member States shall communicate to the Commission the main provisions of national law which they adopt in the field covered by this Directive.

Article 24

This Directive is addressed to the Member States.

Done at Brussels, 21 May 1992.

For the Council

The President

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Guidance document on Article 6(4) of the 'Habitats Directive' 92/43/EEC

CLARIFICATION OF THE CONCEPTS OF: *ALTERNATIVE SOLUTIONS*, *IMPERATIVE REASONS OF OVERRIDING PUBLIC INTEREST*, *COMPENSATORY MEASURES*, *OVERALL COHERENCE*, *OPINION OF THE COMMISSION*.

January 2007

This guidance document should be read in conjunction with the booklet published by the European Commission in 2000 and entitled "Managing Natura 2000 sites. The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC". The current document intends to further develop and replace the section on Article 6(4) of this earlier publication leaflet. The document reflects the views of Commission services only and it is not of a binding nature.

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1.1. The text of Article 6.4 of the Habitats Directive

"If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest".

1.2. Scope

1.2.1. Substantial Scope

This provision forms part of the procedure of assessment and possible authorisation, by the competent national authorities, of plans and projects likely to affect a Special Area of Conservation (SAC), a Special Protected Area (SPA) or a Site of Community Importance (SCI)[1]. Two fundamental considerations arise:

- On the one hand, it addresses exceptions with regard to the general rule of Article 6(3) according to which authorisation can only be granted to plans or projects not affecting the integrity of the site(s) concerned.

- On the other hand, its concrete application has to be done in the respect of the various steps provided for and in the sequential order[2] established by the Directive.

The preliminary assessment of the impacts of a plan or project on the site, provided for in Article 6(3), enables the competent national authorities to arrive at conclusions regarding the consequences of the initiative envisaged in relation to the integrity of the site concerned. If these conclusions are positive, in the sense that no reasonable scientific doubt remains as to the absence of effects in the site, the competent authorities can give their consent on the plan or project. In case of doubt, or negative conclusions, the precautionary and preventive principles should be applied and procedures under art. 6(4) followed. Furthermore, taking into account the precautionary principle and applying a preventive approach might also lead to the decision not to proceed with the plan or project.

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[1] Article 6(2), 6(3) and 6(4) only applies to sites which are placed on the list of sites selected as sites of Community importance (SCI). Thus, these provisions do not apply to sites eligible for identification as sites of Community importance on the national lists transmitted to the Commission (pSCI). The protection regime for the pSCI is defined in case C-117/03 (Judgement of the Court of 13 January 2005, Dragaggi) and in case C-244/05 (Judgement of the Court of 14 September 2006, Bund Naturschutz).

[2] In its Opinion for the case C-239/04 the Advocate General (paragraphs 44-46) seems to consider that there is no a sequential order between the examination of alternative solutions and imperative reasons of overriding public interest.

To this effect, the Court has already held, in case C-127/02 *Waddenvereniging and Vogelbeschermingsvereniging*[3] and confirmed in C-6/04 *Commission v United Kingdom of Great Britain and Northern Ireland*[4], that Article 6(3) of the Habitats Directive makes the requirement for an appropriate assessment of the implications of a plan or project conditional upon there being a probability, or a risk, that it will have a significant effect on the site concerned. In the light, in particular, of the precautionary principle, such a risk is considered to exist if it cannot be excluded, on the basis of objective information, that the plan or project will have a significant effect on the site concerned.

The above mentioned approach is also reflected in the Judgement of the Court of 26 October 2006 in the case C-239/04[5] regarding the construction of a motorway in Portugal, where it is mentioned that any reasonable scientific doubt as to the absence of adverse effects on the integrity of the site must be removed before the project is authorised.

The decision to go ahead with a plan or project must meet the requirements of Article 6(4). In particular, it must be documented that:

1 The alternative put forward for approval, is the least damaging for habitats, for species and for the integrity of the Natura 2000 site, regardless of economic considerations, and that no other feasible alternative, exists that would not affect the integrity of the site.

2 There are imperative reasons of overriding public interest, including 'those of a social or economic nature'.

Being an exception to Article 6(3), this provision can only be applied to circumstances where all the conditions required by the Directive are fully satisfied. In this regard, it falls on whoever wants to make use of this exception to prove, as a prerequisite, that the aforementioned conditions do indeed exist in each particular case.

3 Once the lack of suitable alternatives and the acceptance of imperative reasons of overriding public interest are fully ascertained and documented, all compensatory measures that are needed to ensure the protection of the overall coherence of the Natura 2000 network have to be taken. Therefore, compensatory measures should be considered only when the application of other safeguards, such as mitigation measures, is not sufficient. The compensatory measures adopted must **always** be communicated to the Commission.

The provisions of Art. 6(4) apply when the results of the preliminary assessment under Art. 6(3) are negative or uncertain. That is:
1. The plan or project will adversely affect the integrity of the site
2. Doubts remain as to the absence of adverse effects on the integrity of the site linked to the plan or project concerned
"The sequential order of its steps has to be followed".

[3] Judgement of the Court of 7 September 2004 in case C-127/02, paragraphs 57 and 61.

[4] Judgement of the Court of 20 October 2005 in case C-6/04, paragraph 54.

[5] Judgement of the Court of 26 October 2006, Commission/Portugal (case C-239/04, paragraph 24).

1.2.2. Temporal scope

The judgement delivered by the Court of Justice in relation to the case C-209/04 states the principles with regard to the temporal applicability of Article 6(3) and consequently Article 6(4) of the Habitats Directive. In order to determine whether projects must be subject to an environmental assessment in accordance with Article 6(3), the Court uses a formal criterion: the date of the application for the authorisation for a project. Thus, if the application for authorisation was formally lodged before the expiry of the time-limit for transposition of the Directive or before the accession to the EU, the project is not subject to the requirements laid down in Article 6(3) and (4). However, if the application for authorisation was formally lodged after the expiry of the time-limit for transposition of the Directive or after the accession to the EU, the project is subject to the requirements laid down in Article 6(3) and (4).

1.3. Initial considerations

Ensure quality of appropriate assessment under article 6 (3)

Appropriate assessments of the implications of the plan or project for the site concerned must precede its approval and take into account the cumulative effects which result from the combination of that plan or project with other plans or projects in view of the site's conservation objectives. This implies that all aspects of the plan or project which can, either individually or in combination with other plans or projects, affect those objectives must be identified in the light of the best scientific knowledge in the field.

Assessment procedures of plans or projects likely to affect Natura 2000 sites should guarantee full consideration of all elements contributing to the site integrity and to the overall coherence of the network, both in the definition of the baseline conditions and in the stages leading to identification of potential impacts, mitigation measures and residual impacts. These determine what has to be compensated, both in quality and quantity.

Regardless of whether the provisions of Article 6(3) are delivered following existing environmental impact assessment procedures or other specific methods, it must be ensured that:

- Article 6(3) assessment results allow full traceability of the decisions eventually made, including the selection of alternatives and any imperative reasons of overriding public interest.
- The assessment should include all elements contributing to the site's integrity and to the overall coherence of the network as defined in the site's conservation objectives and Standard Data Form, and be based on best available scientific knowledge in the field. The information required should be updated and could include the following issues:
    - Structure and function, and the respective role of the site's ecological assets
    - Area, representativity and conservation status of the priority and non-priority habitats in the site

- Population size, degree of isolation, ecotype, genetic pool, age class structure, and conservation status of species under Annex II of the Habitats Directive or Annex I of the Birds Directive present in the site
- Role of the site within the biographical region and in the coherence of the Natura 2000 network
- Any other ecological assets and functions identified in the site

– It should include a comprehensive identification of all the potential impacts of the plan or project likely to be significant on the site, taking into account cumulative impacts and other impacts likely to arise as a result of the combined action of the plan or project under assessment and other plans or projects.
– The assessment under Article 6(3) applies the best available techniques and methods, to estimate the extent of the effects of the plan or project on the biological integrity of the site(s) likely to be damaged.
– The assessment provides for the incorporation of the most effective mitigation measures into the plan or project concerned, in order to avoid, reduce or even cancel the negative impacts on the site.
– The characterisation of the biological integrity and the impact assessment should be based on the best possible indicators specific to the Natura 2000 assets which must also be useful to monitor the plan or project implementation.

To meet the requirements of Article 6(3) assessment, it seems most appropriate that the Natura 2000 authorities set up the specific formal requirements regarding the type of information and criteria to follow when carrying out the appropriate assessment. Dissemination and training to the relevant parties (E.g. authorities at a different level of government, consultants and plan or project developers) it is highly recommended.

1.3.1. Examining alternative solutions

In line with the need to prevent undesired impairment to the Natura 2000 network, the thorough revision and/or withdrawal of a proposed plan or project should be considered when significant negative effects on the integrity of a site have been identified. This should be observed especially in the case of effects on priority habitats and/or species protected under the Habitats Directive or globally endangered bird species listed in Annex I of the Birds Directive. The competent authorities have to analyse and demonstrate first the need of the plan or project concerned. Thus, the zero option should be considered at this stage.

Subsequently, the competent authorities should examine the possibility of resorting to alternative solutions which better respect the integrity of the site in question[6]. All feasible alternatives, in particular, their relative performance with regard to the conservation objectives of the Natura 2000 site, the site's integrity and its contribution to the overall coherence of the Natura 2000 Network have to be analyzed. Such solutions should normally already have been identified within the framework of the initial assessment carried out under Article 6(3). They could involve alternative locations or routes, different scales or designs of development, or alternative processes.

[6] In its Opinion for the case C-239/04, the Advocate General (paragraph 44) considers that "among the alternatives short-listed "*the choice does not inevitably have to be determined by which alternative least adversely affects the site concerned. Instead, the choice requires a balance to be struck between the adverse effect on the integrity of the SPA and the relevant reasons of overriding public interest."*

In conformity with the principle of subsidiarity, it rests with the competent national authorities to asses the relative impact of these alternatives solutions on the site concerned. It should be stressed that the reference parameters for such comparisons deal with aspects concerning the conservation and the maintenance of the integrity of the site and of its ecological functions. In this phase, therefore, other assessment criteria, such as economic criteria, cannot be seen as overruling ecological criteria.

It rests with the competent national authorities to assess alternative solutions. This assessment should be made against the site's conservation objectives.

1.3.2. Examining imperative reasons of overriding public interest

In the absence of alternative solutions - or in the presence of solutions having even more negative environmental effects on the site concerned, with regard to the above-mentioned conservation aims of the Directive - the competent authorities have to examine the existence of imperative reasons of overriding public interest, including those of a social or economic nature, which require the realisation of the plan or project in question.

The concept of *"imperative reason of overriding public interest"* is not defined in the Directive. However, Article 6 (4) second subparagraph mentions human health, public safety and beneficial consequences of primary importance for the environment as examples of such imperative reasons of overriding public interests. As regards the *"other imperative reasons of overriding public interest"* of social or economic nature, it is clear from the wording that only public interests, irrespective of whether they are promoted either by public or private bodies, can be balanced against the conservation aims of the Directive. Thus, projects developed by private bodies can only be considered where such public interests are served and demonstrated.

So far the European Court of Justice has not given clear indications for the interpretation of this specific concept. It may therefore be helpful to refer to other fields of Community law, where similar concepts appear.

The "imperative requirement" concept was worked out by the Court of Justice as an exception to the principle of free movement of goods. Among the imperative requirements which can justify national measures restricting freedom of movement, the Court recognised public health and environmental protection, as well as the pursuit of legitimate goals of economic and social policy.

In addition, Community law also recognises the concept of "service of general economic interest", evoked in Article 86(2) (ex 90(2)) of the Treaty, within the framework of the exception to the rules of competition envisaged for companies responsible for the management of such services. In a communication on services of general interest in Europe[7], the Commission, taking account of case law on the matter, gave the following definition of services of general economic interest: "*they describe activities of commercial service fulfilling missions of general interest, and subject consequently by the Member States to specific*

[7] COM (96) 443, of the 11.09.1996.

obligations of public service[8]*. It is the case in particular of services in transport, energy, communication networks*".

Having regard to the *structure of the provision*, in the specific cases, the competent national authorities have to make their approval of the plans and projects in question subject to the condition that the balance of interests between the conservation objectives of the site affected by those initiatives and the above-mentioned imperative reasons weighs in favour of the latter. This should be determined according to the following considerations:

a) the public interest must be **overriding**: it is therefore clear that not every kind of public interest of a social or economic nature is sufficient, in particular when seen against the particular weight of the interests protected by the Directive (see e.g. its 4th recital stating *"Community's natural heritage"*) (see Annex I point 10).

b) in this context, it seems also reasonable to assume that the public interest can only be overriding if it is a **long-term interest**; short term economic interests or other interests which would only yield short-term benefits for the society would not appear to be sufficient to outweigh the long-term conservation interests protected by the Directive.

It is reasonable to consider that the "imperative reasons of overriding public interest, including those of social and economic nature" refer to situations where plans or projects envisaged prove to be indispensable:
- within the framework of actions or policies aiming to protect fundamental values for the citizens' life (health, safety, environment);
- within the framework of fundamental policies for the State and the Society;
- within the framework of carrying out activities of economic or social nature, fulfilling specific obligations of public service.

In order to provide readers with a more precise indication of what might legitimately considered as potential imperative reasons of overriding public interest, some **examples** have been extracted from the Opinions delivered by the Commission in the framework of Article 6(4) and are related to the reasoning given by Member States.

Intersection of the Peene Valley (Germany) by the planned A 20 motorway (Germany)
A 20 motorway is part of the trans-European road network. An east-west link has to be created in Mecklenburg-Western Pomerania in order to link it with central regions of the Community.
Mecklenburg-Western Pomerania suffers from an exceptionally high unemployment. For several years its unemployment rate has been almost the double of that in the old Länder. The gross national product created in Mecklenburg-Western Pomerania, as compared to the percentage of the population, is significantly lower than the average gross national product.

[8]The public service obligations, in their turn, are characterised for the respect of some essential principles of operation, such as continuity, the equal access, universality and transparency, but can vary from one Member State to the other, according to different situations, such as geographical or technical constraints, political and administrative organisation, history and traditions.

Project Mainport Rotterdam" Development Plan (The Netherlands)
Portuary and industrial activity in the Rotterdam area is one of the main pillars of Dutch economy. The harbour of Rotterdam is an essential multimodal crossroads in the TEN-T Network and is therefore of Community importance. Expected growth in global container handling and chemical industrial activity will lead to increased demand for space which will have to be met if the competitive position of the Rotterdam harbour in the Hamburg – Le Havre range has to be maintained.
The development of the Rotterdam port, also brings into focus the question of promoting modal-shift particularly in relation to freight transport. It is clear that shifting freight from road to water will have considerable benefits in terms of reduced green-house gas emissions, reduced atmospheric pollution and reduced congestion. These benefits should be recognised in assessing questions of public interest.

Extension of the site of Daimler Chrysler Aerospace Airbus Gmbh in Hamburg-Finkenwerder (Germany)
Outstanding importance for the region of Hamburg and northern Germany and the European aerospace industry. Project will contribute to the technological advance and foster the European co-operation in the aviation business. Positive effect on the economic and social situation of the bordering regions and positive impact on the competitiveness of the European aeronautic industry. Important number of highly qualified new jobs, needed to counterbalance the considerable loss of jobs in the industrial sector of the region.

High speed line (TGV East) (France)
Lack of options for linking the existing lines. The European TGV East project was viewed favourably in the Council of Ministers of the European Community on 1990 and was chosen as a priority project by the European Council in 1994, having benefited from Union decisions regarding the priority of infrastructure projects to be implemented.

Operational master plan ("Rahmenbetriebsplan") of the Prosper Haniel Colliery (Germany)
Due to its geological and infrastructure qualities the Prosper Haniel coal mine and the continuation of its mining activities contribute to achieving the general objectives of the German long term energy policy at the federal and regional level, and in particular the interest of supply security and to maintain the leading position of European mining and coal energy technologies. The closure of the Prosper Haniel mine would have unacceptable direct and indirect economic and social consequences at the regional level with a direct loss of jobs in coal mining and in up-stream industries and downstream services.

La Breña II Reservoir Project (Spain)
Provide enough water for human consumption, industrial uses and agriculture, which cannot be available in the current situation of the River Guadalquivir basin.

For further examples and information concerning the Opinions delivered by the Commission: http://ec.europa.eu/environment/nature/nature_conservation/eu_nature_legislation/specific_articles/art6/index_en.htm

1.4. Adopting compensatory measures

1.4.1. What is meant by "compensatory measures" and when should they be considered?

In the context of article 6 of the Habitats Directive, mitigation measures must be clearly distinguished from compensatory measures.

The term *"compensatory measures"* is not defined in the 'Habitats' Directive. Experience would suggest the following distinction:

- mitigation measures in the broader sense, are those measures which aim to minimise, or even cancel, the negative impacts on a site that are likely to arise as a result of the implementation of a plan or project. These measures are an integral part of the specifications of a plan or project (see section 4.5 of the leaflet "Managing Natura 2000 sites. The provisions of Article 6 of the Habitats Directive"), and

- compensatory measures *sensu stricto*: are independent of the project (including any associated mitigation measures). They are intended to offset the negative effects of the plan or project so that the overall ecological coherence of the Natura 2000 Network is maintained.

For instance, an extension of underground coal mining activities of the colliery into areas which so far had not been exploited will cause large scale ground subsidence, accompanied by flooding and increase of ground water levels with considerable impacts on all ecosystems in the area. To compensate for the negative effects of the project, land will be selected following ecological criteria for the creation of non-priority habitat types (beech and oak forests) by re-afforestation or transformation/improvement of existing forests. It is also considered the creation and improvement of alluvial forests and restoration or optimisation of riverbeds to compensate for the loss of priority habitat type (Residual alluvial forests - *Alnion glutinoso-incanae*) and non-priority habitat type (water courses of plain to montane levels with floating vegetation). The measure will contribute also to compensate the negative impact of the project on the species *Lampetra planeri.*

Compensatory measures should be additional to the actions that are normal practice under the Habitats and Birds Directives or obligations laid down in EC law. For example, the implementation of a management plan, or the proposal/designation of a new area, already inventoried as of Community importance, constitute "normal" measures for a Member State. Thus, compensatory measures should go beyond the normal/standard measures required for the protection and management of Natura 2000 sites.

Another example of compensation can be given in the case of a harbour extension leading to the destruction of a roosting site for birds and the diminution of low depth inter-tidal mudflats and reedbeds. The recreation of a high tide roosting site and of shallow beaches associated to mudflats as well as habitat restoration of reedbeds and wet meadows through hydraulic works, environmental measures for the agricultural use of reedbeds and meadows, and management of hunting pressure, would compensate for the negative impact caused by the project.

Consequently, compensatory measures are not a means to allow the implementation of plans or projects while escaping the obligations of Article 6. They should be considered only after having ascertained a negative impact on the integrity of a Natura 2000 site. Specifically, the logic and rationale of the assessment process requires that if a negative impact is foreseen then an evaluation of alternatives should be carried out as well as an appreciation of the interest of the plan/project in relation to the natural value of the site. Once it is decided that the project/plan should proceed, then it is appropriate to move to a consideration of compensation measures. This approach has also been confirmed in the opinion given by the advocate general in the case C 239-/04 (paragraph 35).

The compensatory measures constitute measures specific to a project or plan, additional to the normal practices of implementation of the "Nature" Directives. They aim to offset the negative impact of a project and to provide compensation corresponding precisely to the negative effects on the species or habitat concerned. The compensatory measures constitute the "last resort". They are used only when the other safeguards provided for by the directive are ineffectual and the decision has been taken to consider, nevertheless, a project/plan having a negative effect on the Natura 2000 site.

1.4.2. "Overall coherence" of the Natura 2000 network

The expression *"overall coherence"* appears in Art. 6(4) in the context where a plan or project is allowed to be carried out for imperative reasons of overriding public interest and the Member State has to take measures to compensate for the loss.

It also appears in Art. 3(1) which states that Natura 2000 is *"a coherent European ecological network of special areas of conservation that shall enable the natural habitats types and species' habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range"*. Hence, two different criteria are considered, on the one hand the targeted species and habitats in terms of quantity and quality, and on the other hand the role of the site in ensuring the adequate geographical distribution in relation to the range.

Art. 3(3) stipulates that *"where they consider it necessary, Member States shall endeavour to improve the ecological coherence of Natura 2000 by maintaining, and where appropriate developing, features of the landscape which are of major importance for wild fauna and flora, as referred to in Article 10."*

Art. 10, which deals more generally with land use planning and development policy, stipulates that

> *"Member States shall endeavour, where they consider it necessary, in their land-use planning and development policies and, in particular, with a view to improving the ecological coherence of the Natura 2000 network, to encourage the features of the landscape which are of major importance for wild fauna and flora.*
>
> *Such features are those which, by virtue of their linear and continuous structure (such as rivers with their banks or their function as stepping stones (such as ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species."*

The word “ecological” is used both in Art. 3 and Art. 10 to explain the character of the coherence. It is obvious that the expression *“overall coherence”* in Art. 6(4) is used in the same meaning.

Having said this, it is clear that the importance of a site to the coherence of the network is a function of the conservation objectives of the site, the number and status of the habitats and species found within the site, as well as the role the site plays in ensuring an adequate geographical distribution in relation to the range of species and habitats of species concerned.

Art. 6(4) requires to “protect” the overall coherence of Natura 2000. Thus, the Directive presumes that the “original” network has been coherent. If the exception regime is used, the situation must be corrected so that the coherence is fully restored.

With regard to a plan or project, the compensatory measures defined to protect the overall coherence of Natura 2000 network will have to address the criteria mentioned above. This would mean that compensation should refer to the site's conservation objectives and to the habitats and species negatively affected in comparable proportions in terms of number and status. At the same time the role played by the site concerned in relation to the bio-geographical distribution has to be replaced adequately.

At this stage it would be useful to recall that under the Habitats Directive the selection of a site for the Natura 2000 Network rests on:

- the taking into account of the habitat(s) and species in proportions (surface areas, populations) described in the standard data form;
- the inclusion of the site in a biogeographical region within which it is located;
- the selection criteria established by the ‘Habitats’ Committee and used by the European Topic Centre on Biological Diversity to advise the Commission to retain a site on the Community list.

Competent authorities should be looking at these criteria when designing the compensatory measures for a project, and should ensure that they provide the properties and functions comparable to those which had justified the selection of the original site.

The *‘Birds’ Directive* does not provide for bio-geographical regions, or selection at Community level. However by analogy, it could be considered that *the overall coherence of the network* is ensured if:

- compensation fulfils the same purposes that motivated the site's designation in accordance with Article 4(1) and 4(2) of the Birds Directive;
- compensation fulfils the same function along the same migration path;
- the compensation site(s) are accessible with certainty by the birds usually occurring on the site affected by the project.

For instance, if an SPA which has a specific function to provide resting areas for migratory bird species in their way towards the north is negatively affected by a project, the compensatory measures proposed should focus on the specific function played by the site. Therefore, compensating with measures that could recreate the necessary conditions for resting of the same species in an area out of the migratory path or within the migratory path but far away would not be sufficient to ensure the overall coherence of the network. In this case, compensation should provide for suitable resting areas for the targeted species correctly located in the migratory path so that they will be realistically accessible to the birds which would have used the original site affected by the project.

In order to ensure the overall coherence of Natura 2000, the compensatory measures proposed for a project should therefore: a) address, in comparable proportions, the habitats and species negatively affected; b) provide functions comparable to those which had justified the selection criteria of the original site, particularly regarding the adequate geographical distribution. Thus, it would not be enough that the compensatory measures concern the same biogeographical region in the same Member State.

The distance between the original site and the place of the compensatory measures is not necessarily an obstacle as long as it does not affect the functionality of the site, its role in the geographical distribution and the reasons for its initial selection.

1.4.3. Objective and general contents of compensatory measures

The compensatory measures *sensu stricto* have to ensure the maintenance of the contribution of a site to the conservation at a favourable status of natural habitats types and habitats of species "*within the biogeographical region concerned".* In short, ensure the maintenance of the overall coherence of the Natura 2000 Network. It results from this:

- that, as a general principle, a site should not be irreversibly affected by a project before the compensation is indeed in place. However, there may be situations where it will not be possible to fill this condition. For example, the recreation of a forest habitat would take many years to ensure the same functions as an original one negatively affected by a project. Therefore, best efforts should be made to assure compensation is in place beforehand and in the case this is not fully achievable, the competent authorities should consider extra compensation for the interim losses that would occur in the meantime.

- that the compensation must be additional in relation to the Natura 2000 network to which the Member State should have contributed in conformity with the Directives.

Member States should pay particular attention when the negative effects of a plan or project are produced in rare natural habitats types or in natural habitats that need a long period of time to provide the same ecological functionality. Under these circumstances, the zero option should be seriously considered.

While designations of new Natura 2000 sites can be part of a compensation package under Article 6(4), the designations on their own are insufficient without the accompanying measures.

In terms of the *'Birds' Directive*, this could include, as a compensation, work to improve the biological value of an area, which is either designated or will be designated, so that the carrying capacity or the food potential are increased by a quantity corresponding to the loss on the site affected by the project. *A fortiori*, the re-creation of a habitat favourable to the bird species concerned is acceptable provided the created site is available at the time when the affected site loses its natural value.

In terms of the '*Habitats' Directive*, the compensation could, similarly, consist of the re-creation of a comparable habitat or the biological improvement of a substandard habitat within an existing designated site, or even the addition to the Natura 2000 Network of a new site of comparable quality to the original site. In the latter case, one could argue that overall, the project will result in a loss for this habitat type at Member State level. However, at Community level, a new site will benefit from the protection provided for in Article 6, thus contributing to the objectives of the directive.

Compensatory measures appropriate or necessary to adverse effects on Natura 2000 site can consist of:

- Restoration or enhancement in existing sites: restoring the habitat to ensure the maintenance of its conservation value and compliance with the conservation objectives of the site or improving the remaining habitat in proportion to the loss due to the plan or project on a Natura 2000 site;
- Habitat Recreation: recreating a habitat on a new or enlarged site, to be incorporated into Natura 2000;
- As described above and in association with other works, proposing a new site under the Habitats and Birds Directive.

The range of compensatory measures found in current practice within the EU in the frame of the Habitats Directive also includes:

- Species reintroduction.
- Species recovery and reinforcement, including reinforcement of prey species.
- Land purchase.
- Rights acquisition.
- Reserve creation (including strong restrictions in land use).
- Incentives for certain economic activities that sustain key ecological functions.
- Reduction of (other) threats, usually upon species, either through action on a single source or though co-ordinated action on all threat factors (E.g. resulting from space-crowded effects).

In principle, the result of implementing compensation has normally to be operational at the time when the damage is effective on the site concerned. Under certain circumstances where this can not be fully fulfilled, overcompensation would be required for the interim losses.

The option of habitat banking as compensatory measure under Article 6(4) is of very limited value due to the tight criteria mentioned in relation to the need for compensation to ensure the protection of the coherence of the network *(Section 1.4.2)*.

Nevertheless, there could be a potential use of the concept of habitat banking in a constraint regime linked to Article 6(1). For instance, where a development is foreseen it might be appropriate to consider and implement within the management plan designed for the site or integrated into other development plans, the necessary compensatory measures that would be required in the context of such development and consequently before any decision is made by the competent authorities.

1.4.4. What to include in the programme of compensation measures?

The compensatory measures under Article 6(4) must address all issues, whether technical and/or legal or financial, necessary to accomplish the objective of offsetting the negatives effects of a plan or project and preserving the overall coherence of the Natura 2000 network. The following provides an overview of the issues to include in the programme of compensatory measures.

- Tight coordination and cooperation between Natura 2000 authorities, assessment authorities and the proponent of the compensatory programme (i.e. plan or project proponent and external consultants involved).
- Clear objectives and target values according to the conservation objectives of the site.
- Analysis of the technical feasibility of the measures in relation to their conservation objectives.
- Analysis of the legal and/or financial feasibility of the measures according to the timing required.
- Explanation of the time-frame in which the achievement of the conservation objectives is expected.
- Timetable for implementation and their co-ordination with the schedule for the plan or project implementation.
- Public information and/or consultation stages.
- Specific monitoring and reporting schedules based on progress indicators according to the conservation objectives.
- The appropriate budget programme approved during the suitable period to guarantee the success of the measures.

1.5. Criteria for designing compensatory measures

1.5.1. Targeted compensation

Compensatory measures under the Habitats Directive must be established according to reference conditions that are defined after the characterisation of the biological integrity of the site likely to be lost or deteriorated, and according to the likely significant negative effects that would remain after mitigation. Biological integrity can be defined as all those factors that contribute to the maintenance of the ecosystem including structural and functional assets. In the framework of the Habitats Directive, the biological integrity of a site is linked to the conservation objectives for which the site was designated as part of the Natura 2000 network.

Targeted compensation requires that an appropriate Article 6(3) assessment has been correctly undertaken in line with the provisions mentioned in the previous chapter.

Once the biological integrity likely to be damaged and the actual extent of the damage have been identified, the measures in the compensation programme must address specifically those effects, so that the elements of integrity contributing to the overall coherence of the Natura 2000 network are preserved in the long term. Thus, these measures should be the most appropriate to the type of impact predicted and should be focused on objectives and targets clearly addressing the Natura 2000 elements affected. This requires that measures clearly refer to the structural and functional aspects of the site integrity, and the related types of habitat and species populations that are affected.

This entails that the compensatory programme must necessarily consist of ecological measures, for example in the form of habitat restoration or enhancement, population reinforcement and/or any other actions that may be suitable for the purpose. Therefore, payments to members or towards special funds, regardless of whether these are ultimately directed to nature conservation projects are not suitable under the Habitats Directive. In addition, any secondary or indirect measure that might be proposed to enhance the performance of the core measures or the outcome of the compensation scheme, must have a clear relationship to the objectives and targets of the compensatory scheme.

As an example, in designing compensation, clear objectives must be established:

- Identify the total numbers of species affected
- Identify the principle species affected and the broad proportion of the total population(s) that these occur in;
- Identify the principle function(s) of the habitats that will be adversely affected that the species depend on e.g. feeding, roosting, etc;
- Identify the likely populations of species and the habitat functions at favourable conservation status;
- Identify the measures needed to offset the damage to the habitat functions and species affected so that they are restored to a state that reflects the favourable conservation status of the area affected.

Any uncertainty over the precise nature and/or magnitude of the adverse effects should be thoroughly tested. Where appropriate, a precautionary approach should be adopted and the assessment of adverse effect based on a worse-case scenario.

1.5.2. Effective compensation

The feasibility and effectiveness of compensatory measures are critical to the administration of Article 6(4) of the Habitats Directive in agreement to the precautionary principle and good practice. In ensuring effectiveness, technical feasibility must go hand in hand with the appropriate extent, timing and location of the compensatory measures.

Compensatory measures must be feasible and operational in reinstating the ecological conditions needed to ensure the overall coherence of the Natura 2000 network (i.e. the ecological structure and functions impaired and the habitats and species involved). The estimated timescale and any maintenance action required to enhance performance should be known and/or foreseen right from the start in view of the implementation of the measures. This must be based on the best scientific knowledge available, complemented with specific investigations for the precise location where the compensatory measures will be implemented. Measures for which there is no reasonable guarantee of success should not be considered

under Article 6(4), and the likely success of the compensation scheme should influence the final approval of the plan or project in compliance with the preventive principle.

In addition, the most effective option, which allow for the greatest chances of success must be chosen when it comes deciding between different possibilities for compensation.

The programme of compensatory measures needs to include detailed monitoring during implementation to ensure effectiveness in the long term. Being in the framework of the Natura 2000 network, such monitoring should be co-ordinated with, and eventually integrated into, that foreseen under Article 11 of the Habitats Directive.

Measures showing in practice a low level of effectiveness in contributing to the objectives should be modified accordingly.

1.5.3. Technical feasibility

According to current knowledge, it is highly unlikely that the ecological structure and function as well as the related habitats and species populations can be reinstated up to the status they had before the damage by a plan or project. To overcome the intrinsic difficulties standing in the way of full success for the reinstatement of ecological conditions, compensatory measures must be designed:

- Following scientific criteria and evaluation in accordance with best scientific knowledge,

- and taking into account specific requirements of the ecological features to be reinstated (e.g. soil, humidity, exposure, genetic pool, existing threats and other conditions critical to the success of reinstatement).

The critical aspects to technical feasibility will determine the suitability of the location of compensatory measures (spatial feasibility), the appropriate timing and their required extent.

In addition, the choice of particular measures and their design must respect the existing guidance for each particular practice, habitat creation, habitat restoration, population reinforcement, species reintroduction, or any other measure considered in the compensatory programme.

1.5.4. Extent of compensation

The extent required for the compensatory measures to be effective has a direct relationship to the quantitative and qualitative aspects inherent to the elements of integrity (i.e. including structure and functionality and their role in the overall coherence of the Natura 2000 network) likely to be impaired and to the estimated effectiveness of the measures.

Consequently, compensation ratios are best set on a case-by-case basis and must be initially determined in the light of the information managed during Article 6(3) assessment and ensuring the minimum requirements to meet ecological functionality. The ratios may then be redefined according to the results observed when monitoring the effectiveness, and the final decision on the proportion of compensation must be justified.

There is wide acknowledgement that ratios should be generally well above 1:1. Thus, compensation ratios of 1:1 or below should only be considered when it is demonstrated that with such an extent, the measures will be 100% effective in reinstating structure and functionality within a short period of time (e.g. without compromising the preservation of the habitats or the populations of key species likely to be affected by the plan or project).

1.5.5. Location of compensatory measures

Compensatory measures should be located to accomplish the highest effectiveness in maintaining the overall coherence of the Natura 2000 network. This entails a set of pre-conditions that any compensatory measure should meet:

- The area selected for compensation must be within the same biogeographic region (for sites designated under the Habitats Directive) or within the same range, migration route or wintering area for bird species (i.e. sites designated under the Birds Directive) in the Member State concerned. Further on, the area should provide functions comparable to those which had justified the selection criteria of the original site, particularly regarding the adequate geographical distribution.
- The area selected for compensation must have -or must be able to develop- the specific features attached to the ecological structure and functions, and required by the habitats and species populations. This relates to qualitative aspects like the uniqueness of the assets impaired and demands the consideration of local ecological conditions.
- Compensatory measures must not jeopardize the preservation of the integrity of any other Natura 2000 site contributing to the overall coherence of the network. When carried out in existing Natura 2000 site(s), the measures must be consistent with the conservation objectives of the site(s) and must not be understood as a means to undertake the overall management required for the site(s).

In addition, there is general agreement that the local conditions necessary to reinstate the ecological assets at stake are found as close as possible to the area affected by the plan or project. Therefore, locating compensation within or nearby the Natura 2000 site concerned in a location showing suitable conditions for the measures to be successful seems the most preferred option. However, this is not always possible and it is necessary to set a range of priorities to be applied when searching locations that meet the requirements of the Habitats Directive:

1) Compensation within the Natura 2000 site provided the necessary elements to ensure ecological coherence and network functionality exist within the site.

2) Compensation outside the Natura 2000 site concerned, but within a common topographical or landscape unit, provided the same contribution to the ecological structure and/or network function is feasible. The new location can be another site designated as Natura 2000 or a non-designated location. In the latter case, the area must be designated as Natura 2000 site itself and be subject to all the requirements of the 'nature' directives.

3) Compensation outside the Natura 2000 site, in a different topographical or landscape unit. The new location can be another site designated as Natura 2000. If compensation takes place on a non-designated location, the area must be designated as Natura 2000 site itself and be subject to all the requirements of the 'nature' directives.

New designations as part of compensation measures shall be submitted to the Commission before those are implemented and before the realisation of the project but after its authorisation. The new designations should be made available to the Commission through the established channels and procedures as in the process of adoption of the SCI lists and SPA designations *(business as usual)*.

Best cooperation and coordination shall be ensured by Member States when dealing with the location of compensatory measures in the frame of transboundary projects.

1.5.6. Timing of compensation

Timing the compensatory measures demands a case-by-case approach, where the schedule adopted must ensure the continuity of the ecological processes essential for maintaining the biological structure and functions that contribute to the overall coherence of the Natura 2000 network. This requires a tight coordination between the implementation of the plan or project and the implementation of the measures, and relies on issues such as the time required for habitats to develop and/or for species populations to recover or establish in a given area. In addition, other factors and processes must also be considered:

- A site must not be irreversibly affected before compensation is in place.
- The result of compensation should be effective at the time the damage occurs on the site concerned. Under certain circumstances where this can not be fully achieved, overcompensation would be required for the interim losses.
- Time lags might only be admissible when it is ascertained that they would not compromise the objective of 'no net losses' to the overall coherence of the Natura 2000 network.
- Time lags must not be permitted, for example, if they lead to population losses for any species protected in the site under Annex II of Directive 92/43/EEC or Annex I of Directive 79/409/EEC, requiring particularly attention when it entails priority species.
- It may be possible to scale down in time compensatory measures according to whether the significant negative effects would presumably arise in the short, medium or long term.

The application of specific measures to outweigh interim losses that would occur until the conservation objectives are met may be advisable. All necessary provisions, technical, legal or financial, necessary to implement the compensatory measures must be completed before the plan or project implementation starts, so as to prevent any unforeseen delays that may hinder the effectiveness of the measures.

1.5.7. Long term implementation

Compensatory measures require that a sound legal and financial basis for long-term implementation and for their protection, monitoring and maintenance be secured in advance of impacts upon habitats and/or species occur. This could involve:

- Making effective a temporary protection, even if the SCI/SPA status is only granted later.

– Devising binding enforcement tools at the national level aimed to ensure the full implementation and effectiveness of compensation (e.g. linked to liability under EIA directive, if applicable, or to the Environmental Liability Directive when in force; subsidising plan or project approval to the robustness of the relevant provisions for implementation of compensatory measures).

– Devising the necessary legal means in case land or rights purchase is deemed essential for the effective implementation of the measures according to good practice (e.g. typified procedures for compulsory purchase on grounds of nature conservation).

– Establishing monitoring programmes for the whole life of the project, including objectives, responsible bodies and resources needs, indicators, and requirements on reporting to the Commission. This could be best performed by independent bodies specifically set up for the purpose and in close coordination and cooperation with the Natura 2000 authorities.

1.6. Who bears the cost of the compensation measures?

It appears logical that, in line with the 'polluter pays' principle, the promoter of a project bears the cost of the compensatory measures. It may include it in the total budget submitted to the public authorities in the event of co-financing. In this connection, the European funds could, for example, co-finance the compensatory measures for a transport infrastructure retained under the TEN (Trans European Network). In particular, financial assistance from the European Regional Development Fund (ERDF) is possible for compensatory measures associated to projects that are being financed with this fund and provided it is given according to the objectives, rules and procedures applicable to this fund.

A subsidy granted by a public authority for measures taken in order to compensate for damage to a Natura 2000 site can be considered as a *State Aid* (within the meaning of Art. 87 (ex 92) of the Treaty), should it be granted to an undertaking established in a Natura 2000 site, designated before or after the establishment of the undertaking. However, in the case of an undertaking acting as a contractor for a public authority to build an infrastructure, the subsidy would not be considered as a state aid as long as it is granted in exchange of works carried out.

The Member State is bound to compensatory measures as from the entry into force of Article 6. Their financing can fall within its competence.

1.7. Information to the Commission of the compensatory measures

The competent national authorities have to inform the Commission of the compensatory measures adopted. The provision in question specifies neither the form, nor the purpose of this communication. However, in order to facilitate the process the Commission services have prepared a standard format[9] for supplying information to the Commission according to the

[9] This format is presented in Annex IV of this document.

provisions of Art. 6(4). In any case, it is not the Commission's role either to suggest compensatory measures, or to validate them scientifically.

The information should enable the Commission to appreciate the manner in which the conservation objectives of the site in question are pursued in the particular case. While the national authorities are only specifically obliged to communicate the compensatory measures adopted, the communication of certain elements relating to the studied alternative solutions and to the imperative reasons for overriding public interest which required the realisation of the plan or project can also prove necessary, insofar as these elements affected the choice of the compensatory measures.

The information about compensatory measures must enable the Commission to appreciate the manner in which the conservation objectives of the site in question are pursued in the particular case. However, it is not the Commission's role to suggest compensatory measures.

When in the planning process must the Commission be informed about compensatory measures and who is responsible for this information?

In order to allow the Commission to request additional information on the measures taken or to take actions in case it considers that the legal requirements of the directive were not correctly applied, compensatory measures should be submitted to the Commission **before** they are implemented and indeed before the realisation of the plan or project concerned but after its authorisation. It is therefore advised that compensatory measures should be submitted to the Commission as soon as they have been adopted in the planning process in order to allow the Commission, within its competence of guardian of the treaty, to assess whether the provisions of the Directive are being correctly applied.

As responsible bodies for the preservation of the overall coherence of, and for updating the information on, the Natura 2000 network, the authorities responsible for Natura 2000 in each Member State must play an important role in this process, and the information would be submitted through the national authority via the Permanent Representations of each Member State as with the process for the adoption of site lists.

1.8. What happens with sites hosting priority habitats and/or species?

The second subparagraph of Art. 6(4) provides for a special treatment whenever the plan or project concerns a site hosting priority habitats and/or species and is likely to affect these priority habitats and/or species. The realisation of plans or projects likely to adversely affect these sites could be justified only if the evoked imperative reasons of overriding public interest concern human health and public safety or overriding beneficial consequences for the environment, or if, before granting approval to the plan or project, the Commission expresses an opinion on the initiative envisaged.

In other words, damage to the sites would only be accepted as overruling the fulfilment of the objectives of the directive when the specific imperative reasons mentioned above occur or, alternatively, after the additional procedural safeguard of an independent appraisal by the Commission.
This provision raises a number of questions relating to:

- the identification of sites concerned;
- the interpretation of the concepts of human health, public safety and the primary beneficial consequences for the environment;
- the procedure for the adoption of Commission's opinion and the consequences which arise from this opinion.

1.8.1. The sites concerned

Article 6(4), second subparagraph, applies when the realisation of the plan or project is likely to affect a site hosting priority habitats and/or species. In this regard, it would be reasonable to consider that a plan or project:

a) not affecting, in any manner, a priority habitat/species; or

b) affecting a habitat/species which has not been taken into account in the selection of a site ("non-significant presence" in the Standard Data Form)

should not de facto justify that a site should be subject to this second subparagraph.

Since the Birds Directive does not rank any species as priority, compensatory measures aiming to offset effects on SPAs' bird populations would never require the Commissions' opinion.

Art. 6(4), second subparagraph may be understood as applying to all sites hosting priority habitats and/or species, when these habitats and species are affected.

1.8.2. The concepts of "human health", "public safety" and "primary beneficial consequences for the environment"

Human health, public safety and primary beneficial consequences for the environment constitute the most important imperative reasons of overriding public interest. However, like the concept of "imperative reasons of overriding public interest" these three categories are not defined expressly.

Community law refers to public health and public safety reasons as reasons which can justify the adoption of restrictive national measures to the free movement of goods, workers, services as well as to the right of establishment. In addition, the protection of persons' health is one of the fundamental objectives of the Community policy in the field of the environment. In the same view, the primary beneficial consequences for the environment constitute a category which must be included in the aforementioned fundamental objectives of the environmental policy.

Within the framework of the principle of subsidiarity, it rests with the competent national authorities to check whether such a situation occurs. Of course, any situation of this kind is likely to be examined by the Commission within the framework of its activity of control on the correct application of Community law.

As regards the concept of "public safety", it is useful to refer to the judgement of the Court of Justice of 28 February 1991 in Case C-57/89, Commission v Germany ("*Leybucht Dykes").* That decision preceded the adoption of Directive 92/43/EEC and hence Article 6. However, the decision retains relevance, not least because the Court's approach influenced the drafting of Article 6. At issue were construction works to reinforce dykes on the North Sea at Leybucht. These works involved a reduction in the area of an SPA. As a matter of general principle, the Court stated that the grounds justifying such a reduction must correspond to a general interest which is superior to the general interest represented by the ecological objective of the directive. In the specific case, the Court confirmed that the danger of flooding and the protection of the coast constituted sufficiently serious reasons to justify the dyke works and the strengthening of coastal structures as long as those measures are confined to a strict minimum.

The national authorities can authorise the realisation of the plan or project only if the proof of the existence of the afore mentioned reasons of overriding public interest is given and within the limits within which the plan or project in question proves necessary for the fulfilment of the public interest in question.

1.8.3. The adoption of Commission's opinion - its consequences

As confirmed by the Judgement of the Court of 14 September 2006 in case C-244/05, the Commission would only deliver an opinion under Article 6(4) when dealing with sites which are placed on the list of sites selected as sites of Community importance (SCI).

In the case of imperative reasons of overriding public interest other that human health, safety and environmental benefits, the prior opinion of the Commission is necessary. Article 6(4), second subparagraph, does not specify a procedure or the specific contents of such an opinion[10]. One must therefore refer once again to the economy and to the aims pursued by the provision in question. The opinion has to cover the assessment of the ecological values which are likely to be affected by the plan or project, the relevance of the invoked imperative reasons and the balance of these two opposed interests, as well as an evaluation of the compensation measures. That assessment involves both a scientific and economic appraisal as well as an examination of the necessity and proportionality of the realisation of the plan or project with regard to the invoked imperative reason.

From its nature, the opinion is not an act having binding legal effects. The national authorities can move away from it and decide to implement the plan or project, even if the opinion is adverse. In the latter case however, one can reasonably expect that the decision will address Commission's arguments and explain why its opinion has not been followed. In any case the Commission can assess whether the implementation of the plan or project is in conformity with the requirements of Community law and, if necessary, initiate the appropriate legal action. While the Directive does not include any specific deadline regarding the adoption of the Commission's opinion, Commission services will make all necessary efforts to carry out the assessments and to draw the appropriate conclusions as speedily as possible.

[10] The relevant standard format (Annex IV) covers also the request for a Commission opinion according to the provisions of Art. 6(4)2.

The Commission, in delivering its opinion, should check the balance between the ecological values affected and the invoked imperative reasons, and evaluate the compensation measures. The opinion is not binding but in case of non-conformity with Community law, legal action may be taken.

ANNEX

Form for submission of information to the European Commission according to Art. 6(4)

Member State*:* Date*:*

Information to the European Commission
according to Article 6 of the Habitats Directive
(Dir. 92/43/EEC)

Documentation sent for/ □ information/ □ opinion/

(art. 6(4).1) (art. 6(4).2)

Competent national authority*:*

Address*:*

Contact person*:*

Tel., fax, e-mail:

1. PLAN OR PROJECT

Name and code of Natura 2000 site affected*:*

This site is:

- ☐ a SPA under the Birds directive directive
- ☐ a proposed SCI under the Habitats
- ☐ hosting a priority habitat/species

Summary of the plan or project having an effect on the site:

2. NEGATIVE EFFECTS

Summary of the assessment of the negative effects on the site*:*

N.B.: this summary should focus on the adverse effect expected on the habitats and species for which the site has been proposed for the Natura 2000 network, include the appropriate maps and describe the already decided mitigation measures.

3. ALTERNATIVE SOLUTIONS

Summary of alternative solutions studied by the Member State *:*

Reasons why the competent national authorities have concluded that there is absence of alternative solutions

4. IMPERATIVE REASONS

Reason to nevertheless carry out this plan or project*:*

- ☐ Imperative reasons of overriding public interest, including those of a social or economic nature (in the absence of priority habitat/species)
- ☐ human health
- ☐ public safety
- ☐ beneficial consequences of primary importance for the environment
- ☐ other imperative reasons of overriding public interest

Short description of the reason:

5. COMPENSATION MEASURES

Foreseen compensatory measures and timetable*:*

CO/7623/2007

Neutral Citation Number: [2008] EWHC 1204 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London WC2A 2LL

Thursday, 1st May 2008

B e f o r e:

MR JUSTICE SULLIVAN

Between:

THE QUEEN ON THE APPLICATION OF HART DISTRICT COUNCIL

Claimant

v

(1) THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2) LUCKMORE LIMITED
(3) BARRATT HOMES LIMITED

Defendants

and

(1) TAYOR WIMPEY DEVELOPMENTS LIMITED
(2) NATURAL ENGLAND

Interested Parties

Computer-Aided Transcript of the Stenograph Notes of
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(Official Shorthand Writers to the Court)

Mr S Hockman QC and Miss A Williams (instructed by Sharpe Pritchard) appeared on behalf of the **Claimant**
Mr J Maurici and Mr R Turner (instructed by the Treasury Solicitor) appeared on behalf of the **First Defendant**
Miss M Cook and Mr A Ranatunga (instructed by Boyes Turner) appeared on behalf of the **Second and Third Defendants**
Mr K Lindholm QC and Mr C Howell-Williams (instructed by Addlesham Goddard) appeared on behalf of the **First Interested Party**
Mr R Drabble QC and Mr G Machin (instructed by Browne Jacobson) appeared on behalf of the **Second Interested Party**

J U D G M E N T

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1. MR JUSTICE SULLIVAN:

Introduction

2. This is an application under Section 288 of the Town and Country Planning Act 1990 ("the Act") to quash the decision of the first defendant to allow four appeals made by the second and third defendants under Section 78 of the Act. The first defendant's decision is contained in a decision letter dated 24th July 2007 ("the decision letter").

3. The first defendant appointed an inspector to hold a public inquiry into the four appeals. The Inspector held an inquiry between 12th and 15th December 2006 and on 19th December 2006, and reported to the first defendant on 23rd January 2007. In her report, the Inspector recommended that all four appeals should be dismissed.

4. The Inspector said that the appeal proposals were "in effect a package of proposals to achieve the residential development of land off Dilly Lane." (Paragraph 1). Dilly Lane is on the southern edge of Hartley Wintney, which is one of the larger villages in Hart District. The four appeals were referred to as Appeal A, Appeal G, Appeal E and Appeal F in both the Inspector's Report and the decision letter.

5. As amended, Appeal A related to an application for outline planning permission for 170 dwellings, with an affordable housing content of 40 per cent on the "main appeal site" to the south of Dilly Lane.

6. Appeal G related to a detailed application for planning permission for 170 dwellings, including 68 affordable dwellings on the main appeal site.

7. Appeal E related to proposals to widen and surface footpath 18A King John's Ride, to upgrade it to a 2.5 metre wide footpath and cycle path, and to create two links from the upgraded path into the northern and southern parts of the main appeal site. King John's Ride runs to the west of the main appeal site, between it and existing housing in Wier Road, and then runs in a southwesterly direction and joins the B3016 Road, which leads to Winchfield Station, some 1.6 kilometres to the south.

8. Appeal F related to an application to change the use of the field ("the field site") to the east of and adjoining the main appeal site from agricultural use to informal recreational space to serve the proposed residential development and for use by the local community. In total, 9.52 hectares of new open space was included in the package of proposals, 3.36 hectares as buffer zone in the main appeal site, and 6.16 hectares in the field site. Other mitigation measures that form a part of the package are listed in paragraph 4.9 of the Inspector's Report.

9. On 9th March 2005, the Thames Basin Heaths were classified as a special protection area (SPA) under Article 4 of EC Directive 79/407/EEC on the conservation of wild birds ("the Birds Directive") for three species listed in Annex 1 to the Directive: the

nightjar, the woodlark and the Dartford warbler, because the SPA is regularly used by 1 per cent or more of Great Britain's population of those bird species.

10. Since the adoption of the Habitats Directive 92/43/EEC ("the Habitats Directive"), and as a result of Article 7 of that Directive, SPAs classified under the Birds Directive are protected by the obligations contained in Articles 6(2) and (3) of the Habitats Directive. Articles 6(2) and (3) of that Directive impose the following obligations:

> "2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.
>
> 3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public."

11. These provisions are transposed into domestic law by Regulation 48 of the Conservation (Natural Habitats, &c.) Regulations 1984 ("the Regulations"). So far as relevant, Regulation 48 provides:

> "(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—
>
> (a) is likely to have a significant effect on a European site in Great Britain... either alone or in combination with other plans or projects), and
>
> (b) is not directly connected with or necessary to the management of the site,
>
> shall make an appropriate assessment of the implications for the site in view of that site's conservation objectives.
>
> (2) A person applying for any such consent, permission or other authorisation shall provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable them to determine whether an appropriate assessment is required.
>
> (5) In the light of the conclusions of the assessment, and subject to regulation 49, the authority shall agree to the plan or project only after

having ascertained that it will not adversely affect the integrity of the European site...

(6) In considering whether a plan or project will adversely affect the integrity of the site, the authority shall have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which they propose that the consent, permission or other authorisation should be given."

12. The main appeal site lies about 1.5 kilometres south of the nearest point of Hazeley Heath, which is on the north side of Hartley Wintney. Hazeley Heath is a heathland site of Special Scientific Interest (SSSI), and a component of the Thames Basin Heaths SPA. Bramshill SSSI, Castle Bottom to Yateley and Hawley Commons SSSI are also components of the SPA, within 5 kilometres of the appeals site (paragraph 2.3 of the Inspector's Report).

Factual background: The effect on the SPA

13. The planning history of the four appeals is lengthy and complicated. For present purposes, it may be summarised as follows. Having considered the potential for increased visitor pressure on the healthlands within the SPA as a result of permitting residential development some distance away from the SPA, English Nature, now Natural England (NE), indicated in January 2004 that competent authorities should undertake appropriate assessments for proposed residential developments up to 5 kilometres from the (then proposed) SPA.

14. The outline application, which was the subject of Appeal A, was made on 29th July 2004. In a letter dated 12th August 2004, NE stated that the Dilly Lane site was too far from the SPA for there to be an effect on the Annex 1 bird species, and that the proposals were not likely to cause significant damage to Hazeley Heath SSSI. NE, therefore, did not object to the outline application, which subsequently became Appeal A.

15. Mr Colebourn, the ecological consultant instructed by the second and third defendants, explained in his proof of evidence at the inquiry how NE had altered its stance when the detailed application (Appeal G) was made on 1st March 2006:

"2.12 Towards the end of 2005, Natural England reconsidered its policy and 'decided to take a stronger line' in relation to the 'in-combination' effect of multiple residential schemes on the ecological function of the... SPA. In particular, NE's letter to HDC [Hart District Council] dated 25 October 2005 drew attention to further research on heathlands, especially the work of Liley, Clarke, and others, in Dorset; and, in particular, on the mechanisms by which recreational impacts including dog-walking, might affect bird breeding success, and thus be considered a deleterious effect on the habitat.

2.13 Natural England then considered that although it might potentially

> be possible to mitigate such effects through each site providing appropriate alternative recreational facilities, the present Dilly lane application did not provide such Alternative Greenspace, and therefore, in NE's view must fail the Regulation 48 tests.
>
> 2.14 On that basis, Natural England advised HDC that it objected to the Full Planning Application for Dilly Lane."

16. Although Appeal G was made on the basis of the claimant's failure to determine the detailed application within the prescribed period, the claimant subsequently considered the application and its second deemed reason for refusal was as follows:

> "The LPA has insufficient information to allow it to make an Appropriate Assessment under the Conservation (Natural Habitats &c) Regulations 1994. As such it can not be satisfied that the proposed development (on its own and/or in combination with other plans and projects), will not have an adverse impact on the integrity of the Thames Basin Heaths Special Protection Area. Therefore the proposal is contrary to [a number of policies in the development plan]..."

17. In his proof of evidence, Mr Colebourn described the assessments that had been carried out by his company, Ecological Planning and Research Ltd (EPR), and by consultants appointed by the claimant, Jonathan Cox Associates, the latter as part of the claimant's consideration of the first alteration to the plan. It has never been contended that, considered individually, the development of the main appeal site for 170 dwellings would be likely to have a significant effect on the SPA. The issue was whether, in combination with other proposed residential developments in the area, it would be likely to have such an effect.

18. The results of Mr Colebourn's final assessment were contained in a report dated November 2006: "Land at Dilly Lane Hartley Wintney, Measures to Avoid Effects on the Thames Basin Heaths SPA" ("the EPR Report"). The EPR Report described the surveys that had been undertaken by EPR: visitor surveys of the origins of visitors to Hazeley Heath, Bramshill, Warren Heath and Yateley Common; visitor surveys of the users of the common land within Hartley Wintney, and a door-to-door survey of residents of the south-western part of Hartley Wintney. A draft of the EPR Report was sent to NE. NE's questions about the research, and EPR's interpretation of the results, were answered in a technical note from EPR, which was, in substance, incorporated into the final version of the EPR Report.

19. On 20th October 2006, NE wrote to the claimant:

> "Further to our response of 18th August to EPR, who are working for Luckmore Ltd on the above proposals, Natural England has received further information on the mitigation offered. We have also had sight of a draft S106 agreement designed to, amongst other matters, secure the mitigation identified.

I therefore write to clarify the position of Natural England ahead of the deadline for Proofs of Evidence for the Inquiry into the proposals.

The outstanding matters on the mitigation offer related to whether the site was adequate, in terms of its size and quality, to fully mitigate for the development. This is specifically in terms of whether the space offers the length of walks and varied nature provided by the SPA sites, to ensure that it provides a real alternative for those new residents which may also choose to use the SPA.

On the 12th September EPR provided maps illustrating footpaths in and around the village of Hartley Wintney which may be linked to the mitigation space to provide for longer walks of up to 4 km.

After a great deal of consideration, it has been concluded that on balance a competent authority, in view of the additional information provided on links to the local footpath network, would probably be in a position to conclude that the effects on the SPA arising from this development would be avoided, if the proposals are put in place.

It should be noted that the need for other larger sites, as would be provided by a strategic suite of SANGs [Suitable Alternative Natural Greenspace], to be co-ordinated by the local authority is not a new idea. It is consistently applied through the Delivery Plan and acceptance of mitigation packages prior to the Plan being put in place is on the basis that they are considered in light of highly local circumstances."

The remainder of the letter dealt with the proposed Section 106 agreement and other matters that are not relevant for present purposes.

20. Mr Colebourn wrote to NE suggesting that its advice as the statutory nature conservation adviser was not entirely clear. He suggested that it would be helpful if a Statement of Common Ground could be agreed between NE and EPR. The Statement of Common Ground is dated 2nd November 2006. So far as relevant, it said:

"1. For the purposes of this Inquiry, the appellants accept that, consistent with the provisions of the Thames Basin Heaths Delivery Plan, a package of mitigation measures sufficient to avoid a likely significant effect on the Thames Basin Heaths SPA is required.

2. The package of measures offered by the developer, to ensure that the proposed development and associated mitigation and avoidance measures at Dilly Lane does not have an adverse effect on the integrity of the Thames Basin Heaths SPA or any component SSSI, is sufficient in scale and detail to allow a competent authority to conclude that there is not likely to be significant effect on the Thames Basin Heaths SPA, and that no appropriate assessment under the Habitat Regulations is necessary.

3. The package of measures is set out in the following documents:"

Those documents include the EPR Report.

21. On 10th November 2006 NE wrote to the claimant. The letter referred to the provisions in the draft Section 106 agreement and concluded:

> "Therefore, we are satisfied that the S 106 agreement draft of 10 November 2006, as attached, has been improved through the recent amendments and is now a suitable means to secure the impact avoidance measures.
>
> With reference to the Statement of Common Ground of 2 November 2006 (also attached), we accept this as it is clear that the appellant accepts that the avoidance measures are necessary. We interpret this as an indication of their acceptance of Natural England's opinion; that should the measures not be put in place, and were the development still to go ahead, an adverse effect on the integrity of the SPA may arise.
>
> Given this progress, our concerns have been resolved and we are able to withdraw our objections to the proposals in relation to the Thames Basin Heaths SPA. For this reason it is our expectation that it would not be necessary or helpful for us to attend the inquiry."

The claimant's reply on 14th November 2006 said:

> "As you are aware, Hart District Council has relied on evidence from Natural England in relation to the mitigation package. Given the uncertainty surrounding these issues, and hence, whether adequate mitigation can be secured, we must assume and strongly request that Natural England submit evidence to the Inquiry and give evidence on these matters."

22. NE replied on 17th November 2006, reaffirming its position as to the adequacy of the Section 106 agreement and saying:

> "The applicants have accepted that without the measures secured by the s106 agreement there is likely to be a likely significant effect on the SPA. This can be inferred clearly from the statement of common ground. This leaves a clear position. That is, with those measures secured, Natural England's objection is resolved.
>
> If for some reason the Inspector was to conclude that the measures would not reliably secured, then given the accepted possibility of an adverse effect, we believe the Inspector would have no choice but to dismiss the appeal. Given this position, and in particular the indication given by the statement of common ground that the appellants will not dispute the possibility of impact, it does not appear necessary for Natural England to submit evidence to the inquiry."

That was the position when the inquiry opened on 12th December 2006. NE did not

give evidence at the inquiry. The Inspector said in paragraph 1.2 of her report:

> "The second deemed reason for refusal in Appeal G concerns the Thames Basin Heaths Special Protection Area... Subsequently in November 2006 Natural England withdrew its objections on the basis of the proposed package of measures and the controls on their implementation and retention achieved through planning obligations. In view of the advice from Natural England the Council no longer raises any objections to the proposed mitigation plan. The deemed reason for refusal on Appeal F, on the need to secure a management plan for the long term maintenance of the open space, has also been overcome by a planning obligation."

23. The claimant did not challenge Mr Colebourn's evidence at the inquiry. The only reference to the SPA in the claimant's closing submissions to the Inspector was in these terms:

> "HDC does not raise any objections to the technical mitigation plan proposed. Nor does HDC seek to introduce a fresh reason for refusal. However HDC does consider it right to draw the Inspector's attention [to] the fact that [NE's] Draft Delivery Plan is the subject of scrutiny at the South East Plan proceedings."

24. The Inspector reached the following conclusions as to the effect of the proposals on the SPA:

> "12.5 The Appellants have accepted that, because there is not enough current data to confirm otherwise, the Dilly Lane development may, without mitigation and in combination with other developments, contribute to a significant effect on the SPA. Therefore their approach has been to develop a package of mitigation measures to ensure avoidance of any contribution to such adverse in combination effects. The Appellants are confident that the proposals are able to proceed independently of the Natural England Delivery Plan and its application within Hart. Natural England has advised that the package is sufficient in scale and detail to allow a competent authority to conclude that there is not likely to be a significant effect on the SPA. In Natural England's opinion no appropriate assessment under the Habitats Regulations is necessary.
>
> 12.6 The JCA Assessment and the evidence of EPR suggest that the most likely in combination pressures to be placed on the SPA would be through increased recreational pressure and more particularly disturbance by people and dogs. The HWAG [Hartley Wintney Action Group] highlighted the threat of fire. However, the evidence suggests that heathland fires are most likely to be started by children and young people. The distance between the site and Hazeley Heath is such as to discourage easy access by unaccompanied youngsters from the development.
>
> 12.7 The Appellants, through EPR, have developed the mitigation

package over a period of several years. The proposals have been informed by the specifications in the Draft Delivery Plan and by research into human behaviour with regard to informal recreation. The specific local research and survey work undertaken by EPR came later in June/July 2006 in response to comments by Natural England. Therefore rather than informing and guiding the proposals for the SANGS this later work was undertaken with the purpose of establishing likely levels of its future use.

12.8 As explained by the Appellants at the inquiry the objective has not been to provide replacement heathland but to provide alternative green space that would be equally attractive for some of the purposes people visit the heaths. The field site has been designed to be attractive to walkers and more particularly dog walkers, although able to accommodate other informal recreation activity. I consider the informal recreation area would be of a reasonable size, fenced off from the road, with defined footpaths and open areas to allow dogs to be let off the lead. The hay meadow and areas of additional planting would reinforce local landscape character. However, it would have a quite different character to the heaths, being more enclosed and within a farmland and village setting. It would therefore be more akin to some of the commons and open spaces within the village and to the footpaths through the farmland nearby. The links to the informal amenity areas on the housing site and to the surrounding footpath network would offer opportunities for walks of varying length. Again these walks would not generally replicate the openness and semi-wild character of the heathlands.

12.9 A fundamental conclusion of the Appellants, supported they say by 2006 EPR survey work, is that the measures will avoid any net effect of recreational activity on the SPA. My understanding is that reliance is placed on the SANGS drawing existing users away from the Heath to compensate for the new residents using the Heath on occasion. I have serious doubts about these conclusions. In my view an equally valid conclusion from the EPR survey is that the SANGS, because of its convenience and character, would act as an alternative to the use of the Hartley Wintney commons and green spaces for dog walking and walking by existing residents in the locality of the site. There is little I can see to suggest that it would be successful in diverting existing trips by these residents away from the Heath. Taking a wider view, the residents living closest to Hazeley Heath and who form the greater proportion of visitors, are unlikely to be attracted to the SANGS. It would offer nothing significant over and above the Heath, while being less convenient and with less opportunity for longer walks with dogs off a lead. For new residents the SANGS may well provide opportunities for shorter walks close to home but Hazeley Heath and other components of the SPA remain a convenient and unique destination to satisfy a wider range of recreation needs.

12.10 The timescales associated with providing the informal recreation

area on the field site are also relevant to the ability to avoid any net effect of recreational activity on the SPA. The intention is to carry out the planting and associated works to create this key component of the SANGS before occupation of the first dwelling. The Appellants' expert witness on ecology outlined the timescales for establishing the areas of grass, scrub and trees. In his opinion the spaces would have quite a natural appearance after about 3 or 4 years, although the benefits to biodiversity would take a longer period ranging over 5 to 15 years. I consider the less attractive, newly formed appearance of the open space in its early years will not encourage existing residents to take advantage of the SANGS rather than visiting the more attractive Heath, with its particular landscape qualities. The attractiveness for new residents would also be less. Consequently the likelihood of achieving a net positive effect would be reduced in the short term.

12.11 The proposals also include the provision of information about alternative recreation sites and on the SPA. Whilst a positive measure there is little specific evidence to support the view that the provision of the information would be effective in significantly reducing the number of trips to the SPA. The impression I have gained through all the representations is that local residents are very aware of their surroundings and their particular attributes.

12.12 The Natural England Draft Delivery Plan points out that research has indicated that altering the existing recreational patterns by promoting or providing alternatives is harder to achieve than establishing new use patterns amongst new residents. Bearing this in mind, I do not share the confidence of the Appellants that existing residents will be enticed away from the Heath in any significant numbers. In my opinion, because of the character of the SANGS, it will probably be only successful in attracting existing residents who would otherwise use the local commons and green spaces in the village. Whilst I agree new residents will be likely to use the SANGS to fulfil recreation requirements for convenient walks and exercising the dog, the SPA is not far away and has the advantages of its unique character and opportunities for a wider range of recreations. I do not accept that the measures will avoid any net effect of recreational activity on the SPA.

12.13 The JCA Assessment anticipated that measures would be taken to develop access management plans for the component SSSI in the SPA and to ensure appropriate habitat management across the SPA. These measures were envisaged to be in addition to mitigation directly linked with any planning application. Evidence at the inquiry confirmed that such strategic measures have not been put in place. In my view this consideration would be relevant after carrying out an appropriate assessment rather than in an initial appraisal to establish if the proposal would be likely to have a significant effect on the SPA.

12.14 The SPA is of international importance to nature conservation. It enjoys a high level of protection, consistent with the aim of ensuring biodiversity through conservation of natural habitats, fauna and flora. Accordingly, a precautionary approach is to be taken in assessment. Having regard to the conservation objectives for the SPA I am unable to conclude that the proposed package of measures could lead to a judgement of no likely significant effect on the SPA. The probability of the proposals having a significant effect on the SPA in combination with other plans or projects cannot be discounted. It follows that an appropriate assessment should be carried out in order to ascertain if the proposal would adversely affect the integrity of the site.

12.15 However, there is inadequate information available at this time to enable an appropriate assessment to be carried out. Furthermore, there are alternative sites on which dwellings could be built in the Country or South East region which would have a lesser effect or avoid an adverse effect on the integrity of the SPA. Given these circumstances and the uncertainties over the effect of the proposals on the SPA it follows that the development would not be compliant with the Habitats Regulations. To permit the scheme without formal appropriate assessment would be contrary to LP Policy CON 1 and national policy in PPS9. In the light of these conclusions it is not necessary or appropriate to address the criticism raised by the HWAG on the assessment approach used by Natural England."

25. HWAG's criticism of NE's approach to appropriate assessment was summarised by the Inspector in paragraph 9.12 of her report:

"9.12 The Appellants have agreed a mitigation package with Natural England but the package is not environmentally acceptable and sustainable. Firstly, the approach used by Natural England in assessing significant effect on Hazeley Heath is flawed. Account was taken of the package of mitigation and avoidance measures in concluding that they will succeed in avoiding a net adverse effect on the SPA and therefore pass the Preliminary Stage Assessment. Referring to the opinion by Robin Purchas QC, consideration should not be given to possible mitigation at that stage (*Document 69*)."

For completeness I should also refer to paragraph 9.13 of the Inspector's Report, where the Inspector summarised HWAG's case that:

"9.13 Hazeley Heath has an inherent attraction that draws people to it, as indicated by a recent survey (*Document 14 p. 3, Document 64*). The SANGS will not provide the attributes of biodiversity, peacefulness, wilderness, safety, openness, beauty or freedom to roam over a wide area. Even though the SANGS will offer additional recreation land it would be small in comparison to the Heath and be mainly used by dog owners. The field will take some 10 years to take on a natural appearance and the

surrounding farmland and woodland has not the same landscape quality as the SPA. The SANGS would not have the same attractiveness and residents will still wish to visit Hazeley Heath. The extra numbers of people will add pressure, primarily through disturbance and the increased risk of fire."

26. The response of the second and third defendants to HWAG's submissions is recorded by the Inspector in paragraph 8.7 of her report:

> "8.7 In the later stages of the inquiry the HWAG introduced a new point and suggested that the approach of Natural England, one accepted by the Council and endorsed by EPR, is fundamentally flawed. Reliance was based on an opinion of Robin Purchas QC, who concluded that when considering whether an appropriate assessment is necessary one should disregard any mitigation or the manner in which the proposals are intended to be carried out (*Document 69*). However, there is no reason why the Secretary of State should take a different approach to that used by her statutory consultee and which was applied in the Franklands Drive case. In any event whichever way the issue is approached the answer remains the same. Granting permission for the current proposals is not likely to have a significant effect on the SPA either alone or in combination with other plans or projects. Compatibility with the Directive and Habitats Regulations is secured. The net effect will be beneficial in that the likelihood of the Dilly Lane residents (some 400) to use the SPA for recreation will be more than offset by the likelihood of the population in the immediate locality (some 800) to use the proposed open space as part of their recreation. The proposed leaflets and information boards will be the first active steps aimed at educating the public and thus better managing the SPA."

27. In a letter dated 4th April 2007, the first defendant stated that she was minded to disagree with the Inspector's conclusions and recommendations, and was minded to allow the appeals and grant planning permission, subject to conditions and to Section 106 planning obligations, but that before reaching a final decision she required further evidence clarifying the housing supply position within Hart District ("the minded to grant letter"). Paragraphs 13-15 of the minded to grant letter dealt with the effect on the SPA:

> "13. The appeal site is located within 2km of Hazeley Heath, which forms a part of the Thames Basin Heaths Special Protection Area (SPA). The Thames Basin Heaths SPA is protected by the Conservation (Natural Habitats &c.) Regulations 1994, commonly referred to as the Habitats Regulations. These require the consideration of effects of plans or projects on the SPA, which are not directly connected with, or necessary to, its management. Those that are likely to have a significant effect on the European site, either alone or in combination with other plans or projects, must be subject to an appropriate assessment of the implications in view of the European site's conservation objectives.

> 14. The Secretary of State has therefore taken account of the possible impact that allowing these proposals may have on the features of the Special Protection Area that are of conservation interest, namely nightjar, woodlark and Dartford Warbler. In considering this matter she has taken into account the fact that Natural England has withdrawn its objections to the proposed development and has confirmed (IR8.5) it is satisfied that the package of measures offered by the appellant is sufficient in scale and detail to allow a competent authority to conclude that there is not likely to be significant effect on the SPA, and that no appropriate assessment under the Habitats Regulations is necessary. These measures will provide 'suitable alternative natural green space' (SANGS) to serve the residential development and for use by the local community (IR4.8). The Secretary of State gives great weight to Natural England's views as the appropriate nature conservation body in relation to the application of the Conservation (Natural Habitats &c) Regulations 1994. She is therefore satisfied she can proceed to grant planning permission without having to undertake an Appropriate Assessment. Accordingly, the Secretary of State has concluded that there is no need to consider further the Inspector's deliberations in IR12.5-IR12.15 on the effect of the current proposals on the integrity of the habitat. She has gone on to assess the proposals against the other issues identified in paragraph 12 of this letter.
>
> 15. The Secretary of State is aware that the report of the Assessor on the Thames Basin Heaths Special Protection Area and Natural England's draft Delivery Plan was made available in February to the Panel conducting the Examination in Public into the South East plan. She gives the report little weight at this stage, however, given its purpose in informing the SEP Panel, who will in turn report to her. She is therefore not currently in a position to rely upon the Assessor's conclusions and recommendations."

28. Although the Secretary of State had not invited further representations about the effect of the proposals on the SPA, the claimant, in addition to making lengthy representations as to the housing supply and position within its district (see below), also made representations in respect of the SPA:

> "With regard to the SPA there are two issues of particular concern that are explored in further detail in this section of the Council's Statement: i) the SoS's view that there is no requirement for an appropriate assessment in association with the Appeal proposals and that planning permission can be granted in the absence of such an assessment; and ii) the SoS's failure to consider the conclusions of her Inspector relevant to the impact of development on the SPA."

29. Having referred to the Inspector's conclusions, and to another appeal decision in which the Secretary of State had allowed residential development on appeal on the basis that an appropriate assessment ("AA") was not required, the claimant's representations said that:

"3.5... Since that time, matters relevant to the SPA have moved on significantly having regard to the availability of new information and the better level of understanding relevant to the requirements of Article 6(3) of the Habitats Directive.

3.6 In terms of the availability of additional information, the primary development relates to the consideration of a significant body of evidence on the SPA by Peter Burley, a Senior Planning Inspector (the Technical Assessor) between November 2006 and February 2007 as part of the South East Plan Examination in Public. Mr Burley considered all submissions and concluded in his report entitled 'The Thames Basin Heaths Special Protection Area & Natural England's Draft Delivery Plan' published in February 2007 (supported by a clarification note produced in March 2007 and a more recent Addendum issued on the 13 April 2007), that Natural England's approach to the requirements of Article 6(3), namely that the provision of SANGS absolved a Competent Authority from carrying out an AA for a development that would otherwise be considered likely to have a significant effect, was incorrect in law. This conclusion was based on the fact that there was no objective evidence to show that the provision of SANGS would be sufficient to ensure that residential development would be unlikely to have a significant effect on the SPA, and therefore a Competent Authority could not avoid carrying out an AA. This is effectively the position also reached by the Inspector at the Dilly Lane Inquiry.

3.7 The second change since the Franklands Drive decision relates to the increased level of understanding of the procedures required to comply with the requirements of the Article 6(3) of the Habitats Regulations. To this end there have been a number of eminent legal opinions produced as follows:"

Those were opinions by Mr Elvin QC, Mr Griffiths QC, Mr Purchas QC and Mr Drabble QC. The claimant's representations continued:

"3.8 These opinions come to different conclusions relevant to the need to undertake an AA in circumstances where an unmitigated development would have a likely significant effect on the SPA. However in considering these opinions, the Technical Assessor came to the view that,

*'in order to comply with the **Waddenzee** test it will be necessary for the time being at least, for all larger residential developments, which aim to provide SANGS, to be subject to an appropriate assessment'...*"

The representations referred to the Technical Assessor's response to Mr Drabble's opinion and said:

"3.10 In the light of this additional information and the clarification in terms of the application of Article 6(3), HDC considers that the appeal

proposals require an AA as a matter of law...

3.11 For these reasons, HDC is of the view that the SoS's conclusion in terms of the need, or lack thereof, for an AA is flawed and that by failing to carryout an AA, the SoS has acted outside the limits of her discretion as set by... both the EU and UK legislative regime."

30. The claimant then contended, in its representations, that the first defendant had failed to consider the Inspector's conclusions and had instead been guilty of "an unacceptable delegation of her authority" to NE:

> "... the significant and overriding weight given by the SoS to the views of Natural England... led her to take the view, without challenge or further consideration, that she need not consider her own Inspector's conclusions (which notably conflicted with Natural England's but which have subsequently been supported by the Technical Assessor), or to come to a conclusion herself on the matter..."

31. Mr Purchas in his opinion dated 8th December 2006, and the Technical Assessor in his report published in February 2007, were both considering the Draft Delivery Plan published by NE's predecessor, English Nature, on 26th May 2006, in the context of the examination in public into the regional spatial strategy for the South East ("the South East Plan"). In his opinion, Mr Purchas said that Regulation 48 (above) should be approached in three distinct and sequential stages. In the first stage, the question was whether the project (either alone or in combination with other plans or projects) was likely to have a significant effect on the SPA.

32. In paragraph 17 of his opinion, Mr Purchas said:

> "Consideration should not be given at this stage to possible mitigation. This is made clear by the European Commission Environment DG publication *Assessment of plans and projects significantly affecting Natura 2000 sites* which states at 2.6 that 'it is important to recognise that the screening assessment should be carried out in the absence of any consideration of mitigation measures that form part of a project or plan and are designed to avoid or reduce the impact of a project or plan on a Natura 2000 site. ... Effective mitigation of adverse effects on Natura 2000 sites can only take place once those effects have been fully recognised, assessed and reported."

33. Paragraph 1.1 of the document ("the Methodological Guidance") explains the nature of the document referred to by Mr Purchas:

> "This document has been produced to provide non-mandatory methodological help to carry out or review the assessments required under Article 6(3) and (4) of the habitats directive...
>
> This guidance must always be read in conjunction with the directives and national legislation, and within the context of the advice set out in the

> Commission services' interpretation document 'Managing Natura 2000 sites: The provisions of Article 6 of the "Habitats" Directive... (referred to in this guidance as MN2000). MN2000 is the starting point for the interpretation of the key terms and phrases contained in the habitats directive and nothing in this guidance document should be seen as overriding or replacing the interpretations provided in MN2000. Furthermore, this guidance should not be read as imposing or suggesting any procedural requirements for the implementation of the habitats directive. Its use is optional and flexible since, under the principle of subsidiarity, it is for individual Member States to determine the procedural requirements deriving from the directive."

The reasons given in paragraph 2.6 of the document for the proposition that the screening assessment should be carried out in the absence of any consideration of mitigation measures that form part of the project or plan, and are designed to avoid or reduce the impact of a project or plan on the Natura 2000 site, are as follows:

> "The proponents' notion of effective levels of mitigation may vary from that of the competent authority and other stakeholders. To ensure the assessment is as objective as possible, the competent authority must first consider the project or plan in the absence of mitigation measures that are designed into a project. Effective mitigation of adverse effects on Natura 2000 sites can only take place once those effects have been fully recognised, assessed and reported. It will then be for the competent authority, on the basis of consultation, to determine what type and level of mitigation are appropriate."

34. The Draft Delivery Plan (or to give the document its formal title: The Thames Basin Heaths SPA: Draft Mitigation Standards for Residential Development) sets out a strategic approach to the provisions of SANGS. For example, in Zone A (within 400 metres of the SPA) no effective avoidance or mitigation is possible; in Zone B (between 400 metres and 2 kilometres away from the SPA) 16 hectares of SANGS per 1,000 of new population is required, with further requirements as to the minimum size of the SANGS and their maximum distance from the proposed development; in Zone C (between 2 and 5 kilometres from the SPA) the standard of provision required reduces to 8 hectares of SANGS per 1,000 of the new population, with further stipulations as to minimum size and maximum distance from the proposed development.

35. The Draft Delivery Plan does not prevent individual assessments of particular proposals. Under the subheading "Individual Assessments", paragraph 2.2.9 says:

> "The Delivery Plan **does not** preclude the local authority deciding to assess a particular individual residential application separately under the Habitats Regulations. Equally, when making an application, a developer could ask the authority to assess the application separately from the Delivery Plan, whether or not mitigation is included. Given the likelihood of significant effect on the SPA, without mitigation, the application would need to be subject to an appropriate assessment, unless for good reasons,

> the authority is satisfied it would not be likely to have a significant effect on the SPA... Such a conclusion should be recorded, with reasons, by the planning authority and should have regard to the advice in Circular 06/2005 and to the findings of the European Court of Justice referred to in paragraph 13 of the Circular." (Emphasis as in the original).

36. Circular 06/2005 provides administrative guidance on the application of the law relating to planning and nature conservation. For present purposes, paragraphs 13 and 14 of the Circular, which deal with the issue or "likely significant effect", are relevant:

> "13. If the proposed development is not directly connected with or necessary to site management, the decision-taker must determine whether the proposal is likely to have a significant effect on a European site. The decision on whether an appropriate assessment is necessary should be made on a precautionary basis. An appropriate assessment is required where there is a probability or a risk that the plan or project will have significant effects on a site. This is in line with the ruling of the European Court of Justice in Case C-127/02 (the Waddenzee Judgment) which said *'any plan or project not directly connected with or necessary to the management of the site is to be subject to an appropriate assessment of its implications for the site in view of the site's conservation objectives if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects'.*
>
> 14. The decision-taker should consider whether the effect of the proposal on the site, either individually or in combination with other projects, is likely to be significant in terms of the conservation objectives for which the site was classified. The European Commission has also issued guidance, which local planning authorities may wish to consider."

A footnote to the final sentence in paragraph 14 refers to managing the Natura 2000, but not to the Methodological Guidance referred to in the opinion of Mr Purchas.

37. The Technical Assessor considered four main criticisms of the Draft Delivery Plan ("DDP"). They were:

> "... firstly that NE is wrong to hold that developments which provide SANGs of appropriate size and quality would avoid any likely significant effect and therefore not require an appropriate assessment; secondly that its operation of the 'in combination' requirement is unreasonably rigorous; thirdly that its application of the 'precautionary principle' is not proportionate; and finally that the failure to set clear conservation objectives makes it impossible to accurately apply the requirements..."

38. Under the subheading "Avoidance or mitigation" the Technical Assessor said:

> "4.1.11 It is argued, most forcibly by Runnymede Borough Council, that

NE's approach to avoidance and mitigation is wrong in principle. In particular, it is contended that to maintain that the provision of SANGs would avoid any likely significant effect subverts the intention of the legislation since it means that an appropriate assessment is thereby avoided. It is also suggested that NE has confused avoidance and mitigation.

4.1.12 It is clear from the wording of the DDP and what was said at the technical meetings by NE that the primary reason it adopted its approach was in an attempt to provide greater certainty for the house building industry and to make the process of complying with the requirements of the legislation easier. I have no reason to doubt that this was a genuine attempt by NE to facilitate the delivery of housing, albeit that it has largely had the opposite effect...

4.1.14 Whether or not appropriate assessment is more complicated or allows for more flexibility is not the issue. The question is whether the approach adopted by the DDP complies with the legislation. In this regard, I have some doubts that it does. While I accept that in some circumstances steps can be taken to avoid a likely significant effect, for instance by re-siting a proposed development, I am not satisfied that it has been demonstrated on an objective basis that the provision of SANGs would in principle avoid any likely significant effect on the SPA."

39. On this issue, the Technical Assessor concluded in paragraph 4.1.17:

"It seems to me therefore that, until there is a clearer objective basis for concluding that the provision of SANGs would avoid any likely significant effect, the correct approach would be to undertake an appropriate assessment. It may well be that at that stage the provision of alternative open space either individually or in combination with other measures could be demonstrated to provide sufficient mitigation to avoid any adverse affect on the SPA. However taking into account the precautionary principle I am not satisfied that it can be shown at the initial screening stage that such provision would avoid any possibility of there being a likely significant effect."

In his overall conclusions in paragraph 4.1.43 the Technical Assessor said:

"I find that the DPP fails to correctly interpret the requirements of the relevant European and UK legislation in a number of respects. In my view its indication that the provision of SANGs will avoid the need for an appropriate assessment is incorrect and its application of the 'in combination' requirement unduly rigorous. More worryingly its application of the precautionary principle would not appear to comply with the advice of the European Commission in terms of proportionality and consistency."

40. As part of its response to the Technical Assessor's report, NE asked Mr Drabble and Mr Machin to provide an opinion. Their joint opinion dated 21st March 2007 said, so far as relevant:

> "... we do not consider that NE are wrongly conflating avoidance and mitigation. Although both words are commonly used, and used in context are helpful, it must be remembered that neither appear in Article 6 itself. If a proposal includes as an integral part of the development a measure which will avoid any significant effect, then in our opinion the competent authority is entitled to so hold at the significant effect stage. If a development was proposed with a wall that could in practice be guaranteed to prevent anybody from reaching the SPA, then it would clearly be right to hold that there was no likely significant effect. The people, put simply, would not reach the site. The example is of course improbable, but it does illuminate the legal principle; and the same principle applies to the provision of SANGs if the ecological assumption that SANGs is effective is accepted."

41. The Technical Assessor's response in an Addendum Report dated 13th April 2007 included the following:

> "7. The comments made under issue 1 of the opinion imply that I concluded that the provision of SANGS could never avoid the need for assessment. This is a misreading of my original report. I accept that in principle the need for such an assessment could be avoided in certain circumstances. However, such an approach would only accord with the principles of ***Waddenzee*** if objective evidence existed to demonstrate that the provision of SANGS, either on their own or together with other measures, would be sufficient to ensure that new residential development of significant scale would be unlikely to have a significant effect on the SPA. It is clear from the ecological evidence presented to me at the technical meetings that no such objective evidence exists at present.
>
> 8. Consequently, I hold to the view that in order to comply with the ***Waddenzee*** test it will be necessary for the time being at least, for all larger residential developments, which aim to provide SANGS, to be subject to an appropriate assessment. If objective evidence is subsequently forthcoming, which confirms that a specific level and quantity of SANGS per head of population would avoid any likely effect on the SPA, then clearly there would be no need for an appropriate assessment to be undertaken, if the requisite SANGS is to be provided as part of the development...
>
> 10. I accept that the lack of objective evidence of the efficacy of SANGS, as a principle, will make it more difficult for any scheme, which seeks to provide SANGS as mitigation, to demonstrate that there will be no significant adverse effect on the SPA at the appropriate assessment stage. Nevertheless, if one is looking at the circumstances of a specific scheme

in detail, rather than at the general principle, it seems to me that it may well be possible to find sufficient objective evidence to demonstrate that a package of mitigation measures, which might include the provision of SANGS, would avoid an adverse effect on the SPA. In the circumstances, I do not share the view of the opinion that it would not be possible to conclude through an appropriate assessment that the test in ***Waddenzee*** was met."

42. The Technical Assessor's reference to the **Waddenzee** test is a reference to the decision of the European Court of Justice in Case C-127/02 **Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staassecretaris van Landbouw, Natuurbeheer en Visserij**, [2004] Env LR 14.

43. The ECJ dealt with the meaning of the words "likely to have a significant effect" on a protected site under the Habitats Directive in paragraphs 40-45 of its judgment:

> "40. The requirement for an appropriate assessment of the implications of a plan or project is thus conditional on its being likely to have a significant effect on the site.
>
> 41. Therefore, the triggering of the environmental protection mechanism provided for in Art.6(3) of the Habitats Directive does not presume——as is, moreover, clear from the guidelines for interpreting that article drawn up by the Commission, entitled "Managing Natura 2000 Sites: The provisions of Article 6 of the 'Habitats' Directive(92/43/EEC)"—— that the plan or project considered definitely has significant effects on the site concerned but follows from the mere probability that such an effect attaches to that plan or project.
>
> 42. As regards Art.2(1) of Directive 85/337, the text of which, essentially similar to Art.6(3) of the Habitats Directive, provides that 'Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment...are made subject to an assessment with regard to their effects', the Court has held that these are projects which are likely to have significant effects on the environment (see to that effect Case C-117/02 *Commission v Portugal* [2004] E.C.R. I-0000, [85]).
>
> 43. It follows that the first sentence of Art.6(3) of the Habitats Directive subordinates the requirement for an appropriate assessment of the implications of a plan or project to the condition that there be a probability or a risk that the latter will have significant effects on the site concerned.
>
> 44. In the light, in particular, of the precautionary principle, which is one of the foundations of the high level of protection pursued by Community policy on the environment, in accordance with the first subparagraph of Art.174(2) EC, and by reference to which the Habitats Directive must be

interpreted, such a risk exists if it cannot be excluded on the basis of objective information that the plan or project will have significant effects on the site concerned (see, by analogy, *inter alia* Case C-180/96 *United Kingdom v Commission* [1998] E.C.R. I-2265, paras 50, 105 and 107). Such an interpretation of the condition to which the assessment of the implications of a plan or project for a specific site is subject, which implies that in case of doubt as to the absence of significant effects such an assessment must be carried out, makes it possible to ensure effectively that plans or projects which adversely affect the integrity of the site concerned are not authorised, and thereby contributes to achieving, in accordance with the third recital in the preamble to the Habitats Directive and Art.2(1) thereof, its main aim, namely, ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora.

45. In the light of the foregoing, the answer to Question 3(a) must be that the first sentence of Art.6(3) of the Habitats Directive must be interpreted as meaning that any plan or project not directly connected with or necessary to the management of the site is to be subject to an appropriate assessment of its implications for the site in view of the site's conservation objectives if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects."

44. On 11th June 2007, NE responded to the claimant's representations to the first defendant, saying:

"Natural England considers that it is perfectly reasonable for the Secretary of State to conclude, on the evidence, and despite the Inspector's recommendations, that the development would not be likely to have a significant effect on the SPA. We understand that, on the basis of our carefully considered advice to the Council and the Inspector, the Secretary of State has concluded that the suitable alternative natural green space (SANGS) offered by the appellants would avoid any net increase in recreational visits to the SPA heathlands (thereby avoiding any increased disturbance to the Annex 1 bird species). We believe that on that basis it is not only appropriate, but legally correct to conclude no likelihood of a significant effect in terms of Regulation 48(1) of the Conservation (Natural Habitats &c) Regulations 1994. No appropriate assessment is necessary and permission can lawfully be granted in respect of these Regulations and the Habitats and Birds Directives."

45. NE's representations then refer to Mr Drabble's opinion and continue:

"The Secretary of State's letter indicates that she has not considered it necessary to consider the Inspector's deliberations in IR12.5 to IR12.15 on the integrity of the habitat. We assume that this is intended to indicate that having considered the Inspector's conclusions, as to the effects on the SPA, she has preferred the advice of Natural England as the appropriate

nature conservation body, and therefore there is no need to consider the effects on the integrity of the site, because there is no need to undertake an appropriate assessment...

Natural England supports the Secretary of State's application of the Habitats Regulations in this case and her conclusion that, in view of the adequacy of SANGS provided, there is no need to undertake an appropriate assessment in light of there being no likelihood of a significant effect on the SPA."

46. The first defendant responded to the claimant's representations, following the minded to grant letter, in paragraphs 9-11 of her decision letter dated 24th July 2007, under the heading "Effect on the SPA":

"9. For the reasons given in paragraphs 13-15 of her 'minded' letter of 4 April, the Secretary of State was satisfied she could proceed to grant planning permission without having to undertake an Appropriate Assessment. Accordingly, she did not consider further the Inspector's deliberations in IR12.5-IR12.15 on the effect of the current proposals on the integrity of the habitat.

10. Although not a matter on which the Secretary of State sought further representations, Hart District Council took issue with the Secretary of State's approach in their response of 14 May. In particular, it stated that matters relevant to the Special Protection Area (SPA) have moved on significantly, having regard to the availability of new information, and better understanding relevant to the requirements of Article 6(3) of the Habitats Directive. The primary development cited in terms of new information is the report of the Assessor on the Thames Basin Heaths SPA and Natural England's Draft Delivery Plan. In fact, this document was specifically mentioned by the Secretary of State in her 'minded' letter of 4 April. She gave the report little weight, given its purpose in informing the South East Plan Panel, who will in turn report to her. She concluded that she was therefore not currently in a position to rely upon the assessor's conclusions and recommendations. She considers that that remains the position.

11. The Secretary of State continues to give great weight to the views of Natural England as the appropriate nature conservation body in relation to the application of the Conservation (Natural Habitats &c) Regulations 1994. That body has withdrawn its objections to the proposed development and has confirmed (IR8.5) it is satisfied that the package of measures offered by the appellant is sufficient in scale and detail to allow a competent authority to conclude that there is not likely to be a significant effect on the SPA, and that no appropriate assessment under the Habitats Regulations is necessary. The Secretary of State therefore retains the position set out in her 'minded' letter."

The claimant's challenge to the decision letter

47. In its claim form the claimant contended that the defendant's decision was unlawful on a number of grounds. In the claimant's skeleton argument those grounds were grouped under three headings: Ground 1 related to the manner in which the first defendant had dealt with the effect of the proposed development on the SPA; Ground 2 related to the manner in which the first defendant dealt with the issue of housing land supply in Hart District; Ground 3 alleged the first defendant had failed to impose an appropriate condition to secure the works to upgrade King John's Ride. The principal ground of challenge was Ground 1. I will deal with the subsidiary Grounds 2 and 3 below (see paragraphs 85-93 and 94-99 respectively).

48. In respect of Ground 1, the claim form contended that:

    (a) NE, and the first defendant in agreeing with NE, erred in considering the mitigation proposed by the second and third defendants as part of the package at the first, or "screening" stage when deciding whether the proposed development was likely to have a significant effect on the SPA;

    (b) the first defendant had erroneously failed to find that an appropriate assessment should be carried out as required by Regulation 48(1);

    (c) the first defendant failed to have regard a number of material considerations, namely

        (i) paragraphs 12.5-12.15 of the Inspector's Report,

        (ii) the claimant's representations following the minded to grant letter on the Technical Assessor's report which, it was said, cast "severe doubts" as to whether NE's approach in the Draft Delivery Plan, as adopted by the first defendant in the decision letter, was "correct in law";

    (d) the first defendant had given "undue weight" to the views of NE that the package of proposals, including SANGS, would not have a significant effect on the SPA, and therefore that an appropriate assessment was unnecessary.

49. It was not suggested that the complaint in subparagraph (b) (above) added anything of substance to the complaints in paragraphs (a), (c) and (d), which explained why it was being said that the first defendant had erred in concluding that an appropriate assessment was not necessary. The complaint in subparagraph (d) (above) was not pursued in the claimant's skeleton argument or in the oral submissions of Mr Hockman QC on behalf of the claimant. Mr Hockman rightly accepted that the weight to be given to the views of NE was a matter of planning judgment for the first defendant. Since NE is the "appropriate nature conservation body", as defined by Regulation 4 of the Regulations, the first defendant was entitled to give "great weight" to its views if she

chose to do so. Indeed it would have required some cogent explanation in the decision letter if the first defendant had chosen not to give considerable weight to the views of NE.

50. In the claimant's skeleton argument it was submitted that, as a matter of law, mitigation measures had to be disregarded at the screening stage. At the commencement of the hearing this appeared to be the claimant's principal submission (see subparagraph (a) above). However, in his oral submissions Mr Hockman accepted that there was "no absolute legal rule" that one could never take avoidance or mitigation measures into account at the screening stage. Rather, he submitted that once it was accepted, as it had been accepted in the present case, that avoidance or mitigation measures were necessary, then it would be "difficult" for the competent authority to conclude, without first carrying out an appropriate assessment, that there was no risk that there would be a significant effect on the SPA.

51. The claimant's skeleton argument also contained a number of criticisms of the approach adopted by Mr Colebourn in his evidence at the inquiry, and contended that in agreeing to the measures proposed by Mr Colebourn NE had misdirected itself as to the **Waddenzee** test and had failed to ask itself whether there was a risk of a significant adverse effect. In agreeing with NE, the first defendant had similarly misdirected herself, and moreover, in agreeing with the advice from NE, the first defendant had failed to realise that since NE's advice was based in turn upon its agreement with Mr Colebourn's evidence, the criticisms of that evidence in the Inspector's conclusions applied equally to NE's advice. Thus, the first defendant could not rationally have come to the conclusion that there was no need to consider further the Inspector's conclusions in paragraphs 12.5-12.15 of her report.

52. It was also contended that the first defendant had disregarded a relevant consideration because she had given little weight to the Technical Assessor's report. The reason given in the decision letter for attaching little weight to that report, that its purpose was to inform the South East Plan Panel, was not rational, given that the claimant had relied on the report in its representations to the first defendant.

53. It will be noted that the claimant's grounds of challenge have changed (Mr Hockman would say, "have been refined") since the original grounds in the claim form. Insofar as those changes consisted of alleged errors of law which could be addressed on the face of the documents before the court, none of the other parties objected to them. However, Mr Hockman rightly accepted that since the claimant had not challenged Mr Colebourn's evidence at the inquiry (with which NE had agreed) it could not now argue that such evidence was flawed, save to the extent that the claimant could of course rely upon the criticisms of the evidence in the Inspector's conclusions.

Effect on the SPA: Discussion and conclusions

54. In my judgment, Mr Hockman's concession that avoidance or mitigation measures forming part of the plan or project can, as a matter of law, be considered at the screening stage was correct. Since the point is of general importance and has led NE to participate in these proceedings as an interested party represented by Mr Drabble, I will

set out in some detail my reasons for concluding that the claimant's concession was correctly made.

55. The first question to be answered under Article 6(3) or Regulation 48(1) is: what is the plan or project which is proposed to be undertaken or for which consent, permission or other authorisation is sought? The competent authority is not considering the likely effect of some hypothetical project in the abstract. The exercise is a practical one which requires the competent authority to consider the likely effect of the particular project for which permission is being sought. If certain features (to use a neutral term) have been incorporated into that project, there is no sensible reason why those features should be ignored at the initial, screening, stage merely because they have been incorporated into the project in order to avoid, or mitigate, any likely effect on the SPA.

56. No authority is given for the proposition in paragraph 2.6 of the Methodological Guidance that "the screening assessment should be carried out in the absence of any consideration of mitigation measures that form part of a project or plan and are designed to avoid or reduce the impact of a project or plan on a Natura 2000 site." If the screening assessment should consider all of the other components or characteristics of the proposed plan or project, why should a particular component or characteristic be ignored because it has been incorporated into the project as a mitigation measure? Article 6.3 and Regulation 48(1) require the competent authority to consider whether the project, not some part of the project (shorn of any mitigating features incorporated within it), is likely to have a significant effect on the SPA. No support for the proposition in paragraph 2.6 of the Methodological Study can be found in the EC's interpretation guide for Article 6: "Managing Natura 2000 sites. The provisions of Article 6 of the Habitats Directive 92/43/EEC", which is the guidance referred to in paragraph 14 of Circular 06/2005 (see above). The Circular does not refer to the Methodological Guidance.

57. In **Waddenzee** the ECJ did not consider mitigation measures since none were put forward, and there is nothing in the court's judgment which might suggest that mitigation measures forming part of a project should not be considered at the screening stage (see paragraphs 40-45 of the court's judgment above). The claimant referred to paragraph 71 in the Advocate General's Opinion, where he said:

> "In principle, the possibility of avoiding or minimising adverse effects should be irrelevant as regards determining the need for an appropriate assessment. It appears doubtful that such measures could be carried out with sufficient precision in the absence of the factual basis of a specific assessment."

58. It is not surprising that that passage is not reflected in the court's judgment, because the issue did not arise on the facts of that case. The licence for cockle fishing under consideration did not contain any mitigation measures. The Advocate General was responding, in paragraph 71 of his opinion, to a question which the plaintiffs understood was being asked by the Raad Van State:

> "... whether the <u>possibility</u> of measures to minimise damage could be

> taken into account as earlier as this stage of the application of Art.6(3) of the habitats directive." (Emphasis added).

To which the plaintiffs answered:

> "However, such measures can be taken effectively only on the basis of an appropriate assessment. In the present case the questions posed in connection with an ongoing government study already show that cockle fishing is likely to have significant effect." (See paragraph 65 of the Advocate General's Opinion).

59. No specific mitigation measures were being put forward, much less were such measures incorporated into, so that they formed part of, the cockle fishing licence. There can be no dispute that the mere possibility that mitigation measures might be devised which might reduce the effect of a project on an SPA would not be sufficient to enable a competent authority to conclude, without an appropriate assessment, that the project would not be likely to have a significant effect on the SPA.

60. The two reasons given for the proposition in paragraph 2.6 of the Methodological Guidance do not bear scrutiny, and in any event do not appear to be directed at the kind of measures incorporated into the appeal proposals in the present case. The fact that, in some cases, the proponent's notion of effective levels of mitigation may vary from that of a competent authority and other stakeholders does not mean that, in those cases where the competent authority does agree with the proponent's assessment of the effectiveness of proposed mitigation measures, such measures should be ignored at the screening stage. If the competent authority does not agree with the proponents of the project as to the likely effectiveness of any mitigation measure incorporated into the project, it will not have been able to exclude the risk, on the basis of objective information, that the project will have a significant effect on the SPA, and therefore will require that an appropriate assessment be carried out.

61. While it is true that "effective mitigation of adverse effects on Natura 2000 sites can only take place once those effects have been fully recognised, assessed and reported", if the competent authority is satisfied at the screening stage that the proponents of a project have fully recognised, assessed and reported the effects, and have incorporated appropriate mitigation measures into the project, there is no reason why they should ignore such measures when deciding whether an appropriate assessment is necessary. Under Regulation 48(2), the competent authority may ask the proponent of a plan or project for more information about the plan or project, including any proposed mitigation, not merely for the purposes of carrying out an appropriate assessment, but also in order to determine whether an appropriate assessment is required in the first place. If for any reason the competent authority is still not satisfied, then it will require an appropriate assessment. As a matter of common sense, anything which encourages the proponents of plans and projects to incorporate mitigation measures at the earliest possible stage in the evolution of their plan or project is surely to be encouraged. What would be the point, from the proponents' point of view, of going to the time, trouble and expense of devising specific mitigation measures designed to avoid or mitigate any effect on an SPA, and incorporating those proposals into the project, if the competent

authority was then required to ignore them when considering whether an appropriate assessment was necessary?

62. It is also important to appreciate the kind of measures that were incorporated into the package of proposals put forward by the second and third defendants in the present case. The Draft Delivery Plan draws a distinction between "avoidance measures" and "mitigation measures":

> "1.5.7 Measures to avoid or reduce the effects of a development proposal on the SPA (here referred to as **avoidance measures** and **mitigation measures** respectively) can be proposed as part of the planning application and the Council will take these into account in the assessment. Avoidance measures eliminate the likelihood of any effects on the SPA. Mitigation measures would be designed to reduce likely significant effects to a level that is insignificant or in a way that makes them unlikely to occur. It may be that the project could have an adverse effect on site integrity, but conditions, restrictions or other legally enforceable obligations, would ensure mitigation measures can be included in the project to remove the potential for adverse effects on site integrity.
>
> 1.5.8 The difference between avoidance and mitigation measures is not an academic one. If avoidance measures are proposed, and they are considered to be fully effective and guaranteed by way of legally enforceable conditions or obligations, then the proposal is not subject to the further tests of the Habitats Regulations..."

63. In the present case, there was never any question of there being a direct effect on the SPA. The concern was that, when considered in combination with other proposed residential developments in the area, there might be an indirect effect by reason of increased visitor pressure on the SPA as a result of additional, new, residents using the SPA for recreational purposes, including, in particular, dog walking. The purpose of the SANGS was not to lessen the increase in visitor pressure, but to avoid it altogether by drawing some existing users away from the Heath to compensate for those new residents who might use it on occasion (see paragraph 12.9 of the Inspector's Report).

64. As Mr Colebourn explained in his supplementary evidence in response to the claimant's planning witness:

> "1.2 Through a process of extensive research and development the Appellants have put together a very detailed mitigation package whereby any effects, that might have the potential to occur on the SPA, are avoided. This package has been approved by Natural England.
>
> 1.3 HDC do not have any objection to the technical nature of the package, and therefore it can be concluded that if implemented the development at Dilly Lane is not likely to have a significant effect on the SPA."

In response to supplementary evidence produced by the claimant, Mr Colebourn produced further supplementary evidence in which he said:

> "1.8 The Delivery Plan seeks to establish a mechanism for addressing in-combination effects across the SPA. It says that developers can either contribute to the provision of strategic Suitable Alternative Natural Greenspace (SANGS), or can provide their own comprehensive mitigation/avoidance package, and warns that such packages will be rigorously tested.
>
> 1.9 The discussions about the Delivery Plan at the EiP Technical Session on the SPA, through which EPR has been present, have focussed largely on the first of these courses of action; strategic provision of SANGS, and on the evidence base for some of the presumptions about the effects of human recreation on Annex 1 bird species.
>
> 1.10 The Appellants, however, with our advice, have adopted the second course of action. Through a process of extensive research and development the Appellants have developed their own free-standing and very detailed and comprehensive mitigation package, outside the process of implementing the Delivery Plan strategically through SPDs.
>
> 1.11 The measures to avoid effects on the SPA have been researched in great detail through survey work on patterns of use relevant to the local situation in Hartley Wintney and the surrounding area... The degree of research undertaken has allowed the Appellants to understand the local effects on the SPA and predict the likely effect of new development at Dilly Lane. Measures have then been further adapted and progressively re-designed to ensure that the package will avoid the development having any adverse effect on the SPA.
>
> 1.12 The package and the underlying research demonstrate that it can be concluded that the Dilly Lane development would avoid any potential effects on the SPA.
>
> 1.13 Natural England has accepted this, and has approved the avoidance measures package. I can assure the Inquiry that NE have rigorously tested our proposals over many months through extensive discussions and meetings, have sought further clarification on a number of occasions, and have now pronounced themselves satisfied.
>
> 1.14 In sum, therefore, the Appellants do not seek to rely solely - or at all - on the strategic mechanisms set out in the Natural England Delivery Plan or any future Supplementary Planning Document that may be prepared..."

65. If the first defendant, as the competent authority, agreed with that conclusion, then there was simply no point in conducting an appropriate assessment. As Mr Drabble pointed out in the joint opinion and his skeleton argument:

> "... if it is established, on an appropriately rigorous basis, that there will be no net increase in visitor numbers, it has been established that the housing development will not produce any effect within the site at all. In those circumstances, carrying out an appropriate assessment would not further matters in any way. The routine characteristics of an appropriate assessment, typically involving survey work within the site to establish ecological base-line conditions, would, even if undertaken, have no effect on the conclusion."

NE's skeleton argument makes the point that although the provision of SANGS is referred to as a mitigation measure:

> "... it is not a mitigation measure designed to mitigate effects taking place within the site (e.g. controls on methods of working or replacement planting). There are no such effects."

Mitigation measures of that kind, that is to say measures designed to mitigate effects taking place within the SPA, appear to be the kind of mitigation measures with which the Methodological Guidance was primarily, if not exclusively, concerned.

66. In paragraph 42 of its judgment in **Waddenzee**, the ECJ drew attention to the similarities between Article 6(3) of the Habitats Directive and Article 2(1) of Directive 85/337, the Environmental Impact Assessment Directive, which requires Member States to ensure that certain "projects likely to have significant effects on the environment" are subjected to a process of environmental assessment.

67. The Court of Appeal has made it clear that it is permissible for a local planning authority or the Secretary of State to have regard to proposed mitigation measures when deciding, at the screening stage, under the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 (which implemented the EIA Directive) whether a project is likely to have significant effects on the environment.

68. In **Gillespie v Secretary of State for Transport Local Government and the Regions & Ors** [2003] Env LR 30 ([2003] EWCA Civ 400), Pill LJ said in paragraphs 36 and 37:

> "36 When making his screening decision, the Secretary of State was not in my judgment obliged to shut his eyes to the remedial measures submitted as a part of the planning proposal. That would apply whatever the scale of the development and whether (as in *BT*) some harm to the relevant environmental interest is inevitable or whether (as is claimed in the present case) the development will actually produce an improvement in the environment. As stated in *Bozen*, it is the elements of the specific

project which must be considered and all the elements of the project relevant to the EIA. In making his decision, the Secretary of State is not required to put into separate compartments the development proposal and the proposed remedial measures and consider only the first when making his screening decision. If the judges in the cases cited took a contrary view, I respectfully disagree, though it appears to me that both Sullivan J. in *Lebus* and Richards J. in the present case did not require all remedial or mitigating measures to be ignored.

37 The Secretary of State has to make a practical judgment as to whether the project would be likely to have significant effects on the environment by virtue of factors such as its nature, size or location. The extent to which remedial measures are required to avoid significant effects on the environment, and the nature and complexity of such measures, will vary enormously but the Secretary of State is not as a matter of law required to ignore proposals for remedial measures included in the proposals before him when making his screening decision. In some cases the remedial measures will be modest in scope, or so plainly and easily achievable, that the Secretary of State can properly hold that the development project would not be likely to have significant effects on the environment even though, in the absence of the proposed remedial measures, it would be likely to have such effects. His decision is not in my judgment pre-determined either by the complexity of the project or by whether remedial measures are controversial though, in making the decision, the complexity of the project and of the proposed remedial measures may be important factors for consideration."

69. Laws LJ said in paragraph 46:

"46 I would express my reasons for dismissing the appeal very shortly as follows. Where the Secretary of State is contemplating an application for planning permission for development which, but for remedial measures, may or will have significant environmental effects, I do not say that he must inevitably cause an EIA to be conducted. Prospective remedial measures may have been put before him whose nature, availability and effectiveness are already plainly established and plainly uncontroversial; though I should have thought there is little likelihood of such a state of affairs in relation to a development of any complexity. But if prospective remedial measures are not plainly established and not plainly uncontroversial, then as it seems to me the case calls for an EIA. If then the Secretary of State were to decline to conduct an EIA, as it seems to me he would pre-empt the very form of enquiry contemplated by the Directive and Regulations; and to that extent he would frustrate the purpose of the legislation."

70. Pill LJ returned to the subject in **R (Catt) v Brighton and Hove City Council & Anor** [2007] EWCA Civ 298**,** which was concerned with the impact of a proposed football stadium:

"31 Relying on a commentary in the Journal of Planning Law, at [2007] J.P.L. 81, on the decision of Collins J. in the present case, Mr Upton [counsel for the applicant] seeks a 'neat distinction' between routine measures and project specific provisions. Neat distinctions may be a comfort to decision makers but carry the danger that they may distract decision makers from their central duty, which is to examine the actual characteristics of the particular project. In the present case, it would be ludicrous to ignore conditions imposed as to the frequency of football matches, the days on which they may be played and the music which may accompany them...

33 This is a very different development from that proposed *Gillespie*. Developments come in all forms and the approach to the screening opinion must have regard to the development proposed. There will be cases, such as *Gillespie*, where the uncertainties present, whether inherent or sought to be resolved by conditions, are such that their favourable implementation cannot be assumed when the screening opinion is formed.

34 On the other hand, there will be cases where the likely effectiveness of conditions or proposed remedial or ameliorative measures can be predicted with confidence...

35 I repeat my statements in *Gillespie*... that the decision maker is not 'obliged to shut his eyes to the remedial measures submitted as a part of the planning proposal', and that 'in making his decision, the Secretary of State... is not required to put into separate compartments the development proposal and the proposed remedial measures and consider only the first when making his screening decision'. Laws L.J. was considering the facts in *Gillespie* and I do not consider he was asserting a general principle that, only when remedial measures are 'uncontroversial', can they be taken into account when giving a screening opinion.

36 Having referred to *Gillespie*, Dyson L.J., at [39] in *Jones* [[2004] Env LR 2, [2003] EWCA Civ 1408], stated:

'The uncertainties may or may not make it impossible reasonably to conclude that there is no likelihood of significant environmental effect. It is possible in principle to have sufficient information to enable a decision reasonably to be made as to the likelihood of significant environmental effects even if certain details are not known and further surveys are to be undertaken. Everything depends on the circumstances of the individual case.'

37 When forming a screening opinion, the Council were not required to ignore either the conditions proposed to limit the scope of the development or the conditions providing for ameliorative or remedial measures. The consequences of providing the additional seating, and other changes, could not be predicted with certainty but, as Collins J.

> noted, the Council had extensive knowledge and experience, supported by surveys, of the impact of existing football league and cup matches upon the environment. On the basis of that, and the studies into future impact, they were entitled to assess the likely impact of the additional capacity proposed in the context of the continuing ameliorative measures also proposed and to form the screening opinion they did."

71. Maurice Kay and Wilson LJJ agreed. Unlike an EIA, which must be in the form prescribed by the EIA Directive, and must include, for example, a non-technical summary, enabling the public to express its opinion on the environmental issues raised (see **Berkeley v the Secretary of State for the Environment** [2001] 2 AC 603 per Lord Hoffmann at page 615), an appropriate assessment under Article 6(3) and Regulation 48(1) does not have to be in any particular form (see paragraph 52 of **Waddenzee** judgment), and obtaining the opinion of the general public is optional. Thus, considering proposed mitigation measures at the screening stage under Article 6(3) would not be frustrating the purpose of the legislation by pre-empting any particular form of inquiry, which was the particular concern expressed by Laws LJ in **Gillespie** (above).

72. The underlying principle to be derived from both the **Waddenzee** judgment and the domestic authorities referred to above is that, as with the EIA Directive, the provisions in the Habitats Directive are intended to be an aid to effective environmental decision making, not a legal obstacle course. If, having considered the "objective information" contained in the EPR Report, and agreed by NE in the Statement of Common Ground, the first defendant, as the competent authority, was satisfied that the package put forward by the second and third defendants, including the SANGS, would avoid any net increase in recreational visits to the SPA (thereby avoiding any increased disturbance to the Annex 1 bird species), it would have been "ludicrous" for her to disaggregate the different elements of the package and require an appropriate assessment on the basis that the residential component of the package, considered without the SANGS, would be likely, in combination with other residential proposals, to have a significant effect on the SPA, only for her to have to reassemble the package when carrying out the appropriate assessment.

73. The fact that Regulation 48(6) refers to the manner in which it is proposed that the plan or project is to be carried out, or to any conditions or restrictions subject to which it is proposed that consent et cetera shall be given, does not mean that those matters may not be considered at the first stage under Regulation 48(1), if they are incorporated into the application for planning permission when the competent authority is deciding whether the project for which planning permission is being sought is likely to have a significant effect on the SPA.

74. In **World Wildlife Fund UK Limited v Secretary of State for Scotland** [1999] Env LR 632, Lord Nimmo Smith, having noted that "plan or project" was not defined in the Regulations, said at page 699:

> "Regulation 49(1) and (2) speak of it as something for which 'consent, permission or other authorisation' is applied, and in my opinion this

> means that the plan or project is that which is the subject-matter of an application and can thus be identified by reference to the application. This appears to me to be consistent with the provisions of the 1988 regulations, and in particular regulation 6(2), which I shall discuss in due course. Thus in the present case the 'plan or project' is as set out in CCC's application for planning permission. I therefore reject the suggestion which counsel for the petitioners made at one point that the 'plan or project' included all the conditions to which it was made subject at the time when planning permission was granted."

75. Lord Nimmo Smith then considered what had to be ascertained under Regulation 48(5) and concluded that Regulation 48(6) enabled proposed conditions to be taken into consideration when considering whether the integrity of the European site would be adversely affected. Lord Nimmo Smith was considering the local planning authority's power to impose conditions, when granting permission, upon the project as described in the planning application, not proposed mitigation measures which had, from the outset of the process, been incorporated into the application itself. Regulation 48(6) merely reflects the reality that in some, perhaps very many, cases where an appropriate assessment has been carried out, changes to the manner in which it is proposed to carry out the project, or to the conditions or restrictions to be imposed in the consent for the project, will be proposed by the proponents or by the competent authority in response to the findings of the assessment. Regulation 48(6) makes it clear, for the avoidance of doubt, that regard must be had to such matters when considering, under Regulation 48(5), whether the plan or project will adversely affect the integrity of the SPA.

76. For all these reasons, I am satisfied that there is no legal requirement that a screening assessment under Regulation 48(1) must be carried out in the absence of any mitigation measures that form part of a plan or project. On the contrary, the competent authority is required to consider whether the project, as a whole, including such measures, if they are part of the project, is likely to have a significant effect on the SPA. If the competent authority does not agree with the proponent's view as to the likely efficacy of the proposed mitigation measures, or is left in some doubt as to their efficacy, then it will require an appropriate assessment because it will not have been able to exclude the risk of a significant effect on the basis of objective information (see **Waddenzee** above).

77. That leads me to the second complaint made by the claimant about the manner in which the first defendant dealt with the SPA issue. Mr Hockman submitted that in agreeing with NE's conclusion "that there is not likely to be a significant effect on the SPA" (see paragraph 11 of the decision letter), both the first defendant and NE had failed to apply the **Waddenzee** test; they had merely considered whether a significant effect was likely rather than whether there was a risk of a significant effect (see paragraph 44 of **Waddenzee** above). I do not accept that submission for the following reasons. Both NE, in agreeing to the Statement of Common Ground, and in its letter dated 11th June 2007, following the minded to grant letter, and the first defendant in both the minded to grant letter and the decision letter, used the statutory formulation in Article 6(3) and Regulation 48(1) "likely to have a significant effect".

78. To an English lawyer, a need to establish a likelihood imposes a more onerous burden than a need to establish a risk. The concept of a "standard of proof" is of little if any assistance in environmental cases, but the nearest analogy would be the difference between the balance of probability (more likely than not) and the real risk standards of proof. Since the ECJ's decision in **Waddenzee**, it has been clear that, applying the precautionary principle, significant harm to an SPA is "likely" for the purposes of Article 6 and Regulation 48 if the risk of it occurring cannot be excluded on the basis of objective information. Since the **Waddenzee** test is set out in Circular 06/2005, which was specifically referred to in paragraph 10 of the minded to grant letter, which was in turn incorporated into the decision letter (see paragraph 6 of the latter), and Circular 06/2005 is also referred to in NE's Draft Delivery Plan (paragraph 1.5.3), it is impossible to conclude that, when using the correct statutory formulation, both the first defendant and NE did not appreciate that the issue of likelihood had to be approached on the basis set out in **Waddenzee**.

79. There is nothing in the material before the court which suggests that NE (whose advice was accepted by the first defendant) approached the issue in any other way in its lengthy and detailed discussions with Mr Colebourn, which led eventually to the Statement of Common Ground.

80. Although Mr Hockman made other criticisms of the phraseology used in that statement, for example, the apparently cautious statement that the package of measures was sufficient to "allow a competent authority to conclude", the claimant was in no doubt at the inquiry that NE was satisfied that there was not likely to be a significant effect on the SPA, and any forensic, as opposed to real, doubt as to its position is removed by NE's letter dated 11th June 2007 (see above).

81. The first defendant was entitled to prefer NE's view to that expressed by the Inspector. The fact that the Inspector had expressed "serious doubts" about EPR's conclusion that the measures incorporated in the package, including the SANGS, would avoid any net effect of recreational activity on the SPA (paragraph 12.9 of the Inspector's Report) did not mean that the first defendant was obliged to accept that there were such doubts, or that they could not, as NE had concluded, "be excluded on the basis of objective information": see, for example, **R (Merricks) v Secretary of State for Trade and Industry** [2006] EWHC 2698 (Admin) at paragraph 6. Merely expressing doubt without providing reasonable objective evidence for doing so is not sufficient.

82. It is important to appreciate that the Inspector was expressing her doubts on essentially the same "objective information" as had satisfied NE. HWAG had submitted a questionnaire and responses in respect of Hazeley Heath (the Inspector's document number 64), but apart from establishing that Hazeley Heath "has an inherent attraction that draws people to it" (see paragraph 9.13 of the Inspector's Report), a matter which was never in dispute, that survey did not add to the objective information prepared by EPR and agreed by NE.

83. The first defendant clearly considered the Inspector's key conclusion in paragraph 12.9 of the Inspector's Report, with which NE disagreed. Once the first defendant decided that she agreed with NE's conclusion, based on the objective information that there

would be no net increase in recreational activity on the Heath, and hence no significant effect on the SPA, she did not need to consider further the Inspector's deliberations in paragraphs 12.5-12.15 of her report.

84. Mr Hockman submitted that in deciding that she did not need to consider further the Inspector's conclusions, the first defendant failed to appreciate that, insofar as the Inspector's criticisms of EPR's evidence were valid, they applied equally to NE's conclusions because those conclusions were based in turn upon EPR's evidence. I do not accept that submission. It would have been obvious, even on the most cursory perusal of the Inspector's Report and accompanying documents, that the "objective information" had been compiled by EPR and agreed, after discussion, by NE. Thus, insofar as the Inspector's doubts were justified, they applied equally to NE's advice to the first defendant. On any common-sense reading of the decision letter, the first defendant did not consider that the Inspector's doubts were justified.

85. Lastly, under this heading, I deal with the complaint that the first defendant accorded little weight to the views of the Technical Assessor on The Draft Delivery Plan. The starting point must be the proposition that the weight to be given to the views of the Technical Assessor was entirely a matter for the first defendant's planning judgment. In saying that she gave the Technical Assessor's report little weight on the basis that its purpose was to inform the South East Panel, who would in turn report to her, the first defendant was not unreasonably refusing to give little weight to a document simply because it was a report to another body. The purpose of the report is reflected both in its status and in its subject matter. Considering the former, the Technical Assessor's report was only the first stage of the examination process. The report was circulated, representations were made by NE and others, and the Technical Assessor responded to those representations in his Addendum Report. All of that information would then be considered by the panel, which would reach its own conclusions on the issue and advise the first defendant accordingly. The first defendant would then decide whether or not to accept the panel's report. In these circumstances, the Technical Assessor's report could not be regarded as definitive. Moreover, it was concerned with the efficacy of SANGS as a strategic concept. As the Technical Assessor made clear in paragraph 10 of his Addendum Report dated 13th April 2007:

> "... if one is looking at the circumstances of a specific scheme in detail, rather than at the general principle... it may well be possible to find sufficient objective evidence to demonstrate that a package of mitigation measures, which might include the provision of SANGS, would avoid an adverse effect on the SPA."

That was precisely what was being proposed by the EPR in the appeal package in the present case (see Mr Colebourn's supplementary evidence cited above). For these reasons, I reject the claimant's criticisms, whether as originally formulated or as subsequently refined, of the manner in which the first defendant dealt with the SPA issue.

Ground 2

86. PPS3: Housing came into effect on 1st April 2007, after the Inspector delivered her report to the first defendant. In the minded to grant decision, the first defendant said in paragraphs 19 and 20:

> "The Secretary of State does not agree with the Inspector's assessment at IR12.25-12.26, that the balance of the evidence suggests that housing supply over a five year period will provide a small but significant excess against development plan requirements. She notes the Inspector, like the Council, has made allowance for contributions from the Queen Elizabeth Barracks site, which is subject to inquiry following the Council's refusal of planning permission. The Secretary of State does not in the circumstances consider that site to be deliverable as defined in PPS3. She also does not have information on the likely level of housing completions delivered by the Council in 2006/07, and the impact that that might have on the average annual requirement for the remainder of the Structure plan period.
>
> The Secretary of State concludes that the housing supply position seems to her to be marginal, and that the Council has not demonstrated a five year supply of specific deliverable sites for housing. In the light of this, and given her conclusions elsewhere in this letter on the impact of the proposal on the Special Protection Area and the benefits of the proposed affordable housing, the Secretary of State considers there are material considerations weighing in favour of a grant of planning permission."

87. The first defendant asked for "up to date evidence concerning whether or not the Council has identified the five year supply of specific deliverable sites for housing for the period April 2007 to end March 2012" (paragraph 21). The claimant and the second and third defendants made detailed representations. In the decision letter the first defendant said in paragraph 13:

> "Evidence was provided by Hart District Council on this issue in its response of 14 May. The Secretary of State has paid careful regard to this assessment, and sets out below her own assessment of housing land supply, based on that information, and that provided by Barton Willmore on behalf of the appellants on 11 June."

88. The decision letter then contained a number of tables: table 1 set out the first defendant's view of the 5-year supply figure (854); table 2 set out the supply figures where the claimant and the second and third defendants agreed (557); table 3 then set out the disputed supply figures, giving the views of the claimant, the second and third defendants, and finally the first defendant's assessment. The total figure under this heading was 558 in the first defendant's assessment, of which 420 were provided by one site, the Queen Elizabeth II Barracks site at Church Crookham. In respect of that site, paragraph 14 of the decision letter said:

> "14. The Secretary of State has carefully considered the arguments put forward by Hart District Council, and accepts its assertion that, notwithstanding the outcome of the particular appeal proposals currently being heard at inquiry, there is a reasonable prospect of this site delivering housing within 5 years. Evidence provided from the inquiry Statement of Common Ground between Hart and the QEII developer indicates that if a decision to grant the appeal is made, the site could deliver over 700 units by 2012. The Secretary of State accepts as reasonable the assumption that if the current appeal proposals were refused, then 420 units could still be delivered by this site. The Secretary of State does not accept the appellant's argument that the Council's reasons for refusal amount to an 'in principle' objection to the development of this site. In particular, she considers that the issue of impact on the Thames Basin Heath SPA does not transcend other matters. In that respect, she draws attention to the fact that the issue of impact on the SPA is among the matters she has determined in this case."

The figures were then drawn together in table 4 in the decision letter, in which the first defendant concluded that there was a supply of 1,115 units or a 6.52 years' supply.

89. In paragraph 21 of the decision letter the first defendant said:

> "The Secretary of State considers that, on the evidence submitted, it would be reasonable to assert that the Council has demonstrated that it has identified a 6.5 year supply of deliverable housing land at this time, and this accords with the advice in paragraph 54 of PPS3. However, the Secretary of State notes that in order to deliver this supply the Council will be dependent on the QEII Barracks site producing some units by 2012. While she finds that it is reasonable to assume a figure of 420 units is likely to be achievable, she is concerned about the consequences should there be delay in bringing this site forward for development. If the timetable set out in the Council's response proves to be over optimistic, then the 5-year supply could be threatened. Her overall conclusion is that although the 5-year supply has been demonstrated, it is fragile and she is concerned about the Council's ability to maintain a continuous five year supply of deliverable sites as advised in paragraph 57 of PPS3."

90. Having considered the provisions of the development plan and PPS3, the first defendant concluded in paragraph 28 of the decision letter:

> "The Secretary of State has considered the greenfield status of the appeal site, and whether allowing the appeal proposals on this site might prevent developable brownfield sites from coming forward. Given her conclusion in paragraph 21 of this letter that the 5-year supply of deliverable sites, while demonstrated, is fragile, and considering the need to maintain a continuous 5-year supply of deliverable sites, she concludes that the development of this site for 170 units would not have the effect of preventing or delaying developable brownfield sites from coming

forward."

91. The claimant's sole criticism of this very careful and detailed analysis by the first defendant of the housing supply position is the first defendant's conclusion that, although a 5-year supply had been demonstrated in terms of PPS3, that 5-year supply was "fragile". Paragraph 54 of PPS3 sets out the circumstances in which sites are considered "deliverable" for the purpose of deciding whether there is "an up-to-date five year supply of deliverable sites" in accordance with paragraph 70 of the Circular:

> "To be considered deliverable, sites should, at the point of adoption of the relevant Local Development Document:
>
> - Be Available - the site is available now.
>
> - Be Suitable - the site offers a suitable location for development now and would contribute to the creation of sustainable, mixed communities.
>
> - Be Achievable - there is a reasonable prospect that housing will be delivered on the site within five years."

92. Mr Hockman submitted that since the first defendant had concluded that it was reasonable to assume a figure of 420 units was likely to be achievable at the Queen Elizabeth II Barracks by 2012, it was illogical or unreasonable also to conclude that the 5 year supply was fragile. The first defendant was adding a further test, fragility, which was not referred to in PPS3. In my judgment, the first defendant was doing no such thing; she was merely responding to the particular circumstances of this case, where a very significant proportion of the 5-year supply (420 out of 1115 units, or some 38 per cent of the 5-year supply) was dependent on one site producing units by 2012 and where, despite reasonable assumptions to the contrary, there might be slippage in the timetable put forward by the claimant for bringing the site forward for development. Far from being unreasonable, the first defendant's observation that this particular 5-year supply is "fragile" was eminently reasonable on the facts of these appeals. A "reasonable prospect" that housing will be delivered on a particular site in 5 years may range from a near certainty (insofar as that is possible in an uncertain world), that housing will be delivered, to it merely being more likely than not that housing will be delivered on a particular site. The first defendant's approach merely reflects the wisdom of not putting too many of one's eggs into the same planning basket.

93. It was also submitted that the first defendant had failed to consider the Inspector's conclusion that there would be possible disadvantages in prematurely releasing the main appeal site for housing "through the unnecessary development of greenfield land" (see paragraphs 12.31 and 12.55 of the Inspector's Report). Having concluded that there was a 5-year supply of deliverable sites, the first defendant considered, in accordance with the advice in paragraph 70 of PPS3, whether granting planning permission would undermine the achievement of wider policy objectives. The Inspector's conclusion that harm would be done through the "unnecessary release of greenfield land" was reached in the context of her assessment of policy H4 of the structure plan. The purpose of that policy was "to ensure sufficient housing land is provided throughout the structure plan

period to meet identified needs while avoiding the unnecessary use of greenfield land" (see paragraph 12.27 of the Inspector's Report). In paragraph 23 of her decision letter, the first defendant explained why she had assessed the appeal proposals against the more recent policies in PPS3:

> "She concludes that as the appeal site is a greenfield site, and as she has identified a greater than 5 year supply of deliverable housing land, of which the majority of sites are previously developed land, that the appeal proposals are not in accordance with the development plan. However, the relevant policy in the development plan predates PPS3, which is the latest statement by the Government on national policy towards the delivery of housing. The Secretary of State considers that the correct approach to take in this case is to consider the appeal proposals against PPS3 policies, which supersede those of the development plan."

94. Hence the first defendant's approach in paragraph 28 of the decision letter (above) to the "greenfield issue" raised by the Inspector in her report. For these reasons, there is no force in the second ground of challenge.

Ground 3

95. In the minded to grant decision the first defendant agreed with the Inspector's conclusion that all the proposed improvements to King John's Ride (KJR) were "a necessary and important element of the overall housing scene" (paragraph 23). At the inquiry the claimant had sought a "Grampian" condition prohibiting the commencement of development until works were carried out. The Inspector thought that this requirement was excessive:

> "In order to ensure the housing is served by the necessary infrastructure the improvements need to be in place before the first occupation of the dwellings, not prior to commencement of development. The works would take place on Council owned land and the Council is also able to grant cycle rights. The Council as local planning authority has endorsed the improvements and the planning brief suggests the improvements would be achieved by way of a commuted contribution. The Council as landowner did not make objections to the planning application. On that basis Council consent may be anticipated. To the best of my knowledge the Appellants have also followed the only available procedure open to them to establish whether permission would be required to carry out the works on common land. Therefore there are reasonable prospects of the improvements being secured within the necessary timescale. The Grampian form of conditions put forward by the Council in relation to Appeals A and G would be unreasonable and would therefore fail one of the tests in Circular 11/95. I am satisfied that the planning obligations in the unilateral undertakings offer an appropriate procedure for securing the improvements." (Paragraph 12.34 of the Inspector's report).

96. The Section 106 obligations put forward by the second and third defendants require them to use "all reasonable endeavours" to obtain the claimant's consent as landowner to the proposed improvements: lighting, widening, permitting it to be used as a path by cyclists and creating the two new links. The second and third defendants also agreed to use all reasonable endeavours to obtain, if required, planning permission, consent for works on common land and a licence from NE under the Habitats Regulations. There was no suggestion that NE would object to the proposed improvements and the claimant did not submit that consent would be required under the Commons Act, merely that there was no certainty about that matter (see paragraph 7.18 of the Inspector's Report). In reality, therefore, whether or not various improvements to King John's Ride could be implemented depended on obtaining the council's consent as landowner and the authority able to grant cycle rides. It had not objected to the appeals in its capacity as landowner, but in its representations in response to the minded to grant letter, the claimant maintained its position that the Grampian conditions it had put forward were necessary, and that the obligation to use reasonable endeavours was inadequate to secure the improvements. The representations criticised the obligations on the basis that:

> "... the Undertakings as drafted and submitted to the Inquiry commit only to use 'reasonable endeavours' to secure these improvements. Notably, the Undertakings commit only to use reasonable endeavours to the point initially of first occupation and then, if necessary, to completion of the development. However, if these improvements have not been secured by this time the submitted Undertakings provide for these obligations to cease. Whilst HDC accepts that there is a reasonable prospect of these essential improvements being delivered in accordance with the Undertakings submitted, there is clearly some potential for any or all of these obligations to cease without the essential improvements being secured."

97. The claimant also complained that the first defendant had not explained why its suggested Grampian condition did not comply with Circular 11/95. The explanation should have been obvious, but the first defendant nevertheless provided it in paragraph 36 of the decision letter:

> "36. The Council's proposed Grampian conditions would require the improvements to King John's Ride to be in place prior to the commencement of development. The Secretary of State considers that the need for the identified improvements to King John's Ride to be in place arises from the point at which the dwellings are first occupied, and considers that requiring the improvements to be in place before development commences is requiring them at too early a stage in the process. She therefore finds this to be unreasonable, and concludes that the proposed Grampian conditions would fail the sixth test of paragraph 14 of Circular 11/95."

98. The first defendant also considered the claimant's criticisms of the obligations put forward by the second and third defendants in paragraphs 33 and 34 of the decision letter:

> "33... She accepts that the improvements are a necessary and important element of the overall housing scheme: She has considered the evidence put forward at the time of the inquiry by the Council and the appellants. She finds the proposed improvements to be in line with the planning brief for the site, adopted by the Council as Supplementary Planning Guidance in 2000. The planning brief also allows for the improvements to be promoted by means of a commuted contribution. The Council is the owner of the land and, as such, is able to grant cycle rights. It has also endorsed the improvements as the local planning authority, and it did not object to the planning application in its capacity as landowner.
>
> 34. The Secretary of State considers that, in these circumstances, it is reasonable to retain the view that there are reasonable prospects of the improvements being secured within the necessary timescale."

99. Although it was not suggested by the claimant at the inquiry, or in its representations following the minded to grant letter, or even in the claim form, which merely referred to the first defendant's failure to impose "an appropriate Grampian or other condition", Mr Hockman submitted that the first defendant should have imposed a Grampian condition which prevented occupation of the dwellings prior to implementation of the improvement works. Whether it was expedient to impose such a condition was a matter for the first defendant's planning judgment. In the particular circumstances of this case, where the only significant potential obstacle to the implementation of the improvement works was the need to obtain the claimant's consent to them as landowner, it is not surprising that both the Inspector and the first defendant considered that the undertakings offered by the second and third defendants were perfectly adequate.

100. Although Circular 11/95 makes it clear that, as a matter of policy, Grampian conditions should be imposed on a planning permission only if there are at least reasonable prospects of the action in question being performed within the time limit imposed by the permission (see paragraph 40 of the Circular), it does not follow that a Grampian condition must be imposed in all cases where it has been concluded that some action is necessary, and that there are reasonable prospects of the action being carried out within the timescale of the planning permission. Had the first defendant not been satisfied that there were reasonable prospects of the improvements being secured, she would not have been willing either to impose a Grampian condition or to accept the undertakings entered into by the second and third defendants. Once she accepted that there were such prospects, it was for her to decide how the improvements should be secured. Since the ability of the second and third defendants to carry out the relevant action in the present case is largely, if not entirely, dependant on obtaining the claimant's agreement as landowner, and as the authority with the power to grant cycle rights, the first defendant was entitled to conclude that a Grampian condition was unnecessary and that the undertakings entered into by the second and third defendants would be sufficient to

secure the necessary improvements. It follows that there is no substance in Ground 3 of the challenge.

A last word

101. For the sake of completeness, I should mention that in Mr Hockman's skeleton argument he submitted that there was no evidence in the decision letter that the first defendant had actually granted planning permission. The decision letter states that the four appeals are allowed, but does not expressly state that the planning permission is granted for the developments that are the subject of the appeals. Mr Hockman drew attention to the powers conferred on the first defendant by Section 79(1) of the Act: on an appeal under section 78 she may allow or dismiss the appeal "and may deal with the application as if it had been made to [her] in the first instance." Wisely, this submission was not pursued in oral argument. It is true that paragraph 39 of this decision letter does not contain the usual form of words "and grants planning permission for..." after "the Secretary of State hereby allows your appeals", but the decision letter has to be construed as a whole and in a common-sense way.

102. Under the subheading "Overall conclusions", paragraph 38 of the decision letter is in these terms:

> "Following her consideration of the further evidence and representations submitted by the parties pursuant to her minded letter of 4 April, the Secretary of State is now satisfied that the Council has demonstrated it has an identifiable five year supply of deliverable housing land, but it is one that is dependent upon timely delivery from a single site. She therefore finds the five year supply of deliverable housing land to be fragile. She also concludes that a grant of planning permission would not undermine the achievement of relevant policy objectives, and that when this is weighed together with those considerations she has identified above which point in favour of granting planning permission, these are of sufficient weight to overcome the proposal's conflict with the development plan."

Having so concluded, it would have been perverse for first defendant not to have granted planning permission. The failure to include a formal statement to that effect in the decision letter was clearly an oversight, but that oversight is of no consequence because the decision letter incorporates the minded to grant decision, in which the first defendant had said that she was "minded to allow the appeals and to grant planning permission subject to conditions..." It also incorporates Annexes 1-4, which set out the first defendant's conditions, and which refer to "the development hereby permitted". In construing the document as a whole, regard may be had to the conditions in Annexes 1-4. Once that is done, there can be no doubt that the first defendant did not merely allow the appeals, she also granted planning permission for the development comprised in the four appeals. It is with some relief that I reach this conclusion since it means that this very lengthy judgment has not been entirely in vain.

Conclusion

103. The claimant's application is dismissed.

104. Right, that really is the end, in more senses than one.

105. Yes?

106. MR TURNER: My Lord.

107. MR JUSTICE SULLIVAN: Is it Mr Turner for the Secretary of State?

108. MR TURNER: That is correct, my Lord.

109. MR JUSTICE SULLIVAN: Yes.

110. MR TURNER: I merely make an application for the first defendant's costs to be paid. I have spoken to my learned friend Mr Hockman and he has given an indication that the application can properly be made for those sums to be assessed at £18,441.25.

111. MR JUSTICE SULLIVAN: Let us just take it turns. Mr Hockman?

112. MR HOCKMAN: My Lord, that is absolutely right. I indicated to my learned friend that if it was appropriate for him to seek costs, as it plainly is, and if he were to apply to your Lordship to assess those costs in that sum, then we would raise no objection, and we do not.

113. MR JUSTICE SULLIVAN: Well, we will take it in stages anyway. The application is dismissed. The claimant is to pay the first defendant's costs. So his costs to be summarily assessed in the sum of £18,441.25. Any more for any more? I am not encouraging people to make any further applications; I am simply asking them whether they have any. No? Everyone keeping their heads below the parapet? Jolly good idea. I would have done as well.

114. Yes, Mr Hockman?

115. MR HOCKMAN: May I ask your Lordship for permission to take the matter further, please?

116. MR JUSTICE SULLIVAN: You may. You simply rely on the arguments you have put forward?

117. MR HOCKMAN: I do.

118. MR JUSTICE SULLIVAN: Well, I hope you will not think it discourteous if I refuse you permission and say that I do not think that there is a real prospect of success for the reasons that have nearly made me hoarse over the last two hours.

119. MR HOCKMAN: Thank you.

120. MR JUSTICE SULLIVAN: Thank you very much indeed. Thank you all.

Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

11 April 2013*

(Environment — Directive 92/43/EEC — Article 6 — Conservation of natural habitats — Special areas of conservation — Assessment of the implications for a protected site of a plan or project — Criteria to be applied when assessing the likelihood that such a plan or project will adversely affect the integrity of the site concerned — Lough Corrib site — N6 Galway City Outer Bypass road scheme)

In Case C-258/11,

REQUEST for a preliminary ruling under Article 267 TFEU from the Supreme Court (Ireland), made by decision of 13 May 2011, received at the Court on 26 May 2011, in the proceedings

Peter Sweetman,

Ireland,

Attorney General,

Minister for the Environment, Heritage and Local Government

v

An Bord Pleanála,

notice parties:

Galway County Council,

Galway City Council,

THE COURT (Third Chamber),

composed of R. Silva de Lapuerta, acting as the President of the Third Chamber, K. Lenaerts, G. Arestis (Rapporteur), J. Malenovský and T. von Danwitz, Judges,

Advocate General: E. Sharpston,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 12 September 2012,

* Language of the case: English.

after considering the observations submitted on behalf of:

— Mr Sweetman, by B. Harrington, Solicitor, and R. Lyons SC,

— Ireland, the Attorney General and the Minister for the Environment, Heritage and Local Government, by E. Creedon, acting as Agent, and G. Simons SC and M. Gray BL,

— An Bord Pleanála, by A. Doyle and O. Doyle, Solicitors, and N. Butler SC,

— Galway County Council and Galway City Council, by V. Raine and A. Casey, acting as Agents, E. Keane SC and B. Kennedy BL,

— the Greek Government, by G. Karipsiades, acting as Agent,

— the United Kingdom Government, by H. Walker, acting as Agent, and K. Smith, Barrister,

— the European Commission, by S. Petrova and K. Mifsud-Bonnici, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 November 2012,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 6 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7; 'the Habitats Directive').

2 The request has been made in proceedings between (i) Mr Sweetman, Ireland, the Attorney General and the Minister for the Environment, Heritage and Local Government and (ii) An Bord Pleanála (the Irish Planning Board), supported by Galway County Council and Galway City Council, concerning An Bord Pleanála's decision to grant development consent for the N6 Galway City Outer Bypass road scheme.

Legal context

European Union law

3 The third recital in the preamble to the Habitats Directive states:

'… the main aim of this Directive being to promote the maintenance of biodiversity, taking account of economic, social, cultural and regional requirements, this Directive makes a contribution to the general objective of sustainable development; … the maintenance of such biodiversity may in certain cases require the maintenance, or indeed the encouragement, of human activities'.

4 Article 1(d), (e), (k) and (l) of the Habitats Directive provide:

'For the purpose of this Directive:

…

(d) *priority natural habitat types* means natural habitat types in danger of disappearance, which are present on the territory referred to in Article 2 and for the conservation of which the Community has particular responsibility in view of the proportion of their natural range which falls within the territory referred to in Article 2; these priority natural habitat types are indicated by an asterisk (*) in Annex I;

(e) *conservation status of a natural habitat* means the sum of the influences acting on a natural habitat and its typical species that may affect its long-term natural distribution, structure and functions as well as the long-term survival of its typical species within the territory referred to in Article 2.

The conservative status of a natural habitat will be taken as "favourable" when:

— its natural range and areas it covers within that range are stable or increasing, and

— the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and

— the conservation status of its typical species is favourable as defined in (i);

...

(k) *site of Community importance* ["SCI"] means a site which, in the biogeographical region or regions to which is belongs, contributes significantly to the maintenance or restoration at a favourable conservation status of a natural habitat type in Annex I or of a species in Annex II and may also contribute significantly to the coherence of Natura 2000 referred to in Article 3, and/or contributes significantly to the maintenance of biological diversity within the biogeographic region or regions concerned.

...

(l) *special area of conservation* means a site of Community importance designated by the Member States through a statutory, administrative and/or contractual act where the necessary conservation measures are applied for the maintenance or restoration, at a favourable conservation status, of the natural habitats and/or the populations of the species for which the site is designated'.

5 Article 2 of the Habitats Directive is worded as follows:

'1. The aim of this Directive shall be to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies.

2. Measures taken pursuant to this Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest.

3. Measures taken pursuant to this Directive shall take account of economic, social and cultural requirements and regional and local characteristics.'

6 Article 3(1) of the Habitats Directive states:

‘A coherent European ecological network of special areas of conservation shall be set up under the title Natura 2000. This network … shall enable the natural habitat types and the species’ habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range.

The Natura 2000 network shall include the special protection areas classified by the Member States pursuant to [Council] Directive 79/409/EEC [of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1)].’

7 Article 6(2) to (4) of the Habitats Directive provide:

‘2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.’

8 Annex I to the Habitats Directive, entitled ‘Natural habitat types of Community interest whose conservation requires the designation of special areas of conservation’, designates ‘[l]imestone pavements’ as a priority habitat type, under code 8240.

Irish law

9 The European Communities (Natural Habitats) Regulations, 1997, in the version applicable at the material time (‘the 1997 Regulations’), implement the obligations of the Habitats Directive in Irish law.

10 Regulation 30 of the 1997 Regulations, which transposed the requirements of Article 6 of the Habitats Directive, provides:

‘(1) Where a proposed road development in respect of which an application for the approval of the [competent authority] has been made in accordance with section 51 of the Roads Act, 1993, is neither directly connected with nor necessary to the management of a European site but likely to have a

significant effect thereon either individually or in combination with other developments, the [competent authority] shall ensure that an appropriate assessment of the implications for the site in view of the site's conservation objectives is undertaken.

(2) An environmental impact assessment as required under subsection (2) of section 51 of the Roads Act, 1993, in respect of a proposed road development referred to in paragraph (1) shall be an appropriate assessment for the purposes of this Regulation.

(3) [The competent authority] shall, having regard to the conclusions of the assessment undertaken under paragraph (1), agree to the proposed road development only after having ascertained that it will not adversely affect the integrity of the European site concerned.

(4) In considering whether the proposed road development will adversely affect the integrity of the European site concerned, the [competent authority] shall have regard to the manner in which the proposed development is being carried out or to any conditions or restrictions subject to which the approval is given.

(5) [The competent authority] may, notwithstanding a negative assessment and where [it] is satisfied that there are no alternative solutions, decide to agree to the proposed road development where the proposed road development has to be carried out for imperative reasons of overriding public interest.

(6)

(a) Subject to paragraph (b) imperative reasons of overriding public interest shall include reasons of a social or economic nature;

(b) If the site concerned hosts a priority natural habitat type or a priority species, the only considerations of overriding public interest shall be –

(i) those relating to human health or public safety,

(ii) beneficial consequences of primary importance for the environment, or

(iii) further to an opinion from the Commission to other imperative reasons of overriding public interest.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

11 By decision of 20 November 2008, An Bord Pleanála decided to grant development consent for the N6 Galway City Outer Bypass road scheme. Part of the proposed road was planned to cross the Lough Corrib SCI. Following an enlargement of the extent of the SCI, it hosts a total of 14 habitats referred to in Annex I to the Habitats Directive, of which six are priority habitat types, including karstic limestone pavement, the specific protected habitat forming the subject-matter of the main proceedings.

12 The road scheme involves the permanent loss within the Lough Corrib SCI of approximately 1.47 hectares of that limestone pavement. Those 1.47 hectares will be lost from an area which was described by An Bord Pleanála's inspector as constituting a 'distinct sub-area and an area having the particular characteristic of possessing substantial areas of a priority habitat', and which contains a total of 85 hectares of limestone pavement. That surface of 85 hectares itself forms part of a total of 270 hectares of such limestone pavement – which constitutes a priority habitat type referred to in Annex I to the Habitats Directive – in the entire SCI.

13 At the time when An Bord Pleanála's decision was taken, that area had already been included as a potential SCI on a list of sites transmitted by Ireland to the Commission. The extended Lough Corrib site was formally classified as an SCI by a Commission decision of 12 December 2008. According to the referring court, although the extended Lough Corrib site was not formally classified by the Commission as an SCI before that date, An Bord Pleanála was required under national law to apply legal protections equivalent to those under Article 6(2) to (4) of the Habitats Directive to that site from December 2006.

14 In its decision of 20 November 2008, An Bord Pleanála stated, inter alia, that 'it is considered that the part of the road development being approved would be an appropriate solution to the identified traffic needs of the city and surrounding area … and, while having a localised severe impact on the Lough Corrib candidate Special Area of Conservation, would not adversely affect the integrity of this candidate special Area of Conservation. The development, hereby approved, would not, therefore, have unacceptable effects on the environment and would be in accordance with the proper planning and sustainable development of the area.'

15 Mr Sweetman applied to the High Court for leave to issue judicial review proceedings against, in particular, An Bord Pleanála's decision of 20 November 2008. He submitted that An Bord Pleanála had erred in its interpretation of Article 6 of the Habitats Directive in concluding, in particular, that the effect of the road scheme on the Lough Corrib protected site would not constitute an 'adverse effect on the integrity of the site'.

16 By decision of 9 October 2009, the High Court dismissed the application for leave to issue judicial review proceedings and upheld An Bord Pleanála's decision. On 6 November 2009 Mr Sweetman was granted leave to appeal to the Supreme Court against the decision of 9 October 2009.

17 The Supreme Court observes that it has doubts as to when and in what circumstances, where an appropriate assessment of a plan or project is carried out pursuant to Article 6(3) of the Habitats Directive, such a plan or project is likely to have 'an adverse effect on the integrity of the site'. In that regard, the Supreme Court states that the judgment in Case C-127/02 *Waddenvereniging and Vogelbeschermingsvereniging* [2004] ECR I-7405 has not fully dispelled its doubts.

18 It is in those circumstances that the Supreme Court decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. What are the criteria in law to be applied by a competent authority to an assessment of the likelihood of a plan or project the subject of Article 6(3) of the Habitats Directive, having "an adverse effect on the integrity of the site"?

2. Does the application of the precautionary principle have as its consequence that such a plan or project cannot be authorised if it would result in the permanent non-renewable loss of the whole or any part of the habitat in question?

3. What is the relationship, if any, between Article 6(4) and the making of the decision under Article 6(3) that the plan or project will not adversely affect the integrity of the site?'

Consideration of the questions referred

Jurisdiction of the Court

19 Galway County Council and Galway City Council plead, in essence, that the Court lacks jurisdiction to answer the questions referred for a preliminary ruling given that Article 6(3) of the Habitats Directive is not applicable to the main proceedings because An Bord Pleanála's decision approving the N6 Galway City Outer Bypass road scheme was adopted before the Commission decision to classify as an SCI the Lough Corrib site extension which is affected by the scheme.

20 It is indeed apparent from the order for reference that, on the date of An Bord Pleanála's decision, 20 November 2008, the extension of the Lough Corrib site had been notified within Ireland, under Regulation 4 of the 1997 Regulations, but had not yet been designated as an SCI in the list of sites adopted by the Commission. Such a decision was adopted by the Commission on 12 December 2008, that is to say, three weeks after An Bord Pleanála's decision.

21 In the main proceedings, as the referring court itself states, Regulation 30 of the 1997 Regulations largely replicates the wording of Article 6 of the Habitats Directive. It follows, furthermore, from the title of the 1997 Regulations that the Irish legislature intended by their adoption to transpose that directive into domestic law. Finally, as the referring court observes, by according a notified site protection equivalent to that under Article 6(2) to (4) of the Habitats Directive before its designation as an SCI in the list adopted by the Commission, Ireland considered itself to have complied with its obligation to take appropriate protective measures pending designation of a site as an SCI.

22 On that last point, it should be recalled that the Court has already held that, whilst the protective measures prescribed in Article 6(2) to (4) of the Habitats Directive are required only as regards sites which are placed on the list of sites selected as SCIs drawn up by the Commission, this does not mean that the Member States do not have to protect sites as soon as they propose them, under Article 4(1) of the directive, as sites eligible for identification as SCIs on the national list transmitted to the Commission (see Case C-117/03 *Dragaggi and Others* [2005] ECR I-167, paragraphs 25 and 26, and Case C-244/05 *Bund Naturschutz in Bayern and Others* [2006] ECR I-8445, paragraphs 36 and 37).

23 Therefore, as soon as a site is proposed by a Member State, pursuant to Article 4(1) of the Habitats Directive, on the national list transmitted to the Commission as a site eligible for identification as an SCI, and at least until the Commission adopts a decision in that regard, that Member State is, by virtue of the Habitats Directive, required to take protective measures of such a kind as to safeguard the ecological interest referred to (see, to this effect, *Dragaggi and Others*, paragraph 29, and *Bund Naturschutz in Bayern and Others*, paragraph 38). The situation of such a site thus cannot be categorised as a situation not falling within the scope of European Union law.

24 It accordingly follows from the foregoing considerations that the Court has jurisdiction to answer the questions referred for a preliminary ruling by the Supreme Court.

Substance

25 By its questions, which it is appropriate to deal with together, the referring court asks, in essence, whether Article 6(3) of the Habitats Directive must be interpreted as meaning that in a situation such as that in the main proceedings a plan or project not directly connected with or necessary to the management of a site adversely affects the integrity of that site. For the purposes of such an interpretation, the referring court raises the question of the possible effect of the precautionary principle and the question of the relationship between Article 6(3) and Article 6(4) of the Habitats Directive.

26 It is apparent from the order for reference that the implementation of the N6 Galway City Outer Bypass road scheme would result in the permanent and irreparable loss of part of the Lough Corrib SCI's limestone pavement, which is a priority natural habitat type specially protected by the Habitats Directive. Following assessment of the impact of the road scheme on the Lough Corrib SCI, An Bord Pleanála established that it would have a locally significant negative impact on the SCI, but decided that such an impact did not adversely affect the integrity of that site.

27 According to Mr Sweetman, Ireland, the Attorney General, the Minister for the Environment, Heritage and Local Government and the Commission, a negative impact of that kind on the site caused by that road scheme necessarily entails an adverse effect on the site's integrity. By contrast, An Bord Pleanála, Galway County Council and Galway City Council and the United Kingdom Government submit that the finding of damage to that site is not necessarily incompatible with there being no adverse effects on its integrity.

28 Article 6(3) of the Habitats Directive establishes an assessment procedure intended to ensure, by means of a prior examination, that a plan or project not directly connected with or necessary to the management of the site concerned but likely to have a significant effect on it is authorised only to the extent that it will not adversely affect the integrity of that site (*Waddenvereniging and Vogelbeschermingsvereniging*, paragraph 34, and Case C-182/10 *Solvay and Others* [2012] ECR, paragraph 66).

29 That provision thus prescribes two stages. The first, envisaged in the provision's first sentence, requires the Member States to carry out an appropriate assessment of the implications for a protected site of a plan or project when there is a likelihood that the plan or project will have a significant effect on that site (see, to this effect, *Waddenvereniging and Vogelbeschermingsvereniging*, paragraphs 41 and 43).

30 Where a plan or project not directly connected with or necessary to the management of a site is likely to undermine the site's conservation objectives, it must be considered likely to have a significant effect on that site. The assessment of that risk must be made in the light of, in particular, the characteristics and specific environmental conditions of the site concerned by such a plan or project (see, to this effect, *Waddenvereniging and Vogelbeschermingsvereniging*, paragraph 49).

31 The second stage, which is envisaged in the second sentence of Article 6(3) of the Habitats Directive and occurs following the aforesaid appropriate assessment, allows such a plan or project to be authorised on condition that it will not adversely affect the integrity of the site concerned, subject to the provisions of Article 6(4).

32 In appraising the scope of the expression 'adversely affect the integrity of the site' in its overall context, it should be made clear that, as the Advocate General has noted in point 43 of her Opinion, the provisions of Article 6 of the Habitats Directive must be construed as a coherent whole in the light of the conservation objectives pursued by the directive. Indeed, Article 6(2) and Article 6(3) are designed to ensure the same level of protection of natural habitats and habitats of species (see, to this effect, Case C-404/09 *Commission* v *Spain* [2011] ECR I-11853, paragraph 142), whilst Article 6(4) merely derogates from the second sentence of Article 6(3).

33 The Court has already held that Article 6(2) of the Habitats Directive makes it possible to comply with the fundamental objective of preservation and protection of the quality of the environment, including the conservation of natural habitats and of wild fauna and flora, and establishes a general obligation of protection consisting in avoiding deterioration as well as disturbance which could have significant effects in the light of the directive's objectives (Case C-226/08 *Stadt Papenburg* [2010] ECR I-131, paragraph 49 and the case-law cited).

34 Article 6(4) of the Habitats Directive provides that if, in spite of a negative assessment carried out in accordance with the first sentence of Article 6(3) of the directive, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, and there are no alternative solutions, the Member State is to take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected (see Case C-304/05 *Commission* v *Italy* [2007] ECR I-7495, paragraph 81, and *Solvay and Others*, paragraph 72).

35 As an exception to the authorisation criterion laid down in the second sentence of Article 6(3) of the Habitats Directive, Article 6(4) can apply only after the implications of a plan or project have been analysed in accordance with Article 6(3) (see *Solvay and Others*, paragraphs 73 and 74).

36 It follows that Article 6(2) to (4) of the Habitats Directive impose upon the Member States a series of specific obligations and procedures designed, as is clear from Article 2(2) of the directive, to maintain, or as the case may be restore, at a favourable conservation status natural habitats and, in particular, special areas of conservation.

37 In this regard, according to Article 1(e) of the Habitats Directive, the conservation status of a natural habitat is taken as 'favourable' when, in particular, its natural range and areas it covers within that range are stable or increasing and the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future.

38 In this context, the Court has already held that the Habitats Directive has the aim that the Member States take appropriate protective measures to preserve the ecological characteristics of sites which host natural habitat types (see Case C-308/08 *Commission* v *Spain* [2010] ECR I-4281, paragraph 21, and Case C-404/09 *Commission* v *Spain*, paragraph 163).

39 Consequently, it should be inferred that in order for the integrity of a site as a natural habitat not to be adversely affected for the purposes of the second sentence of Article 6(3) of the Habitats Directive the site needs to be preserved at a favourable conservation status; this entails, as the Advocate General has observed in points 54 to 56 of her Opinion, the lasting preservation of the constitutive characteristics of the site concerned that are connected to the presence of a natural habitat type whose preservation was the objective justifying the designation of that site in the list of SCIs, in accordance with the directive.

40 Authorisation for a plan or project, as referred to in Article 6(3) of the Habitats Directive, may therefore be given only on condition that the competent authorities – once all aspects of the plan or project have been identified which can, by themselves or in combination with other plans or projects, affect the conservation objectives of the site concerned, and in the light of the best scientific knowledge in the field – are certain that the plan or project will not have lasting adverse effects on the integrity of that site. That is so where no reasonable scientific doubt remains as to the absence of such effects (see, to this effect, Case C-404/09 *Commission* v *Spain*, paragraph 99, and *Solvay and Others*, paragraph 67).

41 It is to be noted that, since the authority must refuse to authorise the plan or project being considered where uncertainty remains as to the absence of adverse effects on the integrity of the site, the authorisation criterion laid down in the second sentence of Article 6(3) of the Habitats Directive integrates the precautionary principle and makes it possible to prevent in an effective manner adverse effects on the integrity of protected sites as a result of the plans or projects being considered. A less stringent authorisation criterion than that in question could not ensure as effectively the fulfilment of the objective of site protection intended under that provision (*Waddenvereniging and Vogelbeschermingsvereniging*, paragraphs 57 and 58).

42 Such an appraisal applies all the more in the main proceedings, since the natural habitat affected by the proposed road scheme is among the priority natural habitat types, which Article 1(d) of the Habitats Directive defines as 'natural habitat types in danger of disappearance' for whose conservation the European Union has 'particular responsibility'.

43 The competent national authorities cannot therefore authorise interventions where there is a risk of lasting harm to the ecological characteristics of sites which host priority natural habitat types. That would particularly be so where there is a risk that an intervention of a particular kind will bring about the disappearance or the partial and irreparable destruction of a priority natural habitat type present on the site concerned (see, as regards the disappearance of priority species, Case C-308/08 *Commission* v *Spain*, paragraph 21, and Case C-404/09 *Commission* v *Spain*, paragraph 163).

44 So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned (see, to this effect, Case C-404/09 *Commission* v *Spain*, paragraph 100 and the case-law cited). It is for the national court to establish whether the assessment of the implications for the site meets these requirements.

45 In the main proceedings, the Lough Corrib SCI was designated as a site hosting a priority habitat type because, in particular, of the presence in that site of limestone pavement, a natural resource which, once destroyed, cannot be replaced. Having regard to the criteria referred to above, the conservation objective thus corresponds to maintenance at a favourable conservation status of that site's constitutive characteristics, namely the presence of limestone pavement.

46 Consequently, if, after an appropriate assessment of a plan or project's implications for a site, carried out on the basis of the first sentence of Article 6(3) of the Habitats Directive, the competent national authority concludes that that plan or project will lead to the lasting and irreparable loss of the whole or part of a priority natural habitat type whose conservation was the objective that justified the designation of the site concerned as an SCI, the view should be taken that such a plan or project will adversely affect the integrity of that site.

47 In those circumstances, that plan or project cannot be authorised on the basis of Article 6(3) of the Habitats Directive. Nevertheless, in such a situation, the competent national authority could, where appropriate, grant authorisation under Article 6(4) of the directive, provided that the conditions set out therein are satisfied (see, to this effect, *Waddenvereniging and Vogelbeschermingsvereniging*, paragraph 60).

48 It follows from the foregoing considerations that the answer to the questions referred is that Article 6(3) of the Habitats Directive must be interpreted as meaning that a plan or project not directly connected with or necessary to the management of a site will adversely affect the integrity of that site if it is liable to prevent the lasting preservation of the constitutive characteristics of the site that are connected to the presence of a priority natural habitat whose conservation was the objective justifying the designation of the site in the list of SCIs, in accordance with the directive. The precautionary principle should be applied for the purposes of that appraisal.

Costs

49 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that a plan or project not directly connected with or necessary to the management of a site will adversely affect the integrity of that site if it is liable to prevent the lasting preservation of the constitutive characteristics of the site that are connected to the presence of a priority natural habitat whose conservation was the objective justifying the designation of the site in the list of sites of Community importance, in accordance with the directive. The precautionary principle should be applied for the purposes of that appraisal.

[Signatures]

People Over Wind v Teoranta

Court of Justice | April 12, 2018 | Celex No. 62017CJ0323

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Judgment of the Court of Justice (Seventh Chamber) - 12 April 2018
People Over Wind v Teoranta
Case C-323/17

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Text

(Reference for a preliminary ruling - Environment - Directive 92/43/EEC - Conservation of natural habitats - Special areas of conservation - Article 6(3) - Screening in order to determine whether or not it is necessary to carry out an assessment of the implications, for a special area of conservation, of a plan or project - Measures that may be taken into account for that purpose)

JUDGMENT OF THE COURT (Seventh Chamber)

12 April 2018 * Language of the case: English.

In Case C-323/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court (Ireland), made by decision of 10 May 2017, received at the Court on 30 May 2017, in the proceedings

People Over Wind,

Peter Sweetman

v

Coillte Teoranta,

THE COURT (Seventh Chamber),

composed of A. Rosas, President of the Chamber, C. Toader (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- People Over Wind and Mr Sweetman, by O. Clarke, Solicitor, O. Collins, Barrister-at-Law, and J. Devlin, Senior Counsel,

- Coillte Teoranta, by J. Conway, Solicitor, S. Murray, Barrister-at-Law, and D. McGrath, Senior Counsel,

- the European Commission, by C. Hermes and E. Manhaeve, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7; 'the Habitats Directive').

2 The request has been made in proceedings brought by People Over Wind, an environmental NGO, and by Peter Sweetman against Coillte Teoranta ('Coillte'), a company owned by the Irish State that operates in the forestry sector, relating to the works necessary to lay the cable connecting a wind farm to the electricity grid.

Legal context
EU law

3 The 10th recital of the Habitats Directive states:

'... an appropriate assessment must be made of any plan or programme likely to have a significant effect on the conservation objectives of a site which has been designated or is designated in future'.

4 Article 2 of the Habitats Directive provides:

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'1. The aim of this Directive shall be to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies.

2. Measures taken pursuant to this Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest.

3. Measures taken pursuant to this Directive shall take account of economic, social and cultural requirements and regional and local characteristics.'

5 Article 3(1) of the Habitats Directive is worded as follows:

'A coherent European ecological network of special areas of conservation shall be set up under the title Natura 2000. This network, composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II, shall enable the natural habitat types and the species' habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range.

...'

6 Article 6 of the Habitats Directive states:

'1. For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.'

Irish law

7 The High Court (Ireland) explains that development consent is regulated by the Planning and Development Acts and regulations made thereunder. The competent authority is the local planning authority and an appeal lies to An Bord Pleanála (the Irish Planning Board).

8 Certain types of development are classified as 'exempted development' and, subject to certain exceptions, do not require consent under the Planning and Development Acts. Thus, an example of exempted development is 'the carrying out by any undertaker authorised to provide an electricity service of development consisting of the laying underground of mains, pipes, cables or other apparatus for the purposes of the undertaking'.

9 Nevertheless, 'exempted development' projects may be subject to other types of consent or a process of adoption. The European Communities (Birds and Natural Habitats) Regulations 2011 ('the 2011 Regulations') apply to projects other than developments requiring development consent within the meaning of the Planning and Development Acts. Furthermore, a development which comes within 'exempted development' must nevertheless be subject to consent under the Planning and Development Acts where appropriate

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assessment under Article 6(3) of the Habitats Directive is required.

10 Regulation 42 of the 2011 Regulations provides:

'1. A screening for Appropriate Assessment of a plan or project for which an application for consent is received, or which a public authority wishes to undertake or adopt, and which is not directly connected with or necessary to the management of the site as a European Site, shall be carried out by the public authority to assess, in view of best scientific knowledge and in view of the conservation objectives of the site, if that plan or project, individually or in combination with other plans or projects is likely to have a significant effect on the European site.

2. A public authority shall carry out a screening for Appropriate Assessment under paragraph (1) before consent for a plan or project is given, or a decision to undertake or adopt a plan or project is taken.

...

6. The public authority shall determine that an Appropriate Assessment of a plan or project is required where the plan or project is not directly connected with or necessary to the management of the site as a European Site and if it cannot be excluded, on the basis of objective scientific information following screening under this Regulation, that the plan or project, individually or in combination with other plans or projects, will have a significant effect on a European site.

7. The public authority shall determine that an Appropriate Assessment of a plan or project is not required where the plan or project is not directly connected with or necessary to the management of the site as a European Site and if it can be excluded on the basis of objective scientific information following screening under this Regulation, that the plan or project, individually or in combination with other plans or projects, will have a significant effect on a European site.'

The dispute in the main proceedings and the question referred for a preliminary ruling

11 The main proceedings relate to the assessment of the effects that the laying of the cable connecting a wind farm to the electricity grid potentially has on two special areas of conservation under the European ecological network Natura 2000, one of which is that of the River Barrow and River Nore (Ireland). That river constitutes a habitat for the Irish subspecies of the freshwater pearl mussel (margaritifera durrovensis ; 'the Nore pearl mussel'), which is included in Annex II to the Habitats Directive. The extant adult population of this pearl mussel is, according to the estimates mentioned by the referring court, as low as 300 individuals, having been as high as 20 000 individuals in 1991. The life span of each individual is said to be between 70 and 100 years, but the Nore pearl mussel is said not to have reproduced itself since 1970. According to the referring court, it is apparent from recent monitoring surveys that this species is threatened with extinction, on account of the high level of sedimentation of the bed of the River Nore, to which the species is particularly vulnerable, sedimentation which inhibits the successful restocking of the river by juveniles.

12 The consent required for developing the wind farm at issue in the main proceedings, with the exception of its connection to the grid, was dealt with in previous procedures. The consent granted by An Bord Pleanála in 2013 was subject to various conditions. Thus, according to condition 17 of that planning permission, 'the construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including ... (k) means to ensure that surface water run-off is controlled such that no silt or other pollutants enter watercourses ...'.

13 Following the grant of that permission, the developer addressed the question of connecting the wind farm concerned to the electricity grid by means of a cable. The dispute in the main proceedings concerns that connection.

14 The applicants in the main proceedings submit that river pollutants resulting from the laying of the connection cable, such as silt and sediment, will have a harmful effect on the Nore pearl mussel.

15 Coillte contends that the cable laying at issue in the main proceedings is 'exempted development' not requiring consent, within the meaning of the applicable national planning legislation. However, it accepts that, if the project were to require appropriate assessment of the environmental implications, planning permission would have to be obtained from the local planning authority.

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16 In order to determine whether it was necessary to carry out such appropriate assessment, Coillte instructed consultants to conduct the examination ('screening').

17 The screening report drawn up by those consultants concluded, inter alia, as follows:

'(a) In the absence of protective measures, there is potential for the release of suspended solids into waterbodies along the proposed route, including directional drilling locations.

(b) With regards to [the Nore pearl mussel], if the construction of the proposed cable works was to result in the release of silt or pollutants such as concrete into the pearl mussel population area of river through the pathway of smaller streams or rivers, there would be a negative impact on the pearl mussel population. Sedimentation of gravels can prevent sufficient water flow through the gravels, starving juvenile [Nore pearl mussels] of oxygen.'

18 It is apparent from the file before the Court that 'protective measures' were also analysed by that report.

19 Subsequently, on the basis of that report, the following recommendation was drawn up for Coillte by the 'programme manager':

'As set out in detail in the ... appropriate assessment screening report, on the basis of the findings of that report and in light of the best scientific knowledge, the grid connection works will not have a significant effect on the relevant European sites in light of the conservation objectives of the European sites, alone or in combination with the Cullenagh wind farm and other plans or projects, and an appropriate assessment is not required. This conclusion was reached on the basis of the distance between the proposed Cullenagh grid connection and the European sites, and the protective measures that have been built into the works design of the project.'

20 Adopting the above reasons and recommendation, Coillte, as a public authority referred to in Regulation 42 of the 2011 Regulations, determined that no appropriate assessment, within the meaning of Article 6(3) of the Habitats Directive, was required in this instance.

21 The referring court considers that the decision that appropriate assessment was not required is based on the 'protective measures' referred to in the screening report. That court makes clear that the protective measures proposed and taken into account by the authors of that report are not as stringent as those required in condition 17(k) of the planning permission for the wind farm concerned.

22 In the light of the foregoing, the High Court decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Whether, or in what circumstances, mitigation measures can be considered when carrying out screening for appropriate assessment under Article 6(3) of the Habitats Directive?'

Consideration of the question referred

23 First of all, it should be noted that Article 6 of the Habitats Directive imposes upon the Member States a series of specific obligations and procedures designed, as is clear from Article 2(2) of the directive, to maintain, or as the case may be restore, at a favourable conservation status natural habitats and, in particular, special areas of conservation (judgments of 11 April 2013, Sweetman and Others , C-258/11, EU:C:2013:220, paragraph 36 and the case-law cited, and of 21 July 2016, Orleans and Others , C-387/15 and C-388/15, EU:C:2016:583, paragraph 31).

24 According to the Court's case-law, the provisions of Article 6 of the Habitats Directive must be construed as a coherent whole in the light of the conservation objectives pursued by the directive. Indeed, Article 6(2) and Article 6(3) are designed to ensure the same level of protection of natural habitats and habitats of species, whilst Article 6(4) merely derogates from the second sentence of Article 6(3) (see, to that effect, judgment of 14 January 2016, Grüne Liga Sachsen and Others , C-399/14, EU:C:2016:10, paragraph 52 and the case-law cited).

25 Thus, Article 6 of the Habitats Directive divides measures into three categories, namely conservation measures, preventive measures and compensatory measures, provided for in Article 6(1), (2) and (4) respectively. It is clear from the wording of Article 6 of the Habitats Directive that that provision contains no reference to any concept of 'mitigating measure' (see, to that effect, judgment of 21 July 2016, Orleans and Others , C-387/15 and C-388/15, EU:C:2016:583, paragraphs 57 and 58 and the case-law cited).

26 It follows that, as is apparent from the reasoning of the request for a preliminary ruling, that the measures which

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the referring court describes as 'mitigating measures', and which Coillte refers to as 'protective measures', should be understood as denoting measures that are intended to avoid or reduce the harmful effects of the envisaged project on the site concerned.

27 Thus, by its question, the referring court asks, in essence, whether Article 6(3) of the Habitats Directive must be interpreted as meaning that, in order to determine whether or not it is necessary to carry out subsequently an appropriate assessment of a project's implications for a site concerned, it is possible, at the screening stage, to take account of the measures intended to avoid or reduce the project's harmful effects on that site.

28 The 10th recital of the Habitats Directive states that an appropriate assessment must be made of any plan or programme likely to have a significant effect on the conservation objectives of a site which has been designated or is designated in future. That recital finds expression in Article 6(3) of the directive, which provides inter alia that a plan or project likely to have a significant effect on the site concerned cannot be authorised without a prior assessment of its implications for that site (judgment of 7 September 2004, Waddenvereniging and Vogelbeschermingsvereniging , C-127/02, EU:C:2004:482, paragraph 22).

29 As the Court has pointed out, Article 6(3) of the Habitats Directive refers to two stages. The first, envisaged in the provision's first sentence, requires the Member States to carry out an appropriate assessment of the implications for a protected site of a plan or project when there is a likelihood that the plan or project will have a significant effect on that site. The second stage, which is envisaged in the second sentence of Article 6(3) and occurs following the aforesaid appropriate assessment, allows such a plan or project to be authorised only if it will not adversely affect the integrity of the site concerned, subject to the provisions of Article 6(4) of the directive (judgment of 21 July 2016, Orleans and Others , C-387/15 and C-388/15, EU:C:2016:583, paragraphs 44 and 46 and the case-law cited).

30 It should be added that Article 6(3) of the Habitats Directive also integrates the precautionary principle and makes it possible to prevent in an effective manner adverse effects on the integrity of protected sites, resulting from the plans or projects envisaged. A less stringent authorisation criterion than that set out in that provision could not ensure as effectively the fulfilment of the objective of site protection intended under that provision (judgment of 26 April 2017, Commission v Germany , C-142/16, EU:C:2017:301, paragraph 40 and the case-law cited).

31 In the present instance, as the parties to the main proceedings and the Commission agree, the uncertainty of the referring court concerns only the screening stage. More specifically, the referring court asks whether measures intended to avoid or reduce the harmful effects of a plan or project on the site concerned can be taken into consideration at the screening stage, in order to determine whether it is necessary to carry out an appropriate assessment of the implications, for the site, of that plan or project.

32 Article 6(3) of the Habitats Directive sets out clearly that the obligation to carry out an assessment is dependent on both of the following conditions being met: the plan or project in question must not be connected with or necessary to the management of the site, and it must be likely to have a significant effect on the site.

33 It is apparent from the file before the Court that the referring court considers the first of those conditions to be met.

34 As regards the second condition, it is settled case-law that Article 6(3) of the Habitats Directive makes the requirement for an appropriate assessment of the implications of a plan or project conditional on there being a probability or a risk that the plan or project in question will have a significant effect on the site concerned. In the light, in particular, of the precautionary principle, such a risk exists if it cannot be excluded on the basis of objective information that the plan or project will have a significant effect on the site concerned (judgment of 26 May 2011, Commission v Belgium , C-538/09, EU:C:2011:349, paragraph 39 and the case-law cited). The assessment of that risk must be made in the light inter alia of the characteristics and specific environmental conditions of the site concerned by such a plan or project (see, to that effect, judgment of 21 July 2016, Orleans and Others , C-387/15 and C-388/15, EU:C:2016:583, paragraph 45 and the case-law cited).

35 As the applicants in the main proceedings and the Commission submit, the fact that, as the referring court has observed, measures intended to avoid or reduce the harmful effects of a plan or project on the site concerned are taken into consideration when determining whether it is necessary to carry out an appropriate assessment presupposes that

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it is likely that the site is affected significantly and that, consequently, such an assessment should be carried out.

36 That conclusion is supported by the fact that a full and precise analysis of the measures capable of avoiding or reducing any significant effects on the site concerned must be carried out not at the screening stage, but specifically at the stage of the appropriate assessment.

37 Taking account of such measures at the screening stage would be liable to compromise the practical effect of the Habitats Directive in general, and the assessment stage in particular, as the latter stage would be deprived of its purpose and there would be a risk of circumvention of that stage, which constitutes, however, an essential safeguard provided for by the directive.

38 In that regard, the Court's case-law emphasises the fact that the assessment carried out under Article 6(3) of the Habitats Directive may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected site concerned (judgment of 21 July 2016, Orleans and Others , C-387/15 and C-388/15, EU:C:2016:583, paragraph 50 and the case-law cited).

39 It is, moreover, from Article 6(3) of the Habitats Directive that persons such as the applicants in the main proceedings derive in particular a right to participate in a procedure for the adoption of a decision relating to an application for authorisation of a plan or project likely to have a significant effect on the environment (see, to that effect, judgment of 8 November 2016, Lesoochranárske zoskupenie VLK , C-243/15, EU:C:2016:838, paragraph 49).

40 In the light of all the foregoing considerations, the answer to the question referred is that Article 6(3) of the Habitats Directive must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.

Costs

41 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Seventh Chamber) hereby rules:

Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the

harmful effects of the plan or project on that site.

Rosas Toader Jaraši#nas

Delivered in open court in Luxembourg on 12 April 2018.

A. Calot Escobar

Registrar

A. Rosas

President of the Seventh Chamber

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Commentary
2. Broadbent, Richard ; Caine, Catherine Ann: A fresh start for screening under the Habitats Regulations, Environmental Law Review 2018 Vol.20 p.163-170 (EN)
1. Kole, S.: Administratiefrechtelijke beslissingen ; Rechtspraak bestuursrecht 2018 Afl.27 p.1444-1446 (NL)

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References

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62014CJ0399 -N52: N 24
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62016CJ0142 -N40: N 30
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Grace v An Bord Pleanala

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Text

(Reference for a preliminary ruling - Environment - Directive 92/43/EC - Conservation of natural habitats and of wild fauna and flora - Article 6(3) and (4) - Assessment of the implications of a plan or project for a protected site - Plan or project not directly connected with or necessary to the management of the site - Wind farm project - Directive 2009/147/EC - Conservation of wild birds - Article 4 - Special Protection Area (SPA) - Annex I - Hen harrier (Circus cyaneus) - Suitable habitat fluctuating over time - Temporary or permanent reduction of the amount of appropriate land - Measures included in the project to ensure that, during the lifetime of the project, the amount of land that is in fact suitable for hosting the natural habitat of the species will not be reduced and indeed may be enhanced)

JUDGMENT OF THE COURT (Second Chamber)

25 July 2018 *Language of the case: English.

In Case C-164/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Supreme Court (Ireland), made by decision of 20 March 2017, received at the Court on 3 April 2017, in the proceedings

Edel Grace,

Peter Sweetman

v

An Bord Pleanála,

intervening parties:

ESB Wind Developments Ltd,

Coillte,

The Department of Arts Heritage and the Gaeltacht,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, A. Rosas, C. Toader (Rapporteur), A. Prechal and E. Jarašiūnas, Judges,

Advocate General: E. Tanchev,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 1 February 2018,

after considering the observations submitted on behalf of:

- Ms Grace and Mr Sweetman, by O. Collins, Barrister, and J. Devlin, Senior Counsel, instructed by O. Clarke and A. O'Connell, Solicitors,

- the An Bord Pleanála, by F. Valentine, Barrister, and N. Butler, Senior Counsel, instructed by A. Doyle and B. Slattery, Solicitors,

- ESB Wind Developments Ltd and Coillte, by R. Mulcahy, D. McDonald, Senior Counsel, and A. Carroll, Barrister-at-Law, instructed by D. Spence, Solicitor,

- the Netherlands Government, by M. Bulterman and C.S. Schillemans, acting as Agents,

- the European Commission, by E. Manhaeve and C. Hermes, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 19 April 2018,

gives the following

Judgment

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1 This request for a preliminary ruling concerns the interpretation of Article 6(3) and (4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7, 'the Habitats Directive').

2 The request has been made in proceedings between Ms Edel Grace and Mr Peter Sweetman, the applicants, and the An Bord Pleanála (National Planning Appeals Board, Ireland) ('the An Bord') concerning the latter's decision granting ESB Wind Developments Ltd and Coillte permission for a wind farm project in a special protection area which is classified as it hosts the natural habitat of a protected species.

Legal context

European Union law

The Birds Directive

3 Article 1(1) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7) ('the Birds Directive') states that the directive relates to the conservation of all species of naturally occurring birds in the wild state in the European territory of the Member States to which the FEU Treaty applies. It covers the protection, management and control of these species and lays down rules for their exploitation.

4 Article 4 of that directive provides as follows:

'1. The species mentioned in Annex I shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution.

In this connection, account shall be taken of:

(a) species in danger of extinction;

(b) species vulnerable to specific changes in their habitat;

(c) species considered rare because of small populations or restricted local distribution;

(d) other species requiring particular attention for reasons of the specific nature of their habitat.

Trends and variations in population levels shall be taken into account as a background for evaluations.

Member States shall classify in particular the most suitable territories in number and size as special protection areas for the conservation of these species in the geographical sea and land area where this Directive applies.

...

4. In respect of the protection areas referred to in paragraphs 1 and 2, Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.'

5 The species mentioned in Annex I to the directive include the hen harrier (Circus cyaneus).

The Habitats Directive

6 The 10th recital of the Habitats Directive states as follows:

'Whereas an appropriate assessment must be made of any plan or programme likely to have a significant effect on the conservation objectives of a site which has been designated or is designated in future.'

7 Article 2 of that directive provides as follows:

'1. The aim of this Directive shall be to contribute towards ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the [FEU] Treaty applies.

2. Measures taken pursuant to this Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest.

3. Measures taken pursuant to this Directive shall take account of economic, social and cultural requirements and regional and local characteristics.'

8 Article 6 of the Habitats Directive states as follows:

'1. For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative, or contractual measures which correspond to the ecological requirements of the

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natural habitat types in Annex I and the species in Annex II present on the sites.

2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance should be significant in relation to the objectives of this Directive.

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.'

9 Pursuant to Article 7 of the Habitats Directive, obligations arising under Article 6(2) to (4) of the directive are applicable to special protection areas ('SPAs') within the meaning of the Birds Directive.

The dispute in the main proceedings and the question referred for a preliminary ruling

10 The dispute in the main proceedings concerns a plan to build a wind farm, which will be developed and operated jointly by Coillte, a public forestry undertaking, and ESB Wind Developments, and located in the SPA that stretches from Slieve Felim to Silvermines Mountains (in the counties of Limerick and Tipperary, Ireland, respectively) ('the contested development').

11 That territory has been classified as an SPA for the purposes of the fourth subparagraph of Article 4(1) of the Birds Directive because it hosts the natural habitat of a species of bird identified in Annex I to that directive, namely the hen harrier. That territory, which covers 20 935 hectares, includes, in particular, areas of unplanted blanket bog and heath and 12 078 hectares of woodland. Due to its characteristics, the whole of this area is potentially suitable as a habitat for that species.

12 According to the referring court, it is envisaged that the contested development will occupy 832 hectares of the SPA, essentially covered by first and second rotation plantations of conifers and unplanted bog and heath. The erection of 16 wind turbines and related infrastructure will require the clearance of trees at each wind turbine location. It is estimated that 41.7 hectares of trees will be felled. The development will result in the permanent loss of 9 hectares of habitat, corresponding to the built-on areas, and the temporary loss of 1.7 hectares of habitat, which will be used for the construction of temporary settlement ponds. Moreover, as it is assumed that foraging hen harriers will not come within 250 metres of a wind turbine, the referring court notes that this may result in the complete loss of 162.7 hectares of foraging habitat.

13 The contested development includes a Species and Habitat Management Plan ('the management plan'). That plan, to be implemented over a period of five years, includes measures to address the potential effects of the wind farm on the hen harrier's foraging habitat. First, the management plan envisages that three currently planted areas, covering an area of 41.2 hectares, 14.2 of which would be within 250 metres of a turbine, will be restored to blanket bog. Second, during the lifetime of the contested development, under the plan 137.3 hectares of second rotation forest will be subjected to 'sensitive' management, which foresees the felling and replacing of the current closed canopy forest so as to ensure that there will be 137.3 hectares of perpetually open canopy forest providing suitable foraging habitat for the hen harrier and an ecological corridor between two areas of open bog. The felling will be done on a phased basis, starting a year prior to construction. Third, construction works will generally

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be confined to times outside the main hen harrier breeding season.

14 By decision of 22 July 2014, the An Bord decided to grant permission for the contested development on the ground that it would not adversely affect the integrity of the SPA.

15 Ms Grace and Mr Sweetman brought proceedings before the High Court (Ireland) contesting the An Bord's decision. By decisions of 1 October and 4 December 2015, that court rejected their application and upheld the An Bord's decision.

16 By decision of 26 February 2016, Ms Grace and Mr Sweetman were granted leave to appeal against that decision before the Supreme Court (Ireland). By judgment of 24 February 2017, that court gave final rulings on two of the three grounds of appeal. However, the final outcome of the appeal depends on the interpretation of Article 6(3) and (4) of the Habitats Directive.

17 According to Ms Grace and Mr Sweetman, the An Bord should have come to the conclusion that the contested development and its related management plan entailed compensatory measures and, accordingly, it should have taken account of the criteria laid down in Article 6(4) of Habitats Directive when carrying out its assessment.

18 The An Bord and the interveners in the main proceedings argue that, for the purpose of determining whether the development is likely to adversely affect the integrity of the SPA within the meaning of Article 6(3) of the Habitats Directive, it is necessary to take account of the fact that no part of the wooded sector of the area will remain permanently in a condition allowing it to provide suitable habitat.

19 In that connection, the Supreme Court indicates that hen harriers are primarily birds living in open countryside which require extensive areas of suitable land over which to forage. Nesting requirements are, however, small-scale and can be met in a smaller geographical area and a variety of habitat types. Moreover, the decline in the number of the protected species is attributable more to the potential deterioration of the foraging habitat than to that of the nesting habitat. The referring court states that, while unplanted bog and heath were once generally recognised as prime hen harrier habitat, it has been observed that, as commercial forestry has become more widespread, young conifer plantations on bog provide the hen harrier with foraging opportunities. On the other hand, it is apparent from those considerations that a forest which is not thinned or harvested, but is simply left to mature, resulting in a closed canopy, will not provide suitable foraging habitat.

20 It is apparent from the documents submitted to the Court that commercial forestry has an average cycle of 40 years, which includes two rotation stages. The parts of the area in which the plantations have matured at the end of the first stage and which therefore have a closed canopy are clear-felled. This is followed by a replanting stage, as a result of which part of the area will once again be open-canopy, providing suitable territory for hen harrier foraging. It follows that the foraging habitat of this species in the SPA is in constant flux and depends on which of those stages - which are linked to forest management - has been reached. Thus, a failure to actively manage the forest plantation would in itself lead to loss of hen harrier foraging habitat, as a result of the gradual disappearance of parts of the open canopy area. According to the available studies, the population of this protected species can be expected to fall and rise in accordance with the availability of open canopy forest. In the present case, the amount of open canopy forest will gradually decrease from 14% of the total afforested lands over the period 2014 to 2018 to a low of 8% during the period 2024 to 2028.

21 According to the referring court, it is required to determine whether the An Bord was incorrect to take the view that the contested development and the management plan entail mitigating elements which allow it to carry out its assessment solely on the basis of Article 6(3) of the Habitats Directive.

22 In that regard, the referring court is uncertain whether that provision is to be interpreted as meaning that the measures proposed in the management plan relating to the contested development which seek to ensure that the total area providing suitable habitat will not be reduced and could even be enhanced may, in the circumstances of the present case, be classified as mitigating measures, or whether they must be regarded as compensatory measures within the meaning of Article 6(4) of the Habitats Directive.

23 In those circumstances, the Supreme Court decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Where

(a) a protected site has as its essential purpose the provision of habitat for a specified species,

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(b) the nature of the habitat which is beneficial for that species means that the part of the site which is beneficial will necessarily alter over time, and

(c) as part of a proposed development a management plan for the site as a whole (including changes to the management of parts of the site not directly affected by the development itself) is to be put in place which is designed to ensure that, at any given time, the amount of the site suitable as habitat as aforesaid is not reduced and indeed may be enhanced; but

(d) some of the site will, for the lifetime of the development project, be excluded from having the potential to provide appropriate habitat,

can such measures as are described in (c) properly be regarded as mitigatory?'

Consideration of the question referred

24 It should be noted, first, that, although the question referred by the Supreme Court does not contain any reference to provisions of EU law, that question, which must be read in the light of the details given in the order for reference, concerns the interpretation of Article 6(3) and (4) of the Habitats Directive.

25 Next, as regards the terms in which the question referred is couched, it should be added that Article 6 of the Habitats Directive does not contain any reference to 'mitigating measures' (judgments of 21 July 2016, Orleans and Others, C-387/15 and C-388/15, EU:C:2016:583, paragraph 57, and of 12 April 2018, People Over Wind and Sweetman, C-323/17, EU:C:2018:244, paragraph 25).

26 In this connection, the Court has previously observed that the effectiveness of the protective measures provided for in Article 6 of the Habitats Directive is intended to avoid a situation where competent national authorities allow so-called 'mitigating' measures' - which are in reality compensatory measures - in order to circumvent the specific procedures laid down in Article 6(3) of the directive and authorise projects which adversely affect the integrity of the site concerned (judgment of 21 July 2016, Orleans and Others, C-387/15 and C-388/15, EU:C:2016:583, paragraph 58 and the case-law cited).

27 Lastly, with regard to areas classified as SPAs, obligations arising under Article 6(3) of the Habitats Directive replace, in accordance with Article 7 thereof, any obligations arising under the first sentence of Article 4(4) of the Birds Directive, as from the date of classification under the Birds Directive, where that date is later than the date of implementation of the Habitats Directive (judgment of 17 April 2018, Commission v Poland (Białowieża Forest), C-441/17, EU:C:2018:255, paragraph 109 and the case-law cited).

28 If follows that the referring court's question is to be understood as asking, in essence, whether Article 6 of the Habitats Directive must be interpreted as meaning that, where it is intended to carry out a project on a site designated for the protection and conservation of certain species, of which the area suitable for providing for the needs of a protected species fluctuates over time, and the temporary or permanent effect of that project will be that some parts of the site will no longer be able to provide a suitable habitat for the species in question, the fact that the project includes measures to ensure that, after an appropriate assessment of the implications of the project has been carried out and throughout the lifetime of the project, the part of the site that is in fact likely to provide a suitable habitat will not be reduced and indeed may be enhanced may be taken into account for the purpose of the assessment that must be carried out in accordance with Article 6(3) of the directive to ensure that the project in question will not adversely affect the integrity of the site concerned, or whether that fact falls to be considered, if need be, under Article 6(4) of the directive.

29 Article 6 of the Habitats Directive imposes a set of specific obligations and procedures on Member States designed, as is apparent from Article 2(2) of the directive, to maintain or restore, as the case may be, at favourable conservation status, natural habitats and species of wild fauna and flora of European Union interest, with a view to attaining the directive's more general objective, which is to ensure a high level of environmental protection as regards the sites protected pursuant to the directive (see, to that effect, judgments of 8 November 2016, Lesoochranárske zoskupenie VLK, C-243/15, EU:C:2016:838, paragraph 43, and of 17 April 2018, Commission v Poland (Białowieża Forest), C-441/17, EU:C:2018:255, paragraph 106).

30 In that regard, the provisions of Article 6 of the Habitats Directive constitute a coherent whole in the light of the conservation objectives laid down by the directive. Indeed, Article 6(2) and (3) is designed to ensure the same level of protection for natural habitats and habitats of species, whilst Article 6(4) merely derogates from the second sentence of

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Article 6(3) (judgment of 12 April 2018, People Over Wind and Sweetman, C-323/17, EU:C:2018:244, paragraph 24 and the case-law cited).

31 The 10th recital of the Habitats Directive states that an appropriate assessment must be made of any plan or programme likely to have a significant effect on the conservation objectives of a site which has been designated or is designated in future. That recital finds expression in Article 6(3) of the directive, which provides, inter alia, that a plan or project likely to have a significant effect on the site concerned cannot be authorised without a prior assessment of its implications for that site (judgment of 12 April 2018, People Over Wind and Sweetman, C-323/17, EU:C:2018:244, paragraph 28 and the case-law cited).

32 Article 6(3) of the Habitats Directive refers to two stages. The first, envisaged in the provision's first sentence, requires Member States to carry out an appropriate assessment of the implications for a protected site of a plan or project when there is a likelihood that the plan or project will have a significant effect on that site. The second stage, which is envisaged in the second sentence of Article 6(3) and occurs following the appropriate assessment, allows such a plan or project to be authorised only if it will not adversely affect the integrity of the site concerned, subject to the provisions of Article 6(4) of the directive (judgment of 12 April 2018, People Over Wind and Sweetman, C-323/17, EU:C:2018:244, paragraph 29 and the case-law cited).

33 It is in the light of those considerations that the question referred must be answered.

34 In the first place, it should be noted that, in order for the integrity of a site not to be adversely affected for the purposes of the second sentence of Article 6(3) of the Habitats Directive, the site needs to be preserved at favourable conservation status; this entails the lasting preservation of the site's constitutive characteristics that are connected to the presence of a natural habitat type whose preservation was the objective justifying the designation of that site in the list of sites of Community importance, in accordance with the directive (see, to that effect, judgments of 21 July 2016, Orleans and Others, C-387/15 and C-388/15, EU:C:2016:583, paragraph 47 and the case-law cited, and of 17 April 2018, Commission v Poland(Białowieża Forest), C-441/17, EU:C:2018:255, paragraph 116).

35 In accordance with Article 4(1) of the Birds Directive, the designation of a territory as an SPA for the conservation of a species entails the lasting preservation of the constitutive characteristics of the habitat in that area, the survival of the species in question and its reproduction being the objective justifying the designation of that area.

36 In the main proceedings, it is common ground, as indicated by the referring court and as observed by the Advocate General in points 13 and 74 of his Opinion, that the conservation objective of the SPA is to maintain or restore favourable conservation conditions for the hen harrier. In particular, it is by providing the protected species with a habitat including a foraging area that the SPA enables that objective to be attained.

37 As regards, in the second place, the effects of the contested development on the SPA, the referring court states that the aim of the management plan is to put in place safeguards to ensure that, as regards the foraging habitat of the hen harrier, at any given time the area is not reduced and indeed may be enhanced, even though, during the lifetime of the contested development, some of the site will not have the potential to provide the hen harrier with appropriate habitat.

38 Article 6(3) of the Habitats Directive establishes an assessment procedure intended to ensure, by means of a prior examination, that a plan or project not directly connected with or necessary to the management of the area concerned but likely to have a significant effect on it is authorised only to the extent that it will not adversely affect the integrity of the area (see, to that effect, judgment of 17 April 2018, Commission v Poland (Białowieża Forest), C-441/17, EU:C:2018:255, paragraph 108 and the case-law cited).

39 The assessment carried out under that provision may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected area concerned (see, to that effect, judgment of 12 April 2018, People Over Wind and Sweetman, C-323/17, EU:C:2018:244, paragraph 38 and the case-law cited).

40 The fact that the appropriate assessment of the implications of a plan or project for the area concerned must be carried out under that provision means that all the aspects of the plan or project which can, either by themselves or in combination with other plans or projects, affect the conservation objectives

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of that area must be identified in the light of the best scientific knowledge available in the field (see, to that effect, judgment of 17 April 2018, Commission v Poland (Białowieża Forest), C-441/17, EU:C:2018:255, paragraph 113 and the case-law cited).

41 It is at the date of adoption of the decision authorising implementation of the project that there must be no reasonable scientific doubt remaining as to the absence of adverse effects on the integrity of the area in question (see, to that effect, judgment of 17 April 2018, Commission v Poland (Białowieża Forest), C-441/17, EU:C:2018:255, paragraph 120 and the case-law cited).

42 In the present case, it is apparent from the order for reference, first, that the Supreme Court alludes to the permanent and direct loss of nine hectares of land hosting a suitable habitat for the hen harrier. Second, the felling of woodland for the construction of wind turbines and related infrastructure will have the effect of removing 41.7 hectares of that habitat. Third, the part of the area that will not be available during the lifetime of the project could be as much as 162.7 hectares. Fourth, it should also be borne in mind that, during the development stage of the project, the area of open canopy forest, which is one of the constitutive characteristics of the foraging habitat of the protected species, will fall steadily.

43 The Court has previously ruled, in that regard, that where a plan or project not directly connected with or necessary to the management of an area may undermine the area's conservation objectives, it must be considered likely to have a significant effect on that area. The assessment of that risk must be made in the light, inter alia, of the characteristics and specific environmental conditions of the area concerned by such a plan or project (see, to that effect, judgments of 15 May 2014, Briels and Others, C-521/12, EU:C:2014:330, paragraph 20 and the case-law cited, and of 21 July 2016, Orleans and Others, C-387/15 et C-388/15, EU:C:2016:583, paragraph 45).

44 In the third place, the types of measures included in the contested development that form part of the management plan and are intended to address the effects of the development consist in, first, restoring areas of blanket bog and wet heath covering an area of 41.2 hectares (14.2 hectares of which will be within 250 metres of a wind turbine) and, second, providing areas of optimum habitat for hen harriers and other animals within the territory during the lifetime of the project, inter alia by felling and replacing the current closed canopy forest in that territory covering an area of 137.3 hectares in order to ensure that, ultimately, there is an open canopy area.

45 The referring court draws attention to a fact which, in its view, could be decisive for the purpose of the answer to be given to its question, in so far as it distinguishes the circumstances of the present case from those of the cases which gave rise to the judgments of 15 May 2014, Briels and Others (C-521/12, EU:C:2014:330) and of 21 July 2016, Orleans and Others (C-387/15 and C-388/15, EU:C:2016:583).

46 Accordingly, the SPA will be managed 'dynamically' in order to preserve the hen harrier's natural habitat, in the sense that the areas suitable for that habitat will vary geographically and over time, according to how the SPA is managed.

47 In that regard, as the Advocate General observed in point 58 of his Opinion, it follows from Article 6(3) and (4) of the Habitats Directive and the Court's related case-law that there is a distinction to be drawn between protective measures forming part of a project and intended avoid or reduce any direct adverse effects that may be caused by the project in order to ensure that the project does not adversely affect the integrity of the area, which are covered by Article 6(3), and measures which, in accordance with Article 6(4), are aimed at compensating for the negative effects of the project on a protected area and cannot be taken into account in the assessment of the implications of the project (see, to that effect, judgments of 15 May 2014, Briels and Others, C-521/12, EU:C:2014:330, paragraphs 28 and 29; of 21 July 2016, Orleans and Others, C-387/15 and C-388/15, EU:C:2016:583, paragraph 48; and of 26 April 2017, Commission v Germany, C-142/16, EU:C:2017:301, paragraphs 34 and 71).

48 In the present case, it is apparent from the findings of the referring court that some parts of the SPA would no longer be able, if the project went ahead, to provide a suitable habitat but that a management plan would seek to ensure that a part of the SPA that could provide suitable habitat is not reduced and indeed may be enhanced.

49 Accordingly, as the Advocate General observed in paragraph 71 et seq. of his Opinion, while the circumstances of the main proceedings are different from those of the cases which gave rise to the judgments of 15 May 2014, Briels and Others (C-521/12, EU:C:2014:330), and of 21

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July 2016, Orleans and Others (C-387/15 and C-388/15, EU:C:2016:583), those cases are similar in that they are based, at the time the assessment of the implications of the plan or project for the area concerned, on the same premiss that there will be future benefits which will address the effects of the wind farm on that area, even though those benefits are, moreover, uncertain. The lessons to be drawn from those judgments may therefore be transposed to a set of circumstances such as those of the main proceedings.

50 In that regard, the Court has previously ruled that the measures provided for in a project which are aimed at compensating for the negative effects of the project cannot be taken into account in the assessment of the implications of the project provided for in Article 6(3) of the Habitats Directive (judgments of 15 May 2014, Briels and Others, C-521/12, EU:C:2014:330, paragraph 29, and of 21 July 2016, Orleans and Others, C-387/15 and C-388/15, EU:C:2016:583, paragraph 48).

51 It is only when it is sufficiently certain that a measure will make an effective contribution to avoiding harm, guaranteeing beyond all reasonable doubt that the project will not adversely affect the integrity of the area, that such a measure may be taken into consideration when the appropriate assessment is carried out (see, to that effect, judgment of 26 April 2017, Commission v Germany, C-142/16, EU:C:2017:301, paragraph 38).

52 As a general rule, any positive effects of the future creation of a new habitat, which is aimed at compensating for the loss of area and quality of that habitat type in a protected area, are highly difficult to forecast with any degree of certainty or will be visible only in the future (see, to that effect, judgment of 21 July 2016, Orleans and Others, C-387/15 and C-388/15, EU:C:2016:583, paragraphs 52 and 56 and the case-law cited).

53 It is not the fact that the habitat concerned in the main proceedings is in constant flux and that that area requires 'dynamic' management that is the cause of uncertainty. In fact, such uncertainty is the result of the identification of adverse effects, certain or potential, on the integrity of the area concerned as a habitat and foraging area and, therefore, on one of the constitutive characteristics of that area, and of the inclusion in the assessment of the implications of future benefits to be derived from the adoption of measures which, at the time that assessment is made, are only potential, as the measures have not yet been implemented. Accordingly, and subject to verifications to be carried out by the referring court, it was not possible for those benefits to be foreseen with the requisite degree of certainty when the authorities approved the contested development.

54 The foregoing considerations are confirmed by the fact that Article 6(3) of the Habitats Directive integrates the precautionary principle and makes it possible to prevent in an effective manner adverse effects on the integrity of protected areas as a result of the plans or projects being considered (see, to that effect, judgment of 15 May 2014, Briels and Others, C-521/12, EU:C:2014:330, paragraph 26 and the case-law cited).

55 Lastly, it should be noted that, in accordance with Article 6(4) of the Habitats Directive, in the event that, in spite of the fact that the assessment conducted in accordance with the first sentence of Article 6(3) of that directive is negative, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, and where there are no alternative solutions, the Member State concerned is to take all compensatory measures necessary to ensure that 'the overall coherence of Natura 2000' is protected.

56 Therefore, in such a situation, the competent national authorities may grant an authorisation under Article 6(4) of the Habitats Directive only in so far as the conditions set out therein are satisfied (judgment of 21 July 2016, Orleans and Others, C-387/15 and C-388/15, EU:C:2016:583, paragraph 63 and the case-law cited).

57 It follows that the answer to the question referred is that Article 6 of the Habitats Directive must be interpreted as meaning that, where it is intended to carry out a project on a site designated for the protection and conservation of certain species, of which the area suitable for providing for the needs of a protected species fluctuates over time, and the temporary or permanent effect of that project will be that some parts of the site will no longer be able to provide a suitable habitat for the species in question, the fact that the project includes measures to ensure that, after an appropriate assessment of the implications of the project has been carried out and throughout the lifetime of the project, the part of the site that is in fact likely to provide a suitable habitat will not be reduced and indeed may be enhanced may not be taken into account for the purpose of the assessment that must be carried out in accordance with Article 6(3) of the directive to ensure that the project in question will not adversely affect the

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integrity of the site concerned; that fact falls to be considered, if need be, under Article 6(4) of the directive.

Costs

58 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

Article 6 of **Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that, where it is intended to carry out a project on a site designated for the protection and conservation of certain species, of which the area suitable for providing for the needs of a protected species fluctuates over time, and the temporary or permanent effect of that project will be that some parts of the site will no longer be able to provide a suitable habitat for the species in question, the fact that the project includes measures to ensure that, after an appropriate assessment of the implications of the project has been carried out and throughout the lifetime of the project, the part of the site that is in fact likely to provide a suitable habitat will not be reduced and indeed may be enhanced may not be taken into account for the purpose of the assessment that must be carried out in accordance with Article 6(3) of the directive to ensure that the project in question will not adversely affect the integrity of the site concerned; that fact falls to be considered, if need be, under Article 6(4) of the directive.**

Ileši# Rosas Toader

Prechal Jaraši#nas

Delivered in open court in Luxembourg on 25 July 2018.

A. Calot Escobar M. Ileši#

Registrar President of the Second Chamber

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Commentary
3. Kaajan, Marieke: Compensatie of mitigatie, Milieu en recht 2018 n°45 p.600-602 (NL)
4. Born, Charles-Hubert: C.J.U.E., 25 juillet 2018 (Edel Grace et Peter Sweetman), C-164/17, ECLI:EU:C:2018:593, Aménagement - Environnement 2019 N°1 p.30-31 (FR)
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References

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Judgment of the Court of Justice - 7 November 2018 Holohan v An Bord Pleanala Case C-461/17

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Text

(Reference for a preliminary ruling - Environment - Directive 92/43/EEC - Conservation of natural habitats - Conservation of wild fauna and flora - Road construction project - Appropriate assessment of effects on the environment - Extent of the obligation to state reasons - Directive 2011/92/EU - Assessment of the implications of certain projects - Annex IV, Point 3 - Article 5(3)(d) - Meaning of the concept of 'main alternatives')

JUDGMENT OF THE COURT (Second Chamber)

7 November 2018 * Language of the case: English.

In Case C-461/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court (Ireland), made by decision of 5 May 2017, received at the Court on 28 July 2017, in the proceedings

Brian Holohan,

Richard Guilfoyle,

Noric Guilfoyle,

Liam Donegan

v

An Bord Pleanála,

intervening parties:

National Parks and Wildlife Service (NPWS),

THE COURT (Second Chamber),

composed of A. Prechal, President of the Third Chamber, acting as President of the Second Chamber, C. Toader (Rapporteur), and A. Rosas, Judges,

Advocate General: J. Kokott,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 16 May 2018,

after considering the observations submitted on behalf of:

- B. Holohan, R. Guilfoyle, N. Guilfoyle and L. Donegan, by D. Browne and C. Hugues, both Barristers-at-law, and by P. O'Higgins and J. Devlin, both Senior Counsel, instructed by C. Herlihy, L. O'Sullivan and B. Harrington, Solicitors,

- An Bord Pleanála, by F. Valentine, Barrister-at-law, and N. Butler, Senior Counsel, instructed by M. Larkin and A. Doyle, solicitors,

- Ireland, by M. Browne, G. Hodge and A. Joyce, acting as Agents, and by G. Simons, Senior Counsel, and M. Gray, Barrister-at-law,

- the Czech Government, by M. Smolek, J. Vláčil and L. Dvořáková, acting as Agents,

- the United Kingdom Government, initially by G. Brown, acting as Agent, and by C. Banner, Barrister, and subsequently by R. Fadoju and J. Kraehling, acting as Agents, and by T. Buley and C. Banner, Barristers,

- the European Commission, by C. Hermes, E. Manhaeve and M. Noll-Ehlers, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 August 2018,

gives the following

Judgment

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1 This request for a preliminary ruling concerns the interpretation of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7; 'the Habitats Directive') and of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1; 'the EIA Directive').

2 The request has been made in proceedings where the opposing parties are Mr Brian Holohan, Mr Richard Guilfoyle, Mr Noric Guilfoyle and Mr Liam Donegan, on the one hand, and An Bord Pleanála (Ireland) (the Planning Board; 'the Board'), on the other, concerning the granting of development consent for a project to extend the northern ring-road of the city of Kilkenny (Ireland) ('the development project').

Legal context

European Union law

The Habitats Directive

3 The first and third recitals of the Habitats Directive state:

'... the preservation, protection and improvement of the quality of the environment, including the conservation of natural habitats and of wild fauna and flora, are an essential objective of general interest pursued by the Community, as stated in Article [191 TFEU];

...

... the main aim of this Directive being to promote the maintenance of biodiversity, taking account of economic, social, cultural and regional requirements, this Directive makes a contribution to the general objective of sustainable development; ... the maintenance of such biodiversity may in certain cases require the maintenance, or indeed the encouragement, of human activities.'

4 Article 1 of that directive provides:

'For the purposes of this directive:

...

(e) conservation status of a natural habitat means the sum of the influences acting on a natural habitat and its typical species that may affect its long-term natural distribution, structure and functions as well as the long-term survival of its typical species within the territory referred to in Article 2.

The [conservation] status of a natural habitat will be taken as "favourable" when:

- its natural range and areas it covers within that range are stable or increasing, and

- the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and

...

(k) site of Community importance means a site which, in the biogeographical region or regions to which it belongs, contributes significantly to the maintenance or restoration at a favourable conservation status of a natural habitat type in Annex I or of a species in Annex II and may also contribute significantly to the coherence of Natura 2000 referred to in Article 3, and/or contributes significantly to the maintenance of biological diversity within the biogeographic region or regions concerned.

...

(l) special area of conservation means a site of Community importance designated by the Member States through a statutory, administrative and/or contractual act where the necessary conservation measures are applied for the maintenance or restoration, at a favourable conservation status, of the natural habitats and/or the populations of the species for which the site is designated;

...'

5 Article 2 of the Habitats Directive provides:

'1. The aim of this Directive shall be to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies.

2. Measures taken pursuant to this Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest.

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3. Measures taken pursuant to this Directive shall take account of economic, social and cultural requirements and regional and local characteristics.'

6 Article 3(1) of the Habitats Directive is worded as follows:

'A coherent European ecological network of special areas of conservation shall be set up under the title Natura 2000. This network, composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II, shall enable the natural habitat types and the species' habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range.

...'

7 Article 6 of that directive provides:

'1. For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.'

8 In accordance with Article 7 of the Habitats Directive, obligations arising under Article 6(2) to (4) of that directive are to apply to special protection areas ('SPAs') within the meaning of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7; 'the Birds Directive').

The Birds Directive

9 The fourth subparagraph of Article 4(1) of the Birds Directive provides:

'Member States shall classify in particular the most suitable territories in number and size as [SPAs] for the conservation of these species in the geographical sea and land area where this Directive applies.'

The EIA Directive

10 Article 1 of the EIA Directive provides:

'1. This Directive shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.

2. For the purposes of this Directive, the following definitions shall apply:

(a) "project" means:

- the execution of construction works or of other installations or schemes,

- other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;

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(b) "developer" means the applicant for authorisation for a private project or the public authority which initiates a project;

(c) "development consent" means the decision of the competent authority or authorities which entitles the developer to proceed with the project;

(d) "public" means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;

(e) "public concerned" means the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures referred to in Article 2(2). For the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest;

(f) "competent authority or authorities' means that authority or those authorities which the Member States designate as responsible for performing the duties arising from this Directive.

...'

11 Article 2(1) of that directive provides:

'Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects. These projects are defined in Article 4.'

12 Article 3 of that directive is worded as follows:

'The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 12, the direct and indirect effects of a project on the following factors:

(a) human beings, fauna and flora;

(b) soil, water, air, climate and the landscape;

(c) material assets and the cultural heritage;

(d) the interaction between the factors referred to in points (a), (b) and (c).'

13 Article 4(1) of the EIA Directive provides:

'Subject to Article 2(4), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.'

14 Article 5 of that directive provides:

'1. In the case of projects which, pursuant to Article 4, are to be made subject to an environmental impact assessment in accordance with this Article and Articles 6 to 10, Member States shall adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex IV inasmuch as:

(a) the Member States consider that the information is relevant to a given stage of the consent procedure and to the specific characteristics of a particular project or type of project and of the environmental factors likely to be affected;

(b) the Member States consider that a developer may reasonably be required to compile this information having regard, inter alia, to current knowledge and methods of assessment.

...

3. The information to be provided by the developer in accordance with paragraph 1 shall include at least:

...

(c) the data required to identify and assess the main effects which the project is likely to have on the environment;

(d) an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects;

...'

15 Point 3 of Annex IV to that directive, that annex being headed 'Information referred to in Article 5(1)' is worded as follows:

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'A description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the interrelationship between the above factors.'

16 Article 3(2) of Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92 (OJ 2014 L 124, p. 1) provides:

'Projects shall be subject to the obligations referred to in Article 3 and Articles 5 to 11 of [the EIA Directive] prior to its amendment by this Directive where, before 16 May 2017:

(a) the procedure regarding the opinion referred to in Article 5(2) of the [EIA Directive] was initiated; or

(b) the information referred to in Article 5(1) of the [EIA Directive] was provided.'

Irish law

17 Section 177V(1) in Part XAB of the Planning and Development Act 2000 states:

'An appropriate assessment carried out under this Part shall include a determination by the competent authority under Article 6(3) of the Habitats Directive as to whether or not a draft land use plan or proposed development would adversely affect the integrity of a European site and an appropriate assessment shall be carried out by the competent authority, in each case where it has made a determination under Section 177U(4) that an appropriate assessment is required, before ... consent is given for the proposed development.'

18 Section 177V(2) of that act provides:

'In carrying out an appropriate assessment under subsection (1) the competent authority shall take into account each of the following matters: (a) the Natura impact report or Natura impact statement, as appropriate; (b) any supplemental information furnished in relation to any such report or statement; (c) if appropriate, any additional information sought by the authority and furnished by the applicant in relation to a Natura impact statement; (d) any additional information furnished to the competent authority at its request in relation to a Natura impact report; (e) any information or advice obtained by the competent authority; (f) if appropriate, any written submissions or observations made to the competent authority in relation to the application for consent for proposed development; (g) any other relevant information.'

19 Section 217B of the Planning and Development Act 2000 allows the Board to request further information from the roads authorities, and to invite the roads authorities to make specified alterations to the terms of a proposed road development.

20 Section 50 of the Roads Act 1993 states:

'(2) An environmental impact statement shall contain the following specified information:

...

(d) an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects ...'

21 According to Section 50(5) of that act, a scoping opinion, that is, a written opinion on the information to be contained in such an environmental impact statement, must be provided if requested by the developer.

The dispute in the main proceedings and the questions referred for a preliminary ruling

22 The applicants in the main proceedings seek to obtain an order of certiorari annulling the Board's decision of 11 July 2014 concerning the development project consent granted to Kilkenny County Council (Ireland). That development project includes the provision of approximately 1.5 kilometres of single carriageway road, the construction of one roundabout and the adaptation of a second, the provision of a footpath and a cycle track along the city side and various other works.

23 The proposed road crosses two Natura 2000 sites: the River Nore SPA, designated by Ireland under the Birds Directive, and the River Barrow and River Nore site of Community importance (the 'SIC'), listed as an SIC under the Habitats Directive since 2004.

24 The applicants in the main proceedings claim, in essence, that (i) the Board erred in failing to consider the environmental effects of the main alternatives studied; (ii) the appropriate assessment purportedly carried out was deficient; and (iii) the Board erred in approving the

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proposed development and the Natura Impact Statement ('NIS') submitted by Kilkenny County Council, as that council had failed to carry out pre-consent ecological surveys.

25 The referring court states that the developer, namely Kilkenny County Council, drew up the NIS for the development project in May 2013. According to that court, the NIS, which was based on a document drafted by the National Parks and Wildlife Service (Ireland) on 19 July 2011 on conservation objectives, setting out objectives to be achieved for the purposes of classification as a special area of conservation, does not fully examine the effects on species other than those for which the River Barrow and River Nore site was listed and does not address the effects on protected species or habitats to be found outside the boundaries of the sites concerned.

26 In December 2013 the developer also drew up an Environmental Impact Statement ('the EIS') and on 16 December 2013 made an application to the Board for consent for the development project.

27 Following opposition and a hearing in April 2014, a report by the Board's inspector in relation to that application was published in June 2014. In her report, the inspector concluded that the information in that application, the EIS and the NIS was not adequate and that significant further information was required. The inspector sought greater information on, inter alia, the construction phase, a scientific baseline study, and scaled drawings indicating the location or possible location of protected species or habitats, as well as additional information on the option of 'spanning', consisting of the construction of a bridge across the floodplain. Notwithstanding that inspection report, the competent authority took the decision, in July 2014, to grant consent for the development project.

28 According to the referring court, the EIS does not deal in detail with the option of 'spanning', on the ground that that option was discounted by Kilkenny County Council 'at an early stage' in favour of a 'more cost effective solution'. The referring court adds that the EIS also fails explicitly to analyse the effects of the project in question on all the species identified in the EIS.

29 In those circumstances, the High Court (Ireland) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) whether [the Habitats Directive] has the effect that a Natura impact statement must identify the entire extent of the habitats and species for which the site is listed;

(2) whether [the Habitats Directive] has the effect that the potential impact on all species (as opposed to only protected species) which contribute to and are part of a protected habitat must be identified and discussed in a Natura impact statement;

(3) whether [the Habitats Directive] has the effect that a Natura impact statement must expressly address the impact of the proposed development on protected species and habitats both located on the [special conservation area] as well as species and habitats located outside its boundaries;

(4) whether [the EIA Directive], as amended, has the effect that an environmental impact statement must expressly address whether the proposed development will significantly impact on the species identified in the statement;

(5) whether an option that the developer considered and discussed in the environmental impact assessment, and/or that was argued for by some of the stakeholders, and/or that was considered by the competent authority, amounts to a "main alternative" within the meaning of Article 5(3)(d) of [the EIA Directive], as amended, even if it was rejected by the developer at an early stage;

(6) whether [the EIA Directive], as amended, has the effect that an environmental impact assessment should contain sufficient information as to the environmental impact of each alternative as to enable a comparison to be made between the environmental desirability of the different alternatives; and/or that it must be made explicit in the environmental impact statement as to how the environmental effects of the alternatives were taken into account;

(7) whether the requirement in Article 5(3)(d) of [the EIA Directive], as amended, that the reasons for the developer's choice must be made by "taking into account the environmental effects", applies only to the chosen option or also to the main alternatives studied, so as to require the analysis of those options to address their environmental effects;

(8) whether it is compatible with the attainment of the objectives of [the Habitats Directive] that details of the construction phase (such as the compound location and haul routes) can be left to post-consent decision, and if so whether

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it is open to a competent authority to permit such matters to be determined by unilateral decision by the developer, within the context of any development consent granted, to be notified to the competent authority rather than approved by it;

(9) whether [the Habitats Directive] has the effect that a competent authority is obliged to record, with sufficient detail and clarity to dispel any doubt as to the meaning and effect of such opinion, the extent to which scientific opinion presented to it argues in favour of obtaining further information prior to the grant of development consent;

(10) whether [the Habitats Directive] has the effect that the competent authority is required to give reasons or detailed reasons for rejecting a conclusion by its inspector that further information or scientific study is required prior to the grant of development consent; and

(11) whether [the Habitats Directive] has the effect that a competent authority, when conducting an appropriate assessment, must provide detailed and express reasons for each element of its decision.'

Consideration of the questions referred

The Habitats Directive

30 First, it must be recalled that Article 6 of the Habitats Directive imposes upon the Member States a series of specific obligations and procedures designed, as is clear from Article 2(2) of that directive, to maintain, or as the case may be, restore, at a favourable conservation status, natural habitats and species of wild fauna and flora of interest for the European Union, in order to attain that directive's more general objective, which is to ensure a high level of environmental protection as regards the sites protected pursuant to it (judgment of 17 April 2018, Commission v Poland(Białowieża Forest) , C-441/17, EU:C:2018:255, paragraph 106 and the case-law cited).

31 More specifically, Article 6(3) of the Habitats Directive establishes an assessment procedure intended to ensure, by means of an ex ante examination, that a plan or project not directly connected with or necessary to the management of the site concerned but likely to have a significant effect on it is authorised only to the extent that it will not adversely affect the integrity of that site. That provision thus prescribes two stages. The first stage, envisaged in that provision's first sentence, requires the Member States to carry out an appropriate assessment of the implications for a protected site of a plan or project when there is a likelihood that the plan or project will have a significant effect on that site. The second stage, which is envisaged in the second sentence of Article 6(3) of the Habitats Directive and which occurs following the aforesaid appropriate assessment, allows such a plan or project to be authorised on condition that it will not adversely affect the integrity of the site concerned (see, to that effect, judgment of 21 July 2016, Orleans and Others , C-387/15 and C-388/15, EU:C:2016:583, paragraphs 43 to 46 and the case-law cited).

The first three questions

32 By its first three questions, which can be examined together, the referring court seeks, in essence, to ascertain whether Article 6(3) of the Habitats Directive must be interpreted as meaning that an 'appropriate assessment' must, on the one hand, catalogue all the habitat types and species for which a site is protected, and, on the other, identify and examine both the effects of the proposed project on the species present on the site, but for which that site has not been listed, and the effects on habitat types and species to be found outside the boundaries of that site.

33 Under Article 6(3) of the Habitats Directive, an appropriate assessment of the implications of a plan or project for the site concerned implies that, before the plan or project is approved, all the aspects of the plan or project which can, either individually or in combination with other plans or projects, affect the conservation objectives of that site must be identified, in the light of the best scientific knowledge in the field. The competent national authorities are to authorise an activity on the protected site only if they have made certain that it will not adversely affect the integrity of that site. That is so when there is no reasonable scientific doubt as to the absence of such effects (judgment of 8 November 2016, Lesoochranárske zoskupenie VLK , C-243/15, EU:C:2016:838, paragraph 42 and the case-law cited).

34 The assessment carried out under that provision may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of dispelling all reasonable scientific doubt as to the effects of the proposed works on the protected area concerned (judgment of 25 July 2018, Grace and Sweetman , C-164/17, EU:C:2018:593, paragraph 39 and the case-law cited).

35 In order for the integrity of a site as a natural habitat not to be adversely affected for the purposes of the second sentence of Article 6(3) of the Habitats Directive, the site needs to be

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preserved at a favourable conservation status; this entails the lasting preservation of the constitutive characteristics of the site concerned that are connected to the presence of a natural habitat type whose preservation was the objective justifying the designation of that site in the list of sites of Community importance, in accordance with that directive (judgment of 17 April 2018, Commission v Poland(Białowieża Forest) , C-441/17, EU:C:2018:255, paragraph 116 and the case-law cited).

36 Taking account of those conservation objectives, the Court must determine the extent of the obligation to carry out an appropriate assessment of the implications of a plan or project for a site in question.

37 Since, as stated in paragraphs 33 and 34 of the present judgment, all aspects which might affect those objectives must be identified and since the assessment carried out must contain complete, precise and definitive findings in that regard, it must be held that all the habitats and species for which the site is protected must be catalogued. A failure, in that assessment, to identify the entirety of the habitats and species for which the site has been listed would be to disregard the abovementioned requirements and, therefore, as observed, in essence, by the Advocate General in point 31 of her Opinion, would not be sufficient to dispel all reasonable scientific doubt as to the absence of adverse effects on the integrity of the protected site (see, to that effect, judgment of 26 April 2017, Commission v Germany , C-142/16, EU:C:2017:301, paragraph 33).

38 It must also be added that, since the assessment must clearly demonstrate why the protected habitat types and species are not affected, it may be sufficient to establish, as observed by the Advocate General in point 30 of her Opinion, that onlycertain protected habitat types and species are present in the part of the protected area that is affected by the project and that the other protected habitat types and species present on the site are not liable to be affected.

39 As regards other habitat types or species, which are present on the site, but for which that site has not been listed, and with respect to habitat types and species located outside that site, it must be recalled that the Habitats Directive, as follows from the wording of Article 6(3) of that directive, subjects '[a]ny plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon' to the environmental protection mechanism of that provision. In that regard, as stated by the Advocate General in points 43 and 48 of her Opinion, the conservation objective pursued by the Habitats Directive, recalled in paragraph 35 of the present judgment, entails that typical habitats or species must be included in the appropriate assessment, if they are necessary to the conservation of the habitat types and species listed for the protected area.

40 In the light of the foregoing, the answer to the first three questions is that Article 6(3) of the Habitats Directive must be interpreted as meaning that an 'appropriate assessment' must, on the one hand, catalogue the entirety of habitat types and species for which a site is protected, and, on the other, identify and examine both the implications of the proposed project for the species present on that site, and for which that site has not been listed, and the implications for habitat types and species to be found outside the boundaries of that site, provided that those implications are liable to affect the conservation objectives of the site.

The eighth question

41 By its eighth question, which the Court can deal with in the second place, the referring court seeks, in essence, to ascertain whether Article 6(3) of the Habitats Directive must be interpreted as meaning that it enables the competent authority to grant to a plan or project development consent which leaves for later decision the determination of certain parameters relating to the construction phase, such as the location of the construction compound and haul routes, and, if so, whether those parameters may, at that later stage, be determined unilaterally by the developer and merely notified to that authority.

42 It must be recalled that it is clear from Article 6(3) of the Habitats Directive that competent national authorities are not to agree to a plan or project that is not directly connected with or necessary to the management of the site but is likely to have a significant effect thereon, unless they have first ascertained by means of an appropriate assessment that it will not adversely affect the integrity of the site concerned.

43 In accordance with the case-law cited in paragraphs 33 and 34 of the present judgment, an appropriate assessment of the implications of a plan or project for a protected site entails, first, that, before that plan or project is approved, all aspects of that plan or project that might affect the conservation objectives of that site are identified. Second, such an assessment cannot be considered to be appropriate if it contains lacunae and does not contain complete, precise and definitive findings and conclusions capable of dispelling all reasonable scientific doubt as to the effects of the plan or

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project on that site. Third, all aspects of the plan or project in question which may, either individually or in combination with other plans or projects, affect the conservation objectives of that site must be identified, in the light of the best scientific knowledge in the field.

44 Those obligations, in accordance with the wording of Article 6(3) of the Habitats Directive, are borne not by the developer, even if the developer is, as in this case, a public authority, but by the competent authority, namely the authority that the Member States designate as responsible for performing the duties arising from that directive.

45 It follows that that provision requires the competent authority to catalogue and assess all aspects of a plan or project that might affect the conservation objectives of the protected site before granting the development consent at issue.

46 As also observed by the Advocate General in points 56 and 57 of her Opinion, only those parameters as to the effects of which there is no scientific doubt that they might affect the site can be entirely left to be decided later by the developer.

47 In the light of the foregoing, the answer to the eighth question is that Article 6(3) of the Habitats Directive must be interpreted as meaning that the competent authority is permitted to grant to a plan or project development consent which leaves the developer free to determine later certain parameters relating to the construction phase, such as the location of the construction compound and haul routes, only if that authority is certain that the development consent granted establishes conditions that are strict enough to guarantee that those parameters will not adversely affect the integrity of the site.

The 9th, 10th and 11th questions

48 By its 9th, 10th and 11th questions, which can be dealt with together, the referring court seeks, in essence, to ascertain whether Article 6(3) of the Habitats Directive must be interpreted as meaning that, where the competent authority rejects the findings in a scientific expert opinion recommending that additional information be obtained, the 'appropriate assessment' must include an explicit and detailed statement of reasons capable of ensuring certainty that, notwithstanding such an opinion, there is no reasonable scientific doubt as to the environmental impact of the work envisaged on the site that is the subject of those findings.

49 It follows, in particular from the Court's case-law in relation to Article 6(3) of the Habitats Directive, as summarised in paragraph 43 of the present judgment, that the assessment carried out under Article 6(3) of that Directive may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of dispelling all reasonable scientific doubt as to the effects of the proposed works on the protected area concerned.

50 If there are no such conclusions capable of dispelling all reasonable doubt as to the adequacy of the information available, the assessment cannot be considered to be 'appropriate', within the meaning of Article 6(3) of the Habitats Directive.

51 In circumstances such as those in the main proceedings, that requirement entails that the competent authority should be in a position to state to the requisite legal standard the reasons why it was able, prior to the granting of development consent, to achieve certainty, notwithstanding the opinion of its inspector asking that it obtain additional information, that there is no reasonable scientific doubt with respect to the environmental impact of the work envisaged on the site concerned.

52 In the light of the foregoing, the answer to the 9th, 10th and 11th questions is that Article 6(3) of the Habitats Directive must be interpreted as meaning that, where the competent authority rejects the findings in a scientific expert opinion recommending that additional information be obtained, the 'appropriate assessment' must include an explicit and detailed statement of reasons, capable of dispelling all reasonable scientific doubt concerning the effects of the work envisaged on the site concerned.

The EIA Directive

53 While the request for a preliminary ruling refers to the amendments made by Directive 2014/52 , it must be noted that, in accordance with Article 3(2) of that directive, those amendments are applicable only if certain procedural stages have been completed after 16 May 2017.

54 In the main proceedings, the contested decision was adopted on 11 July 2014.

55 It follows that examination of the questions relating to the EIA Directive must have regard to the original version of that directive.

The fourth question

56 By its fourth question, the referring court seeks, in essence, to ascertain whether Article 5(1) and (3) of, and Annex IV to, the EIA Directive must be interpreted as meaning that they require the developer to supply information that expressly addresses the potentially significant impact on all the species identified in the statement that is supplied pursuant to those provisions.

57 Under Article 5(1) of the EIA Directive, the developer is to supply the information specified in Annex IV to that directive. Point 3 of that annex specifically prescribes in that regard that, included in the information to which Article 5(1) of the EIA Directive applies, there should be 'a description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, ... fauna, flora, ... and the interrelationship between the above factors'. Article 5(3)(c) of that directive further requires the developer to include 'the data required to identify and assess the main effects which the project is likely to have on the environment'.

58 As observed by the Advocate General in points 84 and 85 of her Opinion, it follows from those provisions that the obligation imposed does not extend to all effects on all species present, but is restricted to the significant effects, a concept to be interpreted in the light of Article 1(1) and Article 2(1) of the EIA Directive, according to which projects that are likely to have significant effects on the environment must be subject to an assessment of their effects.

59 In the light of the foregoing, the answer to the fourth question is that Article 5(1) and (3) of, and Annex IV to, the EIA Directive must be interpreted as meaning that the developer is obliged to supply information that expressly addresses the significant effects of its project on all species identified in the statement that is supplied pursuant to those provisions.

The fifth, sixth and seventh questions

60 By its fifth, sixth and seventh questions, which can be examined together, the referring court seeks, in essence, to ascertain whether Article 5(3)(d) of the EIA Directive must be interpreted as meaning that the developer must supply information in relation to the environmental effects both of the chosen option and of all the main alternatives studied by the developer, together with the reasons for his choice, taking into account their environmental effects, even if such an alternative was rejected at an early stage.

61 In accordance with Article 3 of the EIA Directive, one of its objectives is to ensure that the effects of projects on the environment are identified, described and assessed.

62 In that regard, Article 5 of the EIA Directive lists the information, specified in Annex IV, that the developer is to supply in an appropriate form to the competent authorities, in order to enable the latter to carry out an environmental impact assessment with respect to the proposed project.

63 In particular, Article 5(3)(d) of the EIA Directive states that the developer must provide at least 'an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects'.

64 It is stated explicitly in the wording of that provision that the developer is obliged to supply to the competent authorities an outline of the main alternatives studied by him and an indication of the main reasons for his choice, taking into account the environmental effects.

65 In that regard, first, it must be observed that the EIA Directive contains no definition of the concept of 'main alternatives', as referred to in Article 5(3)(d) of the EIA Directive. The Court must, however, hold, as did the Advocate General in points 94 and 95 of her Opinion, that the decisive factor, in order to identify those alternatives that should be regarded as 'main' alternatives, is whether or not those alternatives influence the environmental effects of the project. In that regard, the time when an alternative is rejected by the developer is of no relevance.

66 Further, since, according to Article 5(3)(d) of the EIA Directive, only an outline of those alternatives must be supplied, it must be held that that provision does not require the main alternatives studied to be subject to an impact assessment equivalent to that of the approved project. That said, that provision requires the developer to indicate the reasons for his choice, taking into account at least the environmental effects. One of the aims of imposing on the developer the obligation to outline the main alternatives is that reasons for his choice should be stated.

67 That obligation on the developer ensures that, thereafter, the competent authority is able to carry out a comprehensive environmental impact assessment that catalogues, describes and assesses, in an appropriate manner, the effects of the

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approved project on the environment, in accordance with Article 3 of the EIA Directive.

68 Last, it must be observed that the outline referred to in that provision must be supplied with respect to all the main alternatives that were studied by the developer, whether those were initially envisaged by him or by the competent authority or whether they were recommended by some stakeholders.

69 In the light of the foregoing, the answer to the fifth, sixth and seventh questions is that Article 5(3)(d) of the EIA Directive must be interpreted as meaning that the developer must supply information in relation to the environmental impact of both the chosen option and of all the main alternatives studied by the developer, together with the reasons for his choice, taking into account at least the environmental effects, even if such an alternative was rejected at an early stage.

Costs

70 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that an 'appropriate assessment' must, on the one hand, catalogue the entirety of habitat types and species for which a site is protected, and, on the other, identify and examine both the** implications **of the proposed project for the species present on that site, and for which that site has not been listed, and the** implications **for habitat types and species to be found outside the boundaries of that site, provided that those** implications **are liable to affect the conservation objectives of the site.**

2. **Article 6(3) of Directive 92/43 must be interpreted as meaning that the competent authority is permitted to grant to a plan or project consent which leaves the developer free to determine subsequently certain parameters relating to the construction phase, such as the location of the construction compound and haul routes, only if that authority is certain that the development consent granted establishes conditions that are strict enough to guarantee that those parameters will not adversely affect the integrity of the site.**

3. **Article 6(3) of Directive 92/43 must be interpreted as meaning that, where the competent authority rejects the findings in a scientific expert opinion recommending that additional information be obtained, the 'appropriate assessment' must include an explicit and detailed statement of reasons capable of dispelling all reasonable scientific doubt concerning the effects of the work envisaged on the site concerned.**

4. **Article 5(1) and (3) of, and Annex IV to, Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, must be interpreted as meaning that the developer is obliged to supply information that expressly addresses the significant effects of its project on all species identified in the statement that is supplied pursuant to those provisions.**

5. **Article 5(3)(d) of Directive 2011/92 must be interpreted as meaning that the developer must supply information in relation to the environmental impact of both the chosen option and of all the main alternatives studied by the developer, together with the reasons for his choice, taking into account at least the environmental effects,** even if such an alternative was rejected at an early stage **.**

Prechal Toader Rosas

Delivered in open court in Luxembourg on 7 November 2018.

A. Calot Escobar

Registrar

K. Lenaerts

President

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32011L0092 -A03: N 12 61 67
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62015CJ0387 -N44: N 31
62016CJ0142 -N33: N 37
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The Birds Directive
The EIA Directive
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The dispute in the main proceedings and the questions referred for a preliminary ruling
Consideration of the questions referred - The Habitats Directive
The first three questions
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The fifth, sixth and seventh questions
Costs

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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Managing Natura 2000 sites

The provisions of Article 6 of the Habitats Directive 92/43/EEC

(2019/C 33/01)

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FOREWORD

PURPOSE AND NATURE OF THIS DOCUMENT

Article 6 of the Habitats Directive (92/43/EEC) plays a crucial role in the management of the sites that make up the Natura 2000 network. With the spirit of integration in mind, it indicates the various tasks involved so that the nature conservation interests of the sites can be safeguarded.

This document aims at providing guidelines to the Member States on the interpretation of certain key concepts used in Article 6 of the Habitats Directive.

In the framework of the Action Plan for nature, people and the economy ([1]), the Commission has committed to *'update the interpretative guidance document on provisions of Article 6 of the Habitats Directive on the conservation and management of Natura 2000'*. This document replaces therefore the original version of this document that was issued in April 2000 ([2]).

The present update incorporates the large body of rulings that have been issued by the Court of Justice of the EU over the years on Article 6 ([3]). It also builds on a series of Commission notes addressing Natura 2000 management, as well as other relevant Commission guidance documents on Article 6 that should be read in conjunction with this one ([4]).

The primary targets of the document are Member State authorities. It is however expected to also facilitate the understanding of the mechanics of the Habitats Directive amongst anyone involved in the management of Natura 2000 sites and in the Article 6 permit procedure.

The document has been drafted following consultations with the nature protection authorities of the Member States and stakeholders. It is intended to assist Member State authorities, as well as anyone involved in the management of Natura 2000 sites and in the Article 6 permit procedure, in the application of the Habitat Directive. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The interpretations provided by the Commission cannot go beyond the Directive. This is particularly true for this directive as it enshrines the subsidiarity principle and as such lets a large margin of manoeuvre to the Member States for the practical implementation of specific measures related to the various sites of the Natura 2000 network. In any case, the Member States are free to choose the appropriate way they wish to implement the practical measures provided the latter achieve the results of the Directive.

However interpretative, this document is not intended to give absolute answers to site specific questions. Such matters should be dealt with on a case-by-case basis, while bearing in mind the orientations provided in this document.

STRUCTURE OF THE DOCUMENT

After an introductory note on the overall content and logic of Article 6, there follows a detailed presentation of each paragraph (6(1), 6(2), 6(3), 6(4)) according to the same general structure. This involves an introduction to the paragraph and its scope, and then discussion of the main concepts and issues raised, on the basis of the Commission's knowledge, existing jurisprudence of the Court of Justice of the EU, and other EU legislation, where relevant.

To allow for a speedy reading of the relevant conclusions, the key points arising from the Commission's analyses are summarised (in bold characters) at the end of each section.

([1]) http://ec.europa.eu/environment/nature/legislation/fitness_check/action_plan/communication_en.pdf

([2]) 'Managing Natura 2000 sites' — The provisions of Article 6 of the Habitats Directive 92/43/EEC, European Communities, 2000 — ISBN 92-828-9048

([3]) A compilation of the most relevant cases on Article 6 is available at: http://ec.europa.eu/environment/nature/legislation/caselaw/index_en.htm

([4]) Commission notes on designation of SACs, setting of conservation objectives for Natura 2000 sites, establishing conservation measures for Natura 2000 sites
Commission guidance documents on application of Article 6 in different sectors
Available at: http://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm

1. **INTRODUCTION**

Article 6 in Context

1.1. PLACE WITHIN THE OVERALL SCHEME OF THE HABITATS DIRECTIVE AND THE BIRDS DIRECTIVE AS WELL AS WITHIN A WIDER CONTEXT

Before addressing Article 6 in detail, it is worth recalling its place within the overall scheme of Directive 92/43/EEC ([5]) (hereinafter referred to as the Habitats Directive) as well as that of Directive 2009/147/EC ([6]) (hereinafter referred to as the Birds Directive) and its relationship with a wider legal context.

The first chapter of the Habitats Directive, comprising Articles 1 and 2, is entitled 'Definitions'. It sets out the aim of the Directive which is to *'contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies'* ([7]). It also provides a general orientation for the implementation of the Directive, referring to the need for all measures taken pursuant to it to be designed to maintain or restore certain habitats and species *'at favourable conservation status'* ([8]), while, at the same time, referring to the need for measures taken pursuant to the Directive to *'take account of economic, social and cultural requirements and regional and local characteristics'* ([9]).

The main specific requirements of the Habitats Directive are grouped under the two subsequent chapters. The first is entitled 'Conservation of natural habitats and habitats of species' and comprises Articles 3 to 11. The second is entitled 'Protection of Species' and comprises Articles 12 to 16.

The 'Conservation of natural habitats and habitats of species' chapter addresses the establishment and conservation of sites designated for habitat types and species of Community interest listed in Annexes I and II to the Directive. These sites, along with sites classified under the Birds Directive, form the Natura 2000 network (Article 3(1)). Within this chapter, Article 6 contains provisions which govern the conservation and management of Natura 2000 sites. Seen in this context, Article 6 is one of the most important of the 24 articles of the Directive, being the one which most determines the relationship between conservation and other socioeconomic activities.

The article has three main sets of provisions. Article 6(1) deals with the establishment of the necessary conservation measures, and focuses on positive and proactive measures to maintain or restore the natural habitats and the populations of species of wild fauna and flora at a favourable status. Article 6(2) makes provision for avoidance of habitat deterioration and significant species disturbance. Its emphasis is therefore preventive. Article 6(3) and (4) set out a series of procedural and substantive safeguards governing plans and projects likely to have a significant effect on a Natura 2000 site.

Within this structure, it can be seen that there is a distinction between Article 6(1) and (2) which define a general regime and Article 6(3) and (4) which define a procedure applying to specific circumstances.

Considered globally, the provisions of Article 6 reflect the general approach set out in Article 2 and the recitals of the Directive. This involves the need to promote biodiversity by maintaining or restoring certain habitats and species at 'favourable conservation status' across their natural range within the EU, while taking into account economic, social, cultural and regional requirements, as a means of achieving sustainable development.

Apart from the place of Article 6 within the overall scheme of the Habitats Directive, it is also relevant to mention its relationship with the scheme of the Birds Directive:

— Firstly, the scheme of the Birds Directive is broadly comparable with that of the Habitats Directive. In particular, the 'Conservation of natural habitats and habitats of species' chapter of the Habitats Directive is analogous to Articles 3 and 4 of the Birds Directive.

([5]) OJ L 206, 22.7.1992, p. 7.
([6]) OJ L 27, 26.1.2010, p 7, directive repealing Directive 79/409/EEC
([7]) Article 2(1).
([8]) Article 2(2). The term 'Favourable Conservation Status' is defined in Article 1(e) and 1(i) and refers to the conservation status of the species or habitat types of Community interest across their natural range within the EU.
([9]) Article 2(3).

— Secondly, there has been an important degree of merger or fusion between the schemes of both Directives. First, Special Protection Areas (SPAs) classified under the Birds Directive are now an integral part of the Natura 2000 network ([10]). Second, the provisions of Article 6(2), (3) and (4) of the Habitats Directive have been made applicable to SPAs ([11]).

Article 6 is also to be considered within the broader framework of the EU Biodiversity policy ([12]) and is crucial for the achievements of its targets. The implementation of Article 6 can also benefit from other actions undertaken in that context. In particular, work undertaken to measure ecosystem condition under the Mapping and Assessment of Ecosystems and their Services (MAES) ([13]) provides useful and relevant guidance, including sector-specific, on addressing issues such as measuring and assessing the condition of ecosystem types corresponding to the broad habitat types under the Habitats Directive; measuring pressures on ecosystems; quantifying ecological requirements as well as deterioration and ecological integrity of sites.

Seen in a wider context — that of the Treaty on European Union — Article 6 can be regarded as a key framework to give effect to the principle of integration since it encourages Member States to manage the Natura 2000 sites in a sustainable way and it sets the limits of activities which can impact negatively on protected areas while allowing some derogations in specific circumstances. Measures under Article 6 may also benefit from synergies with other relevant EU environmental policies such as on water, marine or fisheries.

Measures under Article 6 of the Habitats Directive may require the adoption of measures falling under the Common Fisheries Policy (Regulation (EU) No 1380/2013. In particular, the provisions under article 11 of the CFP on the conservation measures necessary for compliance with obligations under Union environmental legislation could apply; these provisions are clarified in the Commission Staff Working Document 'on the establishment of conservation measures under the Common Fisheries Policy for Natura 2000 sites and for the Marine Strategy Framework Directive purposes' (SWD(2018) 288 final). The Commission has already adopted several delegated acts pursuant to Article 11 of the CFP (available at https://ec.europa.eu/fisheries/cfp/fishing_rules_en).

Seen in an international context, Article 6 helps achieve the aims of relevant international nature conservation conventions such as the Bern Convention ([14]) and the Convention on Biological Diversity ([15]), while at the same time creating a more detailed framework for site conservation and protection than these conventions themselves do.

Article 6 is a key part of the chapter of the Habitats Directive entitled 'Conservation of natural habitats and habitats of species'. It provides the framework for site conservation and protection, and includes proactive, preventive and procedural requirements. It concerns Special Protection Areas classified under the Birds Directive as well as sites designated under the Habitats Directive. The framework is a key means of supporting the overall objectives of the two directives and achieving the objectives of the EU biodiversity policy and the principle of environmental integration into other EU policies and ultimately sustainable development.

([10]) Article 3(1) of the Habitats Directive provides that 'the Natura 2000 network shall include the special protection areas classified by the Member States pursuant to Directive 79/409/EEC'.
([11]) Article 7 of the Habitats Directive.
([12]) Communication from the Commission: Our life insurance, our natural capital: an EU Biodiversity Strategy to 2020 (COM(2011) 244)
([13]) http://ec.europa.eu/environment/nature/knowledge/ecosystem_assessment/index_en.htm
([14]) Council Decision 82/72/EEC of 3 December 1981 concerning the conclusion of the Convention on the conservation of European wildlife and natural habitats (OJ L 38, 10.2.1982, p. 1).
([15]) Council Decision 93/626/EEC of 25 October 1993 concerning the conclusion of the Convention on Biological Diversity (OJ L 309, 13.12.1993, p. 1).

1.2. RELATION WITH PROTECTION OF SPECIES CHAPTER

As mentioned above, the chapter of the Habitats Directive entitled 'Protection of Species' covers Articles 12 to 16 and deals with strictly protected animal and plant species listed in Annex IV of the Directive ([16]), as well those in need of special management measures, as listed in Annex V.

Articles 12, 13 and 14 cover certain plant and animal species which may also feature in Annex II of the Directive, and which therefore also benefit from the provisions of Article 6 within the Natura 2000 sites hosting them ([17]). As a result, an activity may at the same time fall within the scope of both chapters.

For example, the destruction of a resting place of the brown bear, Ursus arctos, may contravene the prohibition in Article 12(1)(d), while also running counter to Article 6 if the resting place is within a Natura 2000 site designated for the species.

While this may appear to result in duplication, the following points should be noted:

— Firstly, certain species of plants or animals covered by Articles 12, 13 and 14 do not appear in Annex II. Thus, they do not benefit directly from site conservation and protection within Natura 2000.

— Secondly, for vulnerable species, such as large carnivores which benefit from both the chapter on conservation of natural habitats and habitats of species and the chapter on protection of species, the protection afforded to them by Article 6 is limited to sites within the Natura 2000 network, whereas the protection afforded by the chapter on protection of species is not limited to sites. Thus, Article 6 is concerned with the conservation and protection of **sites designated** for the species within the Natura 2000 network, whereas the chapter on protection of species targets the species throughout their natural range within the EU (including specific areas outside Natura 2000 where the species occur, in particular breeding sites and resting places for these animals).

While certain plant and animal species benefit from both the chapter on conservation of natural habitats and habitats of species and the chapter on protection of species, the scope and the nature of the relevant provisions are different.

1.3. PUTTING ARTICLE 6 INTO NATIONAL LAW: THE DUTY OF TRANSPOSITION

It is important to note that the provisions of Article 6 require transposition into national law (i.e. they need to be the subject of provisions of national law giving effect to their requirements). In this respect, they are covered by Article 23 of the Directive which states that '*Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within two years of its notification*'. Depending on the Member State the deadline for transposition was 10 June 1994 or the date of EU accession.

This reflects the type of legal instrument that has been used, namely a directive. A directive is binding as to the result to be achieved, but leaves a Member State the choice as to the form and methods of achieving that result.

Settled case law clarifies that transposition must be clear and precise, faithful and with unquestionable binding force (see Court of Justice of the EU (hereinafter: Court) Cases C-363/85, C-361/88, C-159/99 paragraph 32, C-415/01 paragraph 21, C-58/02, C-6/04 paragraphs 21, 25, 26, C-508/04 paragraph 80) ([18]).

Depending on the Member State concerned, Article 6 needed to be transposed into national law by 10 June 1994 for the first 12 Member States or the date of EU accession for the others.

([16]) Further details on the relationship between the species provisions and the site protection provisions of the Habitats Directive can be found in the Commission guidance on the strict protection of species of Community interest. http://ec.europa.eu/environment/nature/conservation/species/guidance/index_en.htm

([17]) The species protection provisions of the Habitats Directive apply to certain species of Community interest but not to habitat types of Community interest. The latter only benefit from provisions under the 'Conservation of natural habitats and habitats of species' chapter (Articles 3 — 11) which also means that their occurrences outside the Natura 2000 network do not enjoy any protection under the Habitats Directive.

([18]) https://curia.europa.eu/jcms/jcms/Jo2_7045/en/

1.4. TIME OF APPLICATION OF ARTICLE 6: FROM WHICH DATE DO THE OBLIGATIONS OF ARTICLE 6 APPLY?

In general, a distinction needs to be made between the deadline for transposition of the provisions of Article 6 into national law and the date from which these provisions apply to individual sites.

As regards individual sites, a distinction needs to be drawn between Special Protection Areas classified under Birds Directive and other sites — Sites of Community Importance (SCIs) and Special Areas of Conservation (SACs) — under the Habitats Directive.

1.4.1. Special Protection Areas under the Birds Directive

The protection requirements regarding Special Protection Areas (SPAs) are given in Article 4(4), first sentence of the Birds Directive which provides that, for those areas,'… *Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article…*'

After the entry into force of the Habitats Directive the above obligations are replaced pursuant to Article 7 of that Directive which provides as follows:

'*Obligations arising under Article 6(2), (3) and (4) of this Directive shall replace any obligations arising under the first sentence of Article 4(4) of Directive 79/409/EEC in respect of areas classified pursuant to Article 4(1) or similarly recognised under Article 4(2) thereof, as from the date of implementation of this Directive or the date of classification or recognition by a Member State under Directive 79/409/EEC, where the latter date is later.*'

Thus, the provisions of Article 6(1) do not apply to Special Protection Areas (SPAs). However, analogous provisions apply to SPAs by virtue of Article 3 and 4(1) and (2) of the Birds Directive. The date from which these similar provisions should in principle apply to SPAs is the date from which the Birds Directive became applicable in the Member States (cases C-355/90 Commission v Spain 'Santoña Marshes', C-166/97 Commission v France 'Seine Estuary').

As regards the provisions of Article 6(2), (3) and (4), it is clear from the terms of Article 7 that these apply to SPAs already classified at the time of entry into force of the Habitats Directive. However, given the wording of Article 7, a question arises as to whether the provisions of Article 4(4), first sentence of the Birds Directive remain applicable after the 'date of implementation of this Directive' (10 June 1994 for the then Member States and the date of accession for later Member States) for sites that should have been classified as SPAs but have not been so classified.

In the *Santoña Marshes* case (C-355/90 paragraph 22) the Court established that Article 4(4) first sentence of the Birds Directive was applicable to an unclassified site which should have been classified as an SPA from the date of implementation of the Birds Directive (i.e. 7 April 1981 for the then Member States and the date of accession for later Member States).

According to the *Basses Corbières* case (C-374/98 paragraphs 43 — 57; see also C-141/14), areas which have not been classified as SPAs but should have been so classified continue to fall under the regime governed by the first sentence of Article 4(4) of the Birds Directive, which is stricter than that of Article 6(2) to (4) of the Habitats Directive because it does not provide for derogation. The duality of the regimes gives Member States an incentive to carry out classifications, in so far as this enables them to use a procedure which allows them, for imperative reasons of overriding public interest, including those of a social or economic nature, and subject to certain conditions, to adopt plans or projects adversely affecting an SPA.

Article 6(1) of the Habitats Directive does not apply to SPAs. However, there are analogous provisions in Articles 3, 4(1) and 4(2) of the Birds Directive and these apply from the date of implementation of that Directive.

As regards the date of application of Article 6(2), (3) and (4) of the Habitats Directive to SPAs, these apply to all sites classified as SPAs following Article 4(1) and 4(2) of the Birds Directive from the date of implementation of the Habitats Directive.

Sites that have not been classified as SPAs but should have been so classified continue to fall under the protection regime of the first sentence of Article 4(4) of the Birds Directive which is stricter than the provisions of Article 6(2) to (4) of the Habitats Directive.

1.4.2. Sites under the Habitats Directive

Article 6(1) applies to SACs. According to Article 4(4) of the Directive, SACs come into being when Member States designate them as such. This can happen only after a site has been adopted as an SCI in accordance with Article 4(2) of the Directive. An SCI must be designated as an SAC '*as soon as possible and within six years at the most*'.

The designation of an SCI as an SAC effectively triggers the implementation of Article 6(1) since all the other measures under Article 6 — including the duty to prevent further deterioration (Articles 6(2), (3) and (4)) — already apply to SCIs before they are designated as SACs.

Article 4(5) of the Habitats Directive provides as follows:

'*As soon as a site is placed on the list referred to in the third subparagraph of paragraph 2 it shall be subject to Article 6(2), (3) and (4).*'

Thus, in contrast to the provisions of Article 6(1) which apply only when an SCI has been designated as an SAC, the provisions of Article 6(2), (3) and (4) become applicable as soon as a site becomes an SCI (i.e., before it is designated as an SAC). Article 6(1) also applies to SCIs for which the six-year period has expired and which have not yet been designated as SAC in breach of Article 4(4). In other terms, the obligation to establish the necessary conservation measures applies at the latest by the time the six-year period has expired.

The Commission Decisions that approve the SCIs clearly state that: …*it should be stressed that the obligations resulting from Articles 4(4) and 6(1) of Directive 92/43/EEC are applicable as soon as possible and within six years at most from the adoption of the initial or updated lists of sites of Community importance for the biogeographical region, depending on which list a site of Community importance was included as such for the first time.*

This means the six-year period starts running from the date on which the site was first included in the Commission Decision. If later on, subsequent decisions adjust some of the details of the site, this should not be used as an excuse to postpone the SAC designation. These new adjustments will however need to be incorporated into the SAC designation process and taken into account when establishing the necessary conservation measures.

In the *Draggagi* case (C-117/03 paragraph 29) the Court ruled that *'in the case of sites eligible for identification as sites of Community importance that are mentioned on the national lists transmitted to the Commission and may include in particular sites hosting priority natural habitat types or priority species, the Member States are, by virtue of the Directive, required to take protective measures appropriate for the purpose of safeguarding that ecological interest'*.

In the *Bund Naturschutz* case (C-244/05 paragraph 47) the Court further ruled that *'the appropriate protection scheme applicable to the sites which appear on a national list transmitted to the Commission under Article 4(1) of the Directive requires Member States not to authorise interventions which incur the risk of seriously compromising the ecological characteristics of those sites*'.

In the light of the foregoing, Member State authorities must ensure that sites on their national list of proposed SCIs are not allowed to deteriorate and are protected for the purpose of safeguarding their ecological interest even before the Union list of SCIs is adopted. Where the national list remains incomplete, Member States are also advised to safeguard the ecological interest of sites that, according to scientific evidence based on the criteria in Annex III to the Habitats Directive, should be on the national list. To that effect one practical suggestion is to use properly the environmental impact assessment (EIA) process under Directive 2011/92/EU ([19]) for projects with likely significant effects on the environment (in so far as they are covered by that Directive). The Court has already confirmed the importance that should be attached to sensitive natural sites when deciding whether projects should undergo an EIA under that directive (C-392/96 paragraph 66).

([19]) OJ L 26, 28.1.2011, p. 1, as amended by Directive 2014/52/EU (OJ L 124, 25.4.2014, p. 1).

The above considerations can be summarised in the following table:

Site status	Proposed SCI	SCI	SAC	SPA	Sites that should have been classified as SPA
Article 6(1)	Optional	Optional (obligatory if the six-year period has expired)	Obligatory	Not applicable but analogous provisions in Articles 3, 4(1) and 4 (2) of the Birds Directive apply.	Not applicable.
Article 6(2), (3) and (4)	Optional, but Member States must take protective measures that are appropriate for the purpose of safeguarding the ecological interest of the sites ([1]).	Obligatory	Obligatory	Obligatory	Not applicable but these sites continue to fall under the protection regime of the first sentence of Article 4(4) of the Birds Directive.

([1]) A similar requirement would apply to sites that, according to scientific evidence based on the criteria of Annex III of the Habitats Directive, should be on the national list of proposed SCIs.

Articles 6(2), (3) and (4) apply to SCIs and SACs under the Habitats Directive. Article 6(1) applies to SACs under the Habitats Directive.

They do not apply to sites which are on a national list transmitted to the Commission under Article 4(1) of the Directive. Member States must nevertheless take protective measures that are appropriate to safeguard the ecological interest of those sites. This includes not authorising interventions which incur the risk of seriously compromising the ecological characteristics of those sites.

Where a complete national list has not been submitted, Member States are advised to take a similar approach for sites which, on the basis of the scientific criteria in the Directive, clearly ought to be on the national list.

2. **ARTICLE 6(1)**

Clarification of the concepts of necessary conservation measures; conservation objectives; ecological requirements; management plans; and statutory, administrative or contractual measures

2.1. TEXT

'For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.'

2.2. SCOPE

Article 6(1) lays down a general conservation regime which has to be established by the Member States for all Special Areas of Conservation (SAC).

Article 6(1):

— provides for **positive** conservation measures, involving, if need be, management plans, and statutory, administrative or contractual measures, which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the site. In that regard, Article 6(1) is distinguished from the three other paragraphs of Article 6 which provide for preventive measures to avoid deterioration, disturbance and significant effects in the Natura 2000 sites;

— has a value of **reference** for the logic and the overall understanding of Article 6 and its three other paragraphs;

— establishes a general conservation regime which applies to **all** SACs in the Natura 2000 network without exception and to **all** the natural habitat types in Annex I and the species in Annex II present on the sites, except for those identified as non-significant in the Natura 2000 Standard Data Form (SDF) ([20]);

— concerns the **SACs specifically**: Article 6(1) does not apply to the Special Protection Areas (SPAs), unlike Article 6, paragraphs 2, 3 and 4. In this way, the legislator established:

  — a regime laying down 'special conservation measures' for the **SPAs** classified under the Birds Directive, according to its Articles 3 and 4, paragraphs 1 and 2;

  — a regime laying down 'necessary conservation measures' for the **SACs** designated under the Habitats Directive, according to its Article 6(1);

— also applies to SCI for which the six years period has expired and which have not yet been designated as SAC in breach of Article 4(4). In other terms, the obligation to establish the necessary conservation measures applies at the latest by the time the six years period has expired;

— relates to Article 1(a), which defines conservation measures as a series of measures required to maintain or restore the natural habitats and the populations of species of wild fauna and flora at a favourable status;

— relates to Article 2(2), which establishes that measures taken pursuant to this Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest;

— relates to Article 2(3), which specifies that the measures must take account of economic, social and cultural requirements and regional and local characteristics.

For all the SACs, Member States are required to draw up conservation measures and adopt appropriate statutory, administrative or contractual measures. These measures must be established within six years from the adoption of Union lists of Sites of Community Importance (SCIs) at the latest.

These measures are positive and site-specific; they apply to all the natural habitat types in Annex I and the species in Annex II present on the sites, except those whose presence is non-significant according to the Natura 2000 Standard Data Form. They aim to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest; and they take into account economic, social and cultural requirements and regional and local characteristics.

2.3. WHAT SHOULD BE THE CONTENT OF THE 'NECESSARY CONSERVATION MEASURES'?

2.3.1. Setting site-level conservation objectives ([21])

There are several references to the term 'conservation objectives' in the preamble of the Directive as well as an explicit mention of it in Article 6(3). The need for such a concept is also underlined by Articles 4(4) and 6(1) of the Directive. It is useful therefore to examine what is meant by 'conservation objectives' and how it relates to establishing the necessary conservation measures for SACs under Article 6(1).

([20]) Commission Decision 2011/484/EU concerning a site information format for Natura 2000 sites http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:198:0039:0070:EN:PDF

([21]) For further details see Commission note on Setting Conservation Objectives (2013) — http://ec.europa.eu/environment/nature/natura2000/management/docs/commission_note/commission_note2_EN.pdf

Article 1 states that for the purpose of the Directive '*Conservation means a series of measures required to maintain or restore the natural habitats and the populations of species of wild fauna and flora at a favourable status…*'.

As stated in Article 2 the overall aim of the Habitats Directive is to contribute towards ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora. The measures taken under the Directive seek to are with a view to ensuring that the species and habitat types covered achieve 'favourable conservation status', i.e. that their long-term survival is secured across their entire natural range within the EU.

Whereas each site shall contribute to the attainment of **favourable conservation status** (FCS) this overall objective **can only be defined and achieved at the level of the natural range of a species or a habitat type** (see Article 1(e) and (i) of the Directive). A broad conservation objective aiming at achieving FCS can therefore only be considered at an appropriate level, such as for example the national, biogeographical or European level.

However, the **general objective of achieving FCS** for all habitat types and species listed in Annexes I and II to the Habitats Directive **needs to be translated into site-level conservation objectives**. It is important to distinguish between conservation objectives of individual sites and the overall objective of achieving FCS.

Site-level conservation objectives are a set of specified objectives to be met in a site in order to make sure that the site contributes in the best possible way to achieving FCS at the appropriate level (taking into account the natural range of the respective species or habitat types).

Site-level conservation objectives should be established not only for special areas of conservation (SACs) under the Habitats Directive but also for Special Protection Areas (SPAs) under the Birds Directive with a view to achieving the requirements as set out in Articles 2, 3, 4(1), 4(2) and 4(4) of that Directive.

In principle, site-level conservation objectives should be set for all species and habitat types of Community interest under the Habitats Directive and for bird species in Annex I of the Birds Directive or regularly occurring migratory bird species, which are significantly present on the site. However, it is not necessary to establish specific conservation objectives or conservation measures for species or habitat types whose presence on the site is non-significant according to the Natura 2000 SDF ([22]).

Site-level conservation objectives should be based on the ecological requirements of these natural habitat types and species present on the site (see below at section 2.3.3) and should define their desired conservation condition on the site. They should reflect the importance of the site for the maintenance or restoration of the habitat types and species present on the site and for the coherence of Natura 2000. Moreover, they should reflect the threats of degradation or destruction to which the habitats and species on the site are exposed, including those brought about by climate change.

Site-level conservation objectives should define the desired conservation condition of the species and habitat types on the site for maximising its contribution to achieving FCS at the appropriate level. They are sometimes defined as a set of targets to be achieved over a certain period of time. These targets should be established in function of the conservation assessment of each species and habitat type on the site as recorded in the SDF.

Conservation objectives may reflect priorities within a site. In case C-241/08, the Court concluded that '*…determining the conservation and restoration objectives in the context of Natura 2000 may require, as the Advocate General pointed out in point 71 of her Opinion, the reconciliation of various conflicting objectives.*'

It is important to distinguish clearly between objectives and measures. For example, conservation objectives can be expected to be reasonably stable over time — indeed, in most cases they need to be long-term aims. Meanwhile, the conservation measures required to achieve those objectives are likely to change, including in response to changing patterns of threats to sites and, of course, the hopefully positive effects of conservation measures already taken.

Once the conservation objectives have been defined for a Natura 2000 site, there is some flexibility in defining and establishing the conservation measures. Several options can be considered, (using a choice of administrative, contractual or statutory measures), which take into account other socioeconomic activities in the sites.

([22]) i.e. all species indicated as having an insignificant population size and density in relation to the populations present within the national territory (population size category D), habitat types indicated as having an insignificant representativity (category D).

Examples of site-level conservation objectives

1. *Site x has been designated in view of its importance for the habitat type: semi-natural grasslands (6210). According to the SDF, the habitat type has a poor conservation condition (marked as class C in the SDF). The conservation objective for this site may therefore have been set to improve the conservation of the habitat type to class A — excellent — within 10 years, considering that the habitat type has a very unfavourable conservation status within the region. The necessary conservation measures established under Article 6(1) have been designed to achieve that objective.*
2. *Site y has been designated because it harbours a large area of active raised bog (7110). According to the SDF, the habitat type is in excellent condition (marked as class A in the SDF). The conservation objective for that site has therefore been set simply to maintain this condition, even though the habitat types has an unfavourable conservation status within the region. No conservation measures have been established under Article 6(1) since the site does not require any active management measures to maintain this condition.*

In principle conservation objectives should be set for each site and for all species and habitat types significantly present on each site. They should be based on the ecological requirements of the species and habitats present and should define the desired conservation condition of these species and habitat types on the site. They should be established in function of the conservation assessment of each species and habitat type as recorded in the Standard Data Form.

The conservation objectives should also reflect the importance of the site for the coherence of Natura 2000 so that each site contributes in the best possible way to achieving FCS at the appropriate geographical level within the natural range of the respective species or habitat types.

2.3.2. Establishing the necessary conservation measures ([23])

Conservation measures are the actual mechanisms and actions to be put in place for a Natura 2000 site with the aim of achieving the site's conservation objectives and addressing the pressures and threats that the species and habitats within the site face.

According to Article 6(1) '*Member States shall establish the necessary conservation measures*' which correspond to the ecological requirements of the habitats and species of Community interest present. This should be understood as meaning that all necessary conservation measures ***must be taken***.

This is confirmed by the Court which has ruled that '*the Directive requires the adoption of necessary conservation measures, a fact which excludes any discretion in this regard on the part of the Member States and restricts any latitude of the national authorities when laying down the rules or taking decisions to the means to be applied and the technical choices to be made in connection with those measures. By means of the words used in Article 6(1) of the Directive, the Community legislature sought to impose on the Member States* ***the obligation to take the necessary conservation measures*** *that correspond to the ecological requirements of the natural habitat types and species covered by Annex I and Annex II to the Directive respectively*' (case C-508/04 paragraphs 76, 87).

Furthermore the Court has ruled that '*Article 6(1) of the Habitats Directive and Article 4(1) and (2) of the Birds Directive require, if those provisions are not to be rendered redundant, that the conservation measures necessary for maintaining a favourable conservation status of the protected habitats and species within the site concerned not only be adopted, but also, and above all, be* ***actually implemented***' (case C-441/17 paragraph 213).

The obligation is to establish the necessary conservation measures, irrespective of whether those measures are applied within individual sites, or even in some cases outside the boundaries of sites or across multiple sites. In some cases it may be that a significant component of a Member State's compliance with Article 6(1) is through measures of a broader scope which nevertheless contribute to site-specific conservation objectives and are adapted to the ecological requirements of protected habitats and species in the SAC. This may be particularly relevant to marine sites where, for example, wider regulation of fisheries activities ([24]) may be a significant element of Article 6(1) compliance.

([23]) See Commission note on Establishing Conservation Measures (2013) — http://ec.europa.eu/environment/nature/natura2000/management/docs/commission_note/comNote%20conservation%20measures_EN.pdf.

([24]) In accordance with rules under the Common Fishery Policy, including measures taken under Article 11 of Regulation (EU) No 1380/2013.

Key elements to consider in establishing the necessary conservation measures ([25])

Sound knowledge base on the existing conditions in the site, on the species and habitats status and the main pressures and threats that can affect them, the existing land uses and stakeholders interests, etc. This information should include the precise location of key natural features (habitat types and species); the main land uses and activities that can influence the conservation status of relevant habitats and species; the identification of all relevant stakeholders that need to be involved or consulted in the management planning process; potential conflicts and possible ways and means to solve them.

Participation, consultation and communication in planning and preparing the conservation management of a Natura 2000 site allows to take into account the views of the people that live and work or use the site and to ensure engagement of the different stakeholders in the management of the site, so that the likelihood of success is enhanced. Participation can be carried out throughout the process of management planning, starting with early consultation and involvement of stakeholders to inform about the conservation objectives of the site and its importance and to clarify the steps for proper management. This can be done for example through steering groups or committees involving local authorities and representatives of land owners, users and main operators in the Natura 2000 site. It requires efficient organization of the process, collaboration of different policy levels, sufficient staff and budget and effective communication tools; targeted training and effective conflict resolution methods, as well as facilitation of the whole process by a specifically appointed 'site champion', can also be of great added value.

Defining the necessary conservation measures with sufficient level of detail (who does what, when and how) facilitates their implementation and can prevent possible conflicts. The measures must be realistic, quantified, manageable and clearly formulated, drawing on an appropriate level of technical expertise which identifies essential measures and those for which there are various alternative options for implementation, adapted to local interests. The precise location and a description of the means and tools required for their implementation should be provided, e.g. through a work plan flexible enough to allow its review and adaptation as required. It is important also to set a timeline to review the implementation of conservation measures taken, their suitability and the progress towards achieving conservation objectives.

The necessary resources for implementation of the conservation measures need to be considered in any management instrument for Natura 2000 sites, including information about estimated costs for implementation and monitoring, administration, compensation payments, etc., as well as about required human resources and skills, and **possible financial instruments**. Accordingly, full regard is needed to the multiple benefits that flow from investing in Natura 2000 through their ecosystem services. The various socioeconomic activities and their interactions with the natural environment should also be analysed to determine possible costs and benefits arising out of the site management and the actual need for financial support.

Effective implementation and communication needs to be ensured through a mechanism demonstrating that the necessary measures are not just established but also actually implemented, and by making them publicly available (e.g. on websites or official registers) as a source of information for all those concerned.

Article 6(1) of the Habitats Directive imposes an obligation to establish and implement the necessary conservation measures that correspond to the ecological requirements of the natural habitat types and species covered by Annex I and Annex II, a fact that excludes any discretion in this regard on the part of the Member States.

2.3.3. The ecological requirements

Article 6(1) specifies that the necessary conservation measures have to correspond *'to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites'*. It is therefore in relation to the ecological requirements of the natural habitat types and the species that Member States have to determine the conservation measures.

([25]) Extract from Commission Note on Establishing Conservation Measures for Natura 2000 sites, available at http://ec.europa.eu/environment/nature/natura2000/management/docs/commission_note/comNote%20conservation%20measures_EN.pdf.

Although the Directive does not contain any definition of the '*ecological requirements*', the purpose and context of Article 6(1) indicate that these involve all the ecological needs, including both abiotic and biotic factors, which are deemed necessary to ensure the conservation of the habitat types and species, including their relations with the physical environment (air, water, soil, vegetation, etc.) ([26]).

These requirements are based on scientific knowledge and can only be defined on a case-by-case basis, according to the natural habitat types in Annex I, the species in Annex II, and the sites which host them. Such knowledge is essential to make it possible to draw up the conservation measures, on a case-by-case basis.

The ecological requirements may vary from one species to another but also, for the same species, from one site to another.

Thus, for the bats included in Annex II to the Directive, the ecological requirements differ between the period of hibernation (when they rest in underground environments, in hollow shafts or in dwellings) and the active period, from spring onwards (during which they leave their winter quarters and resume their activities of insect hunting).

For the Annex II amphibian Triturus cristatus, *the ecological requirements vary during its life cycle. The species hibernates in the ground (cavities, fissures), then lays its eggs in spring and at the beginning of the summer in ponds. It then leaves the aquatic environment and lives on land during the summer and autumn. For the same species, the ecological requirements may therefore vary according to the sites concerned (aquatic or land). This species also inhabits an extensive range throughout Europe, which means that its ecological requirements may differ from one part of its range to another as well.*

The identification of the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites is the responsibility of the Member States. The latter may wish to exchange their knowledge in this field, with the support of the European Commission and the European Environment Agency — European Topic Centre on Biological Diversity.

The conservation measures have to correspond to the ecological requirements of the natural habitat types in Annex I and of the species in Annex II present on the site. The ecological requirements of those natural habitat types and species involve all the ecological needs which are deemed necessary to ensure the conservation of the habitat types and species. They can only be defined on a case-by-case basis and using scientific knowledge.

2.4. WHAT FORM CAN THE NECESSARY CONSERVATION MEASURES TAKE?

The conservation measures can take the form of '*appropriate statutory, administrative or contractual measures…*' and *'if need be'*, the form of '*appropriate management plans*'.

The choice is left to the Member States, in line with the principle of subsidiarity. The Directive sets out the results to be achieved and leaves it up to the Member States to decide how to do so in practice. Often, the different options referred to in Article 6(1) are used in combination for the management of Natura 2000 sites.

In all cases, the responsibilities for implementing conservation measures need to be clearly defined, along with the relevant financial resources.

2.4.1. Management plans

The necessary conservation measures may involve *'if need be, appropriate management plans specifically designed for the sites or integrated into other development plans*'. Such management plans should address all existing activities, including regular ongoing activities such as day-to-day agricultural activities, whereas new plans and projects are dealt with under Article 6(3) and 6(4).

([26]) Work under Mapping and Assessment of Ecosystems and their Services can support the identification of the ecological requirements of the natural habitat types in Annex I — see especially 5th technical report (http://ec.europa.eu/environment/nature/knowledge/ecosystem_assessment/index_en.htm).

In general, management plans at site level are used to formulate the site's conservation objectives, on the basis of an analysis of the conservation status of species and habitats on the site and the pressures and threats they face, together with the measures necessary to attain these objectives. Management plans are often used as a tool to guide managers and other interested parties in dealing with the conservation of Natura 2000 sites, and to involve the different socioeconomic stakeholders and authorities, including local communities, landowners, farmers, fishermen and other interest groups, in implementing the necessary conservation measures that have been identified.

Management plans are a useful tool for ensuring that the implementation of Article 6(1) provisions is done in a clear and transparent way, enabling all stakeholders to be informed about what Natura 2000 sets out to achieve and to engage actively in this discussion. Management plans may also help identifying the funding needs for the measures and achieving better integration into other plans.

The words 'if need be' indicate that management plans may not always be necessary. If management plans are chosen by a Member State, it will often make sense to establish them before concluding the other measures mentioned in Article 6(1), particularly the contractual measures. Contractual measures will often involve a relationship between the competent authorities and individual landowners and will be limited to individual land-holdings which are normally smaller than the site. In such circumstances, a management plan focused on the site will provide a wider framework, and its contents will provide a useful starting point for the specific details of contractual measures.

The management plans must be *'appropriate'* and *'specifically designed for the sites'*, i.e. targeted at the sites of the Natura 2000 network. Existing management plans for other protected area categories (e.g. national or natural parks, etc.) are not always sufficient to address the management of Natura 2000 sites and should therefore be adapted or supported by further measures to meet the specific conservation objectives of the species and habitat types of Community interest present on the site. Furthermore, the boundaries of other types of protected areas and those of the Natura 2000 sites may not coincide.

Management plans can be stand-alone documents or can also be 'integrated into other development plans', in line with the principle of integration of the environment into other EU policies. In the case of an integrated plan, it is important to ensure that clear conservation objectives and measures are set for the relevant habitats and species present on the site.

Management plans for the Natura 2000 sites are a useful tool for ensuring that the implementation of Article 6 (1) provisions is done in a clear and transparent way, and with the involvement of stakeholders. These plans are not always necessary but, if they are used, they should be specifically designed for the sites or incorporated into other development plans when those exist. They should address all known activities, whereas new plans and projects are dealt with under Article 6(3) and 6(4).

2.4.2. Statutory, administrative or contractual measures

The phrase *'if need be'* refers only to the management plans and not to the statutory, administrative or contractual measures which are needed in all cases (case C-508/04 paragraph 71). Thus, even if a Member State considers a management plan unnecessary, it will still have to take such measures.

The division into these three categories of measures has to be considered in a broad sense. A variety of measures may be considered as appropriate to achieve the conservation objectives established for each site. Often this involves active management but, in some cases, it may also involve more passive preventative measures (e.g. non-intervention management). On the other hand, they may not necessarily be new measures, since existing measures may be considered sufficient if they are appropriate.

— *Statutory measures* usually follow a pattern laid down in law and can set specific requirements in relation to activities than can be allowed, restricted or forbidden in the site.

— *Administrative measures* can set relevant provisions in relation to the implementation of conservation measures or the authorisation of other activities in the site.

— *Contractual measures* involve establishing contracts or agreements usually among managing authorities and land-owners or users on the site.

Agri-environmental or *forestry-environmental measures* serve as a good example of a contractual measure that takes socioeconomic requirements into account when establishing agreements which benefit Natura 2000 sites. They should be designed in line with the conservation measures established for the site and in view of reaching its conservation objectives.

— *Agri-environmental agreements* with farmers within the Rural Development Programmes can be used as a contractual measure aiming to maintain or improve the conservation condition of certain habitat types (e.g. meadows, pastures) and species across a range of sites.

— *Forestry-environmental measures* can also be used to establish contracts and agreements with forest owners on the management of the forest to favour the conservation of habitats and species.

In this perspective, all suitable EU funds (e.g. rural development and regional funds as well as the LIFE programme ([27])) should be considered as a means for implementing these measures ([28]).

The choice between statutory, administrative or contractual measures is left to the Member States. This is in line with the principle of subsidiarity. However, Member States must choose at least one of the three categories, i.e. statutory, administrative, contractual.

There is no hierarchy between these three categories. Thus Member States have the choice to use, on a Natura 2000 site, just one category of measures (e.g. only contractual measures) or combined measures (e.g. combination of statutory and contractual measures according to the conservation issues of the natural habitat types in Annex I and the species in Annex II present on the site). Moreover, on top of the selected compulsory measures, Member States may establish and implement management plans.

The three categories of measures are qualified as 'appropriate'. This qualifier is not defined in the Directive. However, in the case of Article 6(1), the statutory, administrative or contractual measures are embraced within the concept of conservation measures. The qualifier 'appropriate' has no other objective than to recall that whatever the type of measure chosen by the Member States, there is an obligation to ensure that they correspond to the ecological requirements of the target features of particular Natura 2000 sites and respect the general aim of the Directive defined in Article 2(1) and (2).

For SACs, Member States are required to establish and implement the appropriate statutory, administrative or contractual measures. They must a) correspond to the ecological requirements of habitats in Annex I and species in Annex II present on the sites and b) fulfil the Directive's overall aim of maintaining or restoring at a favourable conservation status the natural habitats and the species of fauna and flora of Community interest.

3. **ARTICLE 6(2)**

Clarification of the concepts of taking appropriate avoidance steps; deterioration; and disturbance

3.1. TEXT

'Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.'

3.2. SCOPE

The article takes as its starting point the **prevention principle:** *'Member States shall take appropriate steps* ***to avoid****, in the special areas of conservation, the deterioration… as well as disturbances…'.*

([27]) Regulation (EU) No 1293/2013
([28]) Financing Natura 2000 — http://ec.europa.eu/environment/nature/natura2000/financing/index_en.htm

These measures go beyond the management measures needed for conservation purposes, since these are already covered by Article 6(1). The words *'avoid'* and *'could be significant'* stress the anticipatory nature of the measures to be taken. It is not acceptable to wait until deterioration or disturbances occur before taking measures (case C-418/04 — see also under section 4.4.1 the interpretation of *'likely to'* in Article 6(3)).

This article should be interpreted as requiring Member States to take all the appropriate actions to ensure that no deterioration or significant disturbance occurs. It requires both human-caused and any predictable natural deterioration of natural habitats and the habitats of species to be avoided.

The scope of this article is broader than that of Articles 6(3) and 6(4) which apply only to plans and projects. It also applies to the performance of all ongoing activities, like agriculture, fishing or water management, that may not fall within the scope of Article 6(3) ([29]), along with plans and projects which have already been authorised in the past and subsequently prove likely to give rise to deterioration or disturbances ([30]). It can also apply to the implementation of plans or projects which were authorized before Article 6(3) became applicable (C-399/14 para. 33).

Article 6(2):

— Applies **permanently** in SACs, SCIs and SPAs. It may concern past, present or future activities or events. If an already existing activity in a SAC or SPA is likely to cause deterioration of natural habitats or disturbance of species for which the area has been designated, it must be covered by the appropriate measures foreseen in Article 6(2) of the Habitats Directive or Article 4(4) of the Birds Directive respectively, when applicable. This may require, if appropriate, bringing the negative impact to an end by stopping the activity and/or by taking mitigation or restoration measures. This may be done by means of an *ex-post* assessment.

  This is supported by the *Owenduff* case (C-117/00 paragraphs 28-30) ([31]) in which the Court ruled that Article 6(2) was infringed because measures had not been adopted to prevent deterioration, in an SPA, of the habitats of the species for which the SPA was designated.

  The Court has also ruled that, by providing generally that certain activities practised under the conditions and in the areas authorised by the laws and regulations in force do not constitute activities causing disturbance or having such an effect, a Member State fails to fulfil its obligations under Article 6(2) of the Habitats Directive (case C-241/08 paragraph 76).

— **Is not limited to intentional acts**, but could also cover any chance events that might occur (fire, flood, etc.), as long as they are predictable — for example, if they tend to occur every few years ([32]). In case of catastrophes this concerns only the obligation to take (relative) precautionary measures to decrease the risk of such catastrophes as long as they could jeopardise the aim of the Directive.

  — **Is not limited to human activities**. In the case C-6/04 paragraph 34, the Court considered that *'in implementing Article 6(2) of the Habitats Directive, it may be necessary to adopt both measures intended to avoid external man-caused impairment and disturbance and measures to prevent natural developments that may cause the conservation status of species and habitats in SACs to deteriorate'*. For instance, in the case of natural succession or of climate change effects, measures would need to be taken to halt or counter this process if it is deemed to be negatively impacting on the species and habitat types for which the site has been designated. Accordingly, naturally dynamic situations, as well as modifications linked to climate change (e.g. sea level rise, disappearing or newly arriving species) should be assessed case-by-case ([33]).

([29]) See also section 4.4.1 of this document on term 'project'.
([30]) Case C-127/02, paragraph 37. See also section 4.3 of this document on relationship between Article 6(2) and 6(3).
([31]) see also C-75/01, C-418/04, C-508/04, 301/12
([32]) In particular, climate projections point to the increased frequency and intensity of extreme weather events which need to be factored in.
([33]) See guidance on Climate change and Natura 2000 at http://ec.europa.eu/environment/nature/climatechange/pdf/Guidance%20document.pdf.

The legislator envisaged certain *limits* to the responsibility of the Member States:

— *Spatial limit* — the measures target only species and habitats located *'in the SACs'*. On the other hand, measures may need to be implemented *outside* the SAC if external events may have an impact on the species and the habitats inside the SAC. For instance, in the case of a toxic spill affecting a wetland, the application of Article 6(2) would require that all preventive measures should have been taken to avoid the spillage, even if its location is distant from the wetland. Indeed, the article does not specify that measures have to be **taken in** the SAC but that they should **avoid deterioration in** the SAC. The same logic applies to SPAs.

— *Limit of habitats and species concerned* — the appropriate measures concern only habitats and species *'for which the areas have been designated'*. In particular, the habitats and species concerned by the measures to be taken are those identified in the Natura 2000 Standard Data Forms (see sections 2.2 and 4.6.3). The aim is not therefore to take general protection measures, but rather to take measures focused on the species and habitats which justified the selection of the site (i.e. those recorded as significantly present in the SDF and identified in the designation act). The disturbances and/or deterioration will thus be determined with reference to the information communicated by the Member States and used to ensure the coherence of the Natura 2000 network for the species and habitats concerned.

Member States are required to take preventive measures to avoid deterioration and disturbances connected with a predictable event, activity or process. These measures apply to all species and habitats for which the sites have been designated, and should also be implemented, if necessary, outside the sites.

3.3. WHAT DOES 'TAKE APPROPRIATE STEPS TO AVOID…' MEAN?

Article 6(2) requires Member States to *'take appropriate steps to avoid…'*. Several Court cases have clarified the type of legal protection regime that needs to be put in place for the purposes of Article 6(2) of the Habitats Directive. They stress in particular the need for the legal regime to **be specific, coherent and complete,** capable of ensuring the sustainable management and the effective protection of the sites concerned (C-293/07 paragraphs 26 — 29) ([34]).

The Court has also identified infringements in cases where the regime in place was *'too general and did not concern specifically the SPA or the species that live in it'* (C-166/04 paragraph 15), where provisions can come into play *'only after the activities in question have already commenced and thus only after any deterioration has already occurred'* (C-418/04 paragraph 208), or where SPAs were submitted to *'heterogeneous legal regimes which did not confer on the SPAs a sufficient protection'* (C-293/07 paragraph 26).

In certain cases, merely bringing criminal proceedings against or imposing fines on the party responsible for deterioration/disturbance might not be enough for a Member State to ensure compliance with Article 6(2) (C-504/14, paragraphs 55 and 56).

According to the Court, *'the term "appropriate steps" contained in Article 6(2) of the Habitats Directive implies that Member States enjoy discretion when applying that provision. It should nevertheless be recalled that an activity complies with Article 6(2) of the Habitats Directive only if it is guaranteed that it will not cause any disturbance likely significantly to affect the objectives of that directive, particularly its conservation objectives'* (judgment in Commission v Spain, C-404/09 paragraph 126 and the case-law cited in it). The Court further states that *'should a subsequent review, on the basis of Article 6(2) of the Habitats Directive, prove to be an "appropriate step" within the meaning of that provision, that review must define what risks of deterioration or disturbance likely to be significant within the meaning of that provision are entailed by the implementation of the plan or project, and that review must be carried out in accordance with the requirements of Article 6(3) of that directive'* (C-399/14, paragraphs 40, 41, 54).

([34]) See also Cases C-491/08, C-90/10

The legal regime under Article 6(2) has to be specific, coherent and complete, capable of ensuring the effective protection of the sites concerned. Member States enjoy discretion when taking appropriate steps to implement Article 6(2), provided it is guaranteed that no deterioration and disturbance will occur. If a review of a plan or project is necessary to comply with the provisions of Article 6(2), it must be carried out in accordance with the requirements of Article 6(3).

3.4. DOES IMPLEMENTATION DIFFER FOR DETERIORATION AND DISTURBANCE?

In terms of **disturbance of species**, Article 6(2) specifies that appropriate steps have to be taken to avoid it *'in so far as such disturbance could be significant* ***in relation to the objectives*** *of this Directive'.*

The disturbance in question has to be relevant to (have an impact on) the conservation status of the species in relation to the objectives of the Directive. It is therefore in relation to these **objectives** that the Member State has to determine whether or not disturbance is significant.

In terms of **deterioration of habitats** (which relates both to natural habitats and habitats of species) however, the effect in relation to the objectives of the Directive is not explicitly mentioned in the text of Article 6(2). It is simply stated that the deterioration of habitats must be avoided.

It may seem difficult to assess deterioration in absolute terms without reference to measurable limits. However, connecting deterioration to the site-level conservation objectives, which contribute to achieving the Directive's objectives, may make it possible to interpret the limits of what constitutes deterioration (see section 3.5.1).

Article 6(2) and (3) of the Habitats Directive must be construed as a coherent whole and are designed to ensure the same level of protection of habitat types and habitats of species (C-258/11, paragraph 32; C-521/12, paragraph 19; C-387&388). Therefore, the assessment of the deterioration, if necessary, should follow similar criteria and methods as those used in applying Article 6(3) (see also C-399/14 paragraph 54).

The conservation condition of a habitat type or habitat of a species present in a site may be assessed against its conservation condition as provided in the Natura 2000 Standard Data Form, subject to this being up to date.

On a particular site the conservation condition should reflect the dynamic nature of the habitats and species concerned.

Disturbance of a species must be avoided in so far as it could be significant in relation to the Directive's objectives. On the other hand, deterioration of a natural habitat or a habitat of a species is not qualified by the need to be significant in relation to the Directive's objectives, it must simply be avoided altogether.

Deterioration and disturbance should be assessed against the conservation objectives of the site and the conservation condition of the species and habitat types present in the site using the same criteria as for the Article 6(3) procedure. This notion should be interpreted in a dynamic way, according to the evolution of the conservation condition of the habitat or of the species in that site.

3.5. INDICATORS OF DETERIORATION AND DISTURBANCE

Member States must take appropriate protective measures in order to maintain ***the ecological characteristics*** of Natura 2000 sites from the time they are proposed as sites of Community interest.

The Court has confirmed this in the *Bund* case (C-244/05 paragraph 45): *'…it must be remembered that, in accordance with the first part of Annex III to the Directive, the ecological characteristics of a site identified by the competent national authorities must reflect the assessment criteria which are listed there, namely, the degree of representativity of the habitat type, its area, structure and functions, the size and density of the population of the species present on the site, the features of the habitat which are important for the species concerned, the degree of isolation of the population present on the site and the value of the site for the conservation of the habitat type and species concerned'.*

It follows that the ecological characteristics of the site must not be allowed to deteriorate below their level at the time of designation. In case a better condition has been achieved, this improved condition should be the reference. As a general rule, on a particular site, disturbance or deterioration is assessed on a case-by-case basis, using indicators (see below) with respect to the significance of their change in value ([35]).

3.5.1. Deterioration of habitat types and habitats of species

Deterioration is any form of degradation affecting a habitat. The Member State has to take into consideration all the influences on the environment hosting the habitats (space, water, air, soils). If these influences result in making the conservation parameters for the habitat worse than they were before, the deterioration can be considered to have occurred.

It is important to recall that the requirement to avoid deterioration applies not just to the ***habitat types*** listed in Annex I to the Habitats Directive for which the site has been designated, but also to the ***habitats of the species*** listed in Annex II to the Habitats Directive and Annex I to the Birds Directive, and of the migratory species covered by Article 4(2) of the Birds Directive, for which the site has been designated.

To assess this deterioration, one can refer to the conservation objectives of the site and the ecological characteristics of the site that lead to it being selected as an SCI (in accordance with the selection criteria in Annex III to the Directive) or as an SPA.

These ecological characteristics for **habitat types** are recorded in the SDF using the following parameters ([36]):

— *The degree of **representativity** of the habitat type — this gives a measure of 'how typical' a habitat type is.*

This should be linked to the interpretation manual of Annex I habitat types ([37]) since this manual provides a definition of each habitat type, together with an indication of characteristic species and other relevant elements. Any event, activity or process that causes the habitat type to lose its representativity should be assessed as deterioration.

— ***The surface** of the habitat in the site and its relative surface as compared to the total area covered by the habitat type within the national territory.*

Any event, activity or process which contributes to the reduction in the size, within the site, of the habitat type or the habitat of the species for which this site has been designated, should be regarded as deterioration.

— *The **degree of conservation** of the structure and functions of the natural habitat type concerned and its restoration possibilities.*

Similar considerations may apply in the case of habitats of species, e.g. wetlands for birds. Any impairment of any of these factors which are necessary for the long-term maintenance of the habitats and habitats of species may be regarded as deterioration, e.g. deterioration may be caused not just by the habitat's physical reduction in size but also by the loss of quality as a breeding, feeding, resting or staging site for the species.

The functions necessary for the long-term maintenance depend of course on the habitat concerned. Member States must know these requirements (by means of studies, data collection, etc.) since Article 6(1) provides that they have to take measures *'which correspond to the ecological requirements of the habitats in Annex I and species in Annex II'*.

([35]) Work under Mapping and Assessment of Ecosystems and their Services provides indicators on pressures on ecosystems that can also be used to assess deterioration and disturbance — see especially 5th technical report (http://ec.europa.eu/environment/nature/knowledge/ecosystem_assessment/index_en.htm).

([36]) Commission implementing Decision of 11 July 2011 concerning a site information format for Natura 2000 sites (notified under document C(2011) 4892) (2011/484/EU) OJ L 198 30.7.2011, p 39) http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:198:0039:0070:EN:PDF

([37]) http://ec.europa.eu/environment/nature/legislation/habitatsdirective/docs/Int_Manual_EU28.pdf

Habitat deterioration occurs on a site when the area covered by the habitat type or habitat of the species in this site is reduced, or the specific structure and functions necessary for the long-term maintenance of that habitat or the status of the species which are associated with this habitat are reduced in comparison to their initial or restored condition. This assessment is done according to the site's conservation objectives and its contribution to the coherence of the network.

3.5.2. Disturbance of species

Contrary to deterioration, disturbance does not directly affect the physical conditions of a site; it concerns the species and it may be limited in time (noise, source of light etc.). The intensity, duration and frequency of repetition of disturbance are therefore important parameters.

To assess whether a disturbance is significant in relation to the objectives of the Directive, reference can be made to the definition of the *favourable conservation status of a species* given in Article 1(i), on the basis of the following factors:

— '***Population dynamics data*** *on the species concerned indicate that it is maintaining itself on a long-term basis as a viable element of its natural habitats'.*

Any event, activity or process contributing to the long-term decline of the population of the species on the site can be regarded as a significant disturbance.

— *'The* ***natural range*** *of the species is* ***neither being reduced*** *nor is likely to be reduced for the foreseeable future'*

Any event, activity or process contributing to the reduction or to the risk of reduction of the range of the species within the site can be regarded as a significant disturbance.

— *'There is, and will probably continue to be, a* ***sufficiently large habitat*** *to maintain its populations on a long-term basis'.*

Any event, activity or process contributing to the reduction of the size of the available habitat of the species can be regarded as a significant disturbance.

In that regard effects such as noise, vibrations and isolation of sub-populations of a species are capable of causing significant disturbances for that species. Therefore, failure by a Member State to take appropriate measures to prevent them constitutes a failure to fulfil obligations under Article 6(2) of the Habitats Directive (case C-404/09).

Factors such as intensity, frequency and duration of the disturbance may be taken into account to determine its significance, which may vary from one species to another and according to different times and different conditions (e.g. food resources, or through the presence of sufficient undisturbed areas nearby).

Disturbance of a species occurs on a site from events, activities or processes contributing, within the site, to a long-term decline in the population of the species, to a reduction or risk of reduction in its range, and to a reduction in its available habitat. This assessment is done according to the site's conservation objectives and its contribution to the coherence of the network.

4. **ARTICLE 6(3)**

Clarification of the concepts of plan or project, likelihood of significant effects, appropriate assessment, site's conservation objectives; cumulative effects, competent authorities, opinion of the public, integrity of the site

4.1. TEXT

'Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.'

4.2. SCOPE

As regards **purpose and context,** the role of the third and fourth paragraphs of Article 6 needs to be considered in relation to that of the first (or, in the case of SPAs, with that of the first and second paragraphs of Articles 3 and 4 of the Birds Directive) and second paragraphs of Article 6. In particular, it is important to remember that, even if it is determined that an initiative or activity does not fall within the scope of Article 6(3), it will still be necessary to make it compatible with the other aforementioned provisions.

It may be noted that activities which contribute to or are compatible with the site conservation objectives may already be accommodated within Article 6(1) and (2) — for example, traditional farming practices which sustain particular habitat types and species. The provisions of Article 6(3) and (4) constitute a form of permitting regime, setting out the circumstances within which plans and projects with likely significant negative effects on Natura 2000 sites may or may not be allowed. They thus ensure that economic and other non-ecological requirements can be fully considered in light of the site's conservation objectives.

Article 6(3) defines a *step-wise procedure* for considering plans and projects ([38]).

a) The first part of this procedure consists of a pre-assessment stage ('screening') to determine whether, firstly, the plan or project is directly connected with or necessary to the management of the site, and secondly, whether it is likely to have a significant effect on the site; it is governed by Article 6(3), first sentence.

b) The second part of the procedure, governed by Article 6(3), second sentence, relates to the appropriate assessment and the decision of the competent national authorities.

A third part of the procedure (governed by Article 6(4)) comes into play if, despite a negative assessment, it is proposed not to reject a plan or project but to give it further consideration. In this case Article 6(4) allows for derogations from Article 6 (3) under certain conditions.

The applicability of the procedure, and the extent to which it applies, depend on several factors, and in the sequence of steps, each step is influenced by the previous step. The order in which the steps are followed is therefore essential for the correct application of Article 6(3).

As regards *geographical scope*, the provisions of Article 6(3) are not restricted to plans and projects that exclusively occur in or cover a protected site; they also target plans and projects situated outside the site but likely to have a significant effect on it regardless of their distance from the site in question (cases C-98/03 paragraph 51 and C-418/04 paragraphs 232, 233).

Furthermore, the Court has stated that Article 6(3) of the Habitats Directive does not preclude a more stringent national protective measure which might for instance impose an absolute prohibition of a certain type of activity, without any requirement for an assessment of the environmental impact of the individual project or plan on the Natura 2000 site concerned (C-2/10 paragraphs 39-75).

Article 6(3) defines a step-wise procedure for considering plans and projects that may have a significant effect on a Natura 2000 site. Activities not falling within the scope of Article 6(3) will still have to be compatible with the provisions of Article 6(1) — or, in the case of SPAs, Articles 3, 4(1) and (2) of the Birds Directive — and 6(2) of the Habitats Directive.

4.3. THE RELATIONSHIP BETWEEN ARTICLE 6(2) AND ARTICLE 6(3)

Articles 6(2) and 6(3) are both intended to prevent any negative effects on a site. In the case of Article 6(2) the intention is to avoid '*deterioration …or significant disturbance*'. In the case of Article 6(3) the aim is to avoid the authorisation of any plans or projects that could '*adversely affect the integrity of the site*'. The objectives are therefore broadly similar. However, it should be recalled that the provisions of Article 6(2) apply to the site *at all times* whereas those under Article 6(3) only come into play *if a plan or project is being proposed* that may have significant effects on the site. Because both paragraphs serve the same overall objective, it is logical to conclude that any plan or project approved in compliance with Article 6(3) will also be in conformity with the provisions of Article 6(2), unless it subsequently proves likely to deteriorate the habitat and/or disturb the species for which the site has been designated.

([38]) A simplified flow chart of this procedure is presented in Annex II at the end of this document.

This was confirmed by the Court (case C-127/02 paragraphs 35-37): *'the fact that a plan or project has been authorised according to the procedure laid down in Article 6(3) renders superfluous, as regards the action to be taken on the protected site under the plan or project, a concomitant application of the rule of general protection laid down in Article 6(2). Authorisation of a plan or project granted in accordance with Article 6(3) necessarily assumes that it is considered not likely adversely to affect the integrity of the site concerned and, consequently, not likely to give rise to deterioration or significant disturbances within the meaning of Article 6(2).*

Nevertheless, it cannot be precluded that such a plan or project subsequently proves likely to give rise to such deterioration or disturbance, even where the competent authorities cannot be held responsible for any error. Under those conditions, application of Article 6(2) of the Habitats Directive makes it possible to satisfy the essential objective of the preservation and protection of the quality of the environment, including the conservation of natural habitats and of wild fauna and flora, as stated in the first recital in the preamble to that directive.'

On the other hand, where authorisation for a plan or project has been granted without complying with Article 6(3), a breach of Article 6(2) may be found where deterioration of a habitat or disturbance of the species for which the area in question was designated has been established (C-304/05, C-388/05, C-404/09, C-141/14).

The same applies to all projects and activities which were authorised prior to the inclusion of sites into the SCI list, or their classification as SPAs, and which do not fall under the obligation of the assessment of their implication for habitat types and species under Article 6(3) but the effects of which might adversely affect the integrity of those sites. Article 6(2) and (3) of the Habitats Directive must be construed as a coherent whole, and are designed to ensure the same level of protection of natural habitats and habitats of species (C-258/11, C-521/12, C-399/14, C-387&388/15).

Therefore, where Article 6(2) leads to an obligation to carry out a subsequent review of the implications for the site concerned of a plan or project, that review must be carried out in accordance with the requirements of Article 6(3) (Case C-399/14, paragraph 54).

Article 6(3) does not apply in respect of any action whose implementation was subject to authorisation but which was carried out without authorisation and thus unlawfully. However, such actions may have consequences breaching Article 6 (2), and the Member State is obliged to act in line with the latter provision (case C-504/14).

4.4. WHAT IS MEANT BY 'PLAN OR PROJECT NOT DIRECTLY CONNECTED WITH OR NECESSARY TO THE MANAGEMENT OF THE SITE'?

In as much as the Habitats Directive does not define 'plan' or 'project', due consideration must be given to general principles of interpretation, in particular the principle that an individual provision of EU law must be interpreted on the basis of its wording and of its purpose and the context in which it occurs.

There are two arguments for giving a broad interpretation to 'plan' or 'project':

— Firstly, the Directive does not circumscribe the scope of either 'plan' or a 'project' by reference to particular categories of either. Instead, the key limiting factor is whether or not they are likely to have a significant effect on a site.

— Secondly, a corollary of the continued applicability of Article 6(2) to activities excluded from the scope of Article 6(3) and (4) is that, the more narrowly 'plan' and 'project' are defined, the more potentially restricted are the means to consider a conservation interest against a damaging non-conservation interest, and hence to ensure the correct application of Article 6(2), i.e. avoiding deterioration and disturbance.

4.4.1. Project

Support for a broad definition of 'project' is reinforced, by analogy, if we refer to Directive 2011/92/EU *on the assessment of the effects of certain public and private projects on the environment* ([39]) — hereinafter referred to as the EIA Directive. That directive operates in a similar context, setting rules for the assessment of projects with likely significant effects on the environment. Article 1(2) of the EIA Directive provides that 'project' means:

'— *the execution of construction works or of other installations or schemes, — other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources.*'

This is a very broad definition (C-72/95 *Kraaijeveld* paragraphs 30 and 31) which is not limited to physical construction but also covers other interventions in the natural environment including regular activities aimed at utilising natural resources ([40]). For example, a significant intensification of agriculture which threatens to damage or destroy the semi-natural character of a site may be covered ([41]).

The Court has issued a number of rulings regarding the type of interventions which require the application of Article 6(3).

The *Waddenzee* case (C-127/02 paragraphs 25 — 29) clarified that **activities which have been carried out periodically** for several years on the site concerned but for which a licence is granted annually for a limited period, with each licence entailing a new assessment both of the possibility of carrying on that activity and of the site where it may be carried on, should be considered, at the time of each application, as a distinct plan or project within the meaning of the Habitats Directive.

In the *Papenburg* case (C-226/08 paragraphs 50 — 51) the Court further ruled that:'*… ongoing maintenance works in respect of the navigable channels of estuaries, which are not connected with or necessary to the management of the site … must, to the extent that they constitute a project and are likely to have a significant effect on the site concerned, undergo an assessment of their implications for that site pursuant to those provisions [Article 6(3)]*'.

However, '*…if, having regard in particular to the regularity or nature of the maintenance works at issue … or the conditions under which they are carried out, they can be regarded as constituting a single operation, in particular where they are designed to maintain the navigable channel at a certain depth by means of regular dredging necessary for that purpose, those maintenance works can be considered to be one and the same project for the purposes of Article 6(3) of the Habitats Directive.*'

The Court has also ruled that **the option of exempting generally certain activities does not comply with the provisions of Article 6(3**) (C-256/98, C-6/04, C-241/08, C-418/04, C-538/09). In addition, the Court ruled that projects may not be excluded from the assessment obligation on account only of the fact that they are not subject to authorisation (C-98/03, paragraphs 43 –52).

The Court has also ruled that **the size of the project is not relevant** as it does not in itself preclude the possibility that it is likely to have a significant effect on a protected site (Case C-98/03, Case C-418/04 paragraph 244).

4.4.2. Plan

The term 'plan' has also, for the purpose of Article 6(3), a potentially very broad meaning. If we refer, by analogy, to the Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment ([42]) (hereinafter referred to as the SEA Directive), Article 2(a) of that Directive defines plans and programmes as:

'Plans and programmes, including those co-financed by the European Community, as well as any modifications to them:

— *which are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government, and*

— *which are required by legislative, regulatory or administrative provisions;'*

([39]) OJ L 26, 28.1.2012, p. 1, as amended by Directive 2014/52/EU.
([40]) The relevance of this definition to the Habitats Directive is also stated by the Court (case C-127/02, paragraph 26).
([41]) To fall under the scope of the EIA Directive, such interventions/activities have to involve alterations to the physical aspects of a given site (C-121/11, *Pro-Braine* paragraph 31, C-275/09 *Brussels Airport* paragraph 30).
([42]) OJ L 197, 21.7.2001, p. 30.

In this respect, the Court has ruled that '*Given the objective of Directive 2001/42/EC, which consists in providing for a high level of protection of the environment,* ***the provisions which delimit the directive's scope****, in particular those setting out the definitions of the measures envisaged by the directive,* ***must be interpreted broadly***' (C-567/10 paragraphs 24-43).

Of obvious relevance under the Habitats Directive are **land-use or spatial plans**. Some plans have direct legal effects for the use of land, others only indirect effects. For instance, regional or geographically extensive spatial plans are often not applied directly but form the basis for more detailed plans or serve as a framework for development consents, which then have direct legal effects. Both types of land-use plan should be considered as covered by Article 6(3) to the extent that they are likely to have significant effects on a Natura 2000 site.

The Court upheld this view (C-6/04 paragraph 52) stating that although land-use plans do not always authorise developments and planning permission must be obtained for development projects in the normal manner, **they have great influence on development decisions**. Therefore land-use plans must be subject to appropriate assessment of their implications for the site concerned (see also C-418/04).

Sectoral plans should also be considered as covered by the scope of Article 6(3), again in so far as they are likely to have a significant effect on a Natura 2000 site. Examples might include transport network plans, energy plans, waste management plans, water management plans or forest management plans (see C-441/17, 122-124).

However, a distinction needs to be made with 'plans' which are in the nature of policy statements, i.e. policy documents which show the general political will or intention of a ministry or lower authority. An example might be a general plan for sustainable development across a Member State's territory or region. It does not seem appropriate to treat these as 'plans' for the purpose of Article 6(3), particularly if any initiatives deriving from such policy statements must pass through the intermediary of a land-use or sectoral plan (C 179/06, paragraph 41) ([43]). However, where the link between the content of such an initiative and likely significant effects on a Natura 2000 site is clear and direct, Article 6(3) should be applied.

Where one or more specific projects are included in a plan in a general way but not in terms of project details, the assessment made at plan level does not exempt the specific projects from the assessment requirements of Article 6(3) at a later stage, when much more details about them are known ([44]).

4.4.3. Not directly connected with or necessary to the management …

From the context and purpose of Article 6, it is apparent that the term 'management' is to be treated as referring to the 'conservation' management of a site, i.e. it is to be seen in the sense in which it is used in Article 6(1). Thus, if an activity is directly connected with and necessary for fulfilling the conservation objectives, it is exempted from the requirement for an assessment.

By introducing the possibility of establishing management plans, Article 6(1) envisages flexibility for Member States as regards the form such plans can take. The plans can either be specifically designed for the sites or 'integrated into other development plans'. Thus it is possible to have a 'pure' conservation management plan or a 'mixed' plan with conservation as well as other objectives.

The words *'not directly connected with or necessary to…'* ensure that a non-conservation component of a plan or project which includes conservation management amongst its objectives may still require an appropriate assessment.

([43]) This is without prejudice to the application of the SEA Directive (2001/42/EC).
([44]) For details on the integration of different stages of assessment see also the guidance document on streamlining environmental assessment procedures for Projects of Common Interest, Chapter 3.2: http://ec.europa.eu/environment/eia/pdf/PCI_guidance.pdf.

For example, commercial timber harvesting may form part of a conservation management plan for a woodland designated as Special Area of Conservation. In as much as the commercial dimension is not necessary to the site's conservation management, it may need to be considered for an appropriate assessment.

The Court has supported this view (C-241/08 paragraph 55), pointing out that *'the mere fact that the Natura 2000 contracts comply with the conservation objectives of sites cannot be regarded as sufficient, in the light of Article 6(3) of the Habitats Directive, to allow the works and developments provided for in those contracts to be systematically exempt from the assessment of their implications for the sites.'*

There may also be circumstances where a plan or project directly connected with or necessary to the management of one site may affect another site.

For example, in order to improve the flooding regime of one site, it may be proposed to build a barrier in another site, with a possible significant adverse effect on the latter. In such a case, the plan or project should be the subject of an assessment as regards the affected site.

In addition, case C-441/17 (paragraph 123) identifies an example of a plan (concerned solely with increasing the volume of harvestable timber by the carrying out of active forest management operations within a Natura 2000 site) not directly related to conservation as it does not lay down any conservation objectives or measures, and hence would fall for consideration under Article 6(3).

The term 'project' should be given a broad interpretation to include both construction works and other interventions in the natural environment. The term 'plan' has also a broad meaning, including land-use plans and sectoral plans or programmes.

Plans and projects directly related to the conservation management of the site, either individually or as components of other plans and projects, should generally be excluded from the provisions of Article 6(3), but their non-conservation components may still require an assessment.

4.5. HOW TO DETERMINE WHETHER A PLAN OR PROJECT IS 'LIKELY TO HAVE A SIGNIFICANT EFFECT' ON A SITE, 'EITHER INDIVIDUALLY OR IN COMBINATION WITH OTHER PLANS OR PROJECTS'?

This phrase encapsulates both a cause-and-effect relationship and the cumulative aspect. On the one hand, it is necessary to explore what sorts of effects are covered ('*significant effect*'), and then to explore what sorts of causes are likely to create such effects ('*likely to have … either individually or in combination*').

Determining whether a plan or project is likely to have a significant effect will have practical and legal consequences. Therefore, when a plan or project is proposed, it is important firstly that this key issue is considered, and secondly that the consideration is capable of standing up to scientific and expert scrutiny.

Plans and projects that are considered as not likely to have significant effects can be processed without reference to the subsequent steps of Article 6(3). However, Member States will need to justify and record the reasons for reaching such a screening conclusion.

4.5.1. Likely to have…

The safeguards set out in Article 6(3) are triggered not by a **certainty** but by a **likelihood** of significant effects. Thus, in line with the precautionary principle, it is unacceptable to fail to undertake an assessment on the basis that significant effects are not certain.

This was confirmed by the Court's *Waddenzee* ruling (C-127/02 paragraphs 39 — 44): '*…The environmental protection mechanism provided for in Article 6(3) … does not presume that the plan or project considered definitely has significant effects on the site concerned but follows from the mere probability that such an effect attaches to that plan or project. …* ***In case of doubt as to the absence of significant effects such an assessment must be carried out****. … The first sentence of Article 6(3) must therefore be interpreted as meaning that any plan or project not directly connected with or necessary to the management of the site is to be subject to an appropriate assessment of its implications for the site in view of the site's conservation objectives* ***if it cannot be excluded, on the basis of objective information,*** *that it will have a significant effect on that site, either individually or in combination with other plans or projects*'.

It is again useful to refer to the EIA Directive 2011/92/EU as amended, since the formula 'likely to have a significant effect' is almost identical to the basic formula used to create the assessment duty of Member States under the EIA Directive ([45]). The EIA Directive is also of assistance in setting out a range of factors which may contribute to a likelihood of a significant effect ([46]). Any proposal deemed to require an assessment under the EIA Directive on the grounds, inter alia, that it is likely to significantly affect a Natura 2000 site can be judged to also come under the assessment requirement of Article 6(3) ([47]).

In determining the likelihood of significant impacts, and hence the need for an appropriate assessment, mitigation measures (i.e. measures to avoid or reduce negative effects) cannot be taken into account. This is confirmed by the Court in its ruling in case C-323/17: '*Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site*' ([48]).

A likelihood of significant effects may arise not only from plans or projects located **within** a protected site but also from plans or projects located **outside** a protected site (C-142/16, paragraph 29). For example, a wetland may be damaged by a drainage project located some distance outside the wetland's boundaries, or a site may be impacted by an emission of pollutants from an external source. For this reason, it is important that Member States, both in their legislation and in their practice, allow for the Article 6(3) safeguards to be applied to any development pressures — including those which are external to Natura 2000 sites but which are likely to have significant effects on any of them.

This includes the consideration of any **potential transboundary effects**. If a plan or project in one country is likely to have a significant effect on a Natura 2000 site in a second country, either individually or in combination with other plans or projects, then an appropriate assessment must be undertaken which addresses, inter alia, the potential effects on the integrity of respective Natura 2000 sites in that second country as well.

Cross-border plans and projects (i.e. plans or projects located in more than one Member State, involving for example pipelines, cables, bridges, or tunnels) should be treated accordingly, ensuring that all potential effects on Natura 2000 sites are considered. To this end, and to avoid duplications, the respective competent authorities should coordinate their assessments.

This is in line with the Espoo Convention and its SEA Protocol ([49]) which are implemented within the EU through the EIA and SEA Directives ([50]). As those Directives cover plans or projects that are likely to require an assessment pursuant to Article 6 of the Habitats Directive as well, it follows that transboundary effects are also to be covered in appropriate assessments undertaken under the Habitats Directive, in accordance with relevant provisions under those Directives.

The procedure under Article 6(3) is triggered not by the certainty but by the likelihood of significant effects, arising from plans or projects regardless of their location inside or outside a protected site. Such likelihood exists if significant effects on the site cannot be excluded. Mitigation measures cannot be taken into account at this stage. Transboundary effects are also to be considered.

([45]) See Article 2(1) of Directive 2011/92/EU as amended by Directive 2014/52/EU.
([46]) See Annex III of Directive 2011/92/EU as amended by Directive 2014/52/EU.
([47]) On the other hand, an appropriate assessment under Article 6(3) might be required for projects not falling under the scope of the EIA Directive.
([48]) However under the EIA Directive it is possible to take into account features of the project and/or measures envisaged to avoid or prevent significant adverse effects when deciding on the need to conduct a full EIA (Article 4(5)(b) of the EIA Directive, as amended).
([49]) http://www.unece.org/env/eia/welcome.html
([50]) Article 7 of Directive 2011/92/EU (as amended by Directive 2014/52/EU) and Article 7 of Directive 2001/42/EC.

4.5.2. Significant effect

The notion of what is a 'significant' effect cannot be treated in an arbitrary way. In the first place, the Directive uses the term in an objective context (i.e. it does not qualify it with discretionary formulae). In the second place, a consistency of approach to what is 'significant' is needed to ensure that Natura 2000 functions as a coherent network.

While there is a need for objectivity in interpreting the scope of the term 'significant', clearly such objectivity cannot be divorced from the specific features and environmental conditions of the protected site concerned by the plan or project. In this regard, the conservation objectives of a site as well as prior or baseline information about it can be very important in more precisely identifying conservation sensitivities (C-127/02, paragraphs 46-48).

Some of this information is presented in the Standard Data Form that accompanies the site selection process under the Habitats and Birds Directives (see section 3.5.1). Member States may also have available detailed site conservation management plans which describe variations in the sensitivity of habitats and species within a site with regard to different threats.

Significance will vary depending on factors such as magnitude of impact, type, extent, duration, intensity, timing, probability, cumulative effects and the vulnerability of the habitats and species concerned.

Against this background, it is clear that what may be significant in relation to one site may not be in relation to another.

For example, a loss of a hundred square metres of habitat may be significant in relation to a small rare orchid site, while a similar loss in a large steppic site may be insignificant if it does not have implications for the site conservation objectives.

The notion of what is 'significant' needs to be interpreted objectively. The significance of effects should be determined in relation to the specific features and environmental conditions of the protected site concerned by the plan or project, taking particular account of the site's conservation objectives and ecological characteristics.

4.5.3. … either individually or in combination with other plans or projects

A series of individually modest impacts may, in combination, produce a significant impact. As the Court has pointed out '*the failure to take account of the cumulative effect of projects in practice leads to a situation where all projects of a certain type may escape the obligation to carry out an assessment, whereas, taken together, they are likely to have significant effects on the environment*' (C-418/04, C-392/96 paragraphs 76, 82).

Article 6(3) tries to address this by taking into account the combination of effects from other plans or projects. In this regard, Article 6(3) does not explicitly define which other plans and projects are within the scope of the in-combination provision.

It is important to note that the underlying intention of this in-combination provision is to take account of cumulative impacts, and these will often only occur over time. In that context, one can consider plans or projects which are ***completed, approved but uncompleted,*** *or* ***proposed***:

— In addition to the effects of those plans or projects which are the main subject of the assessment, it may be appropriate to consider the effects of already completed plans and projects in this 'second level' of assessment, including those preceding the date of transposition of the Directive or the date of designation of the site (see, for example, C-142/16, paragraphs 61 and 63). Although already completed plans and projects are themselves excluded from the assessment requirements of Article 6(3), it is still important to take them into consideration when assessing the impacts of the current plan or project in order to determine whether there are any potential cumulative effects arising from the current project in combination with other already completed plans and projects. The effects of such completed plans and projects would normally form part of the site's baseline conditions which are considered at this stage ([51]).

([51]) Already completed plans and projects may also raise issues under Article 6(1) and Article 6(2) of the Habitats Directive if their continued effects give rise to a need for the Member States to take remedial or countervailing conservation measures or measures to avoid habitat deterioration or species disturbance.

— Plans and projects which have been approved in the past but have not yet been implemented or completed should be included in the in-combination provision.

— As regards other proposed plans or projects, on grounds of legal certainty it would seem appropriate to restrict the in-combination provision to those which have been *actually proposed*, i.e. for which an application for approval or consent has been introduced. At the same time, it must be evident that, in considering a proposed plan or project, Member States do not create a presumption in favour of other not yet proposed plans or projects in the future.

For example, if a residential development is considered not to give rise to a significant effect and is therefore approved, the approval should not create a presumption in favour of further residential developments in the future.

In addition, it is important to note that the assessment of cumulative effects is not restricted to the assessment of similar types of plans or projects covering the same sector of activity (e.g. a series of housing projects). All types of plans or projects that could, in combination with the plan or project under consideration, have a significant effect, should be taken into account during the assessment.

Similarly, the assessment should consider the cumulative effects not just between projects or between plans but also **between projects and plans** (and vice versa). For example, a new project to build a major motorway through an area may on its own not adversely affect the site, but when considered in combination with an already approved housing development plan for the same area, these impacts may become significant enough to adversely affect the site. On the other hand, a plan may have no significant impact on Natura 2000 sites on its own but may be assessed differently if considered in combination with an already proposed or authorised major development project not included in that plan.

Potential cumulative impacts should be assessed using sound baseline data and not rely only on qualitative criteria. They should also be assessed as an integral part of the overall assessment and not be treated merely as an 'afterthought' at the end of the assessment process.

When determining likely significant effects, the combination with other plans and/or projects should also be considered to take account of cumulative impacts during the assessment of the plan or project in question. The in-combination provision concerns other plans or projects which have been already completed, approved but uncompleted or actually proposed.

4.6. WHAT IS MEANT BY 'APPROPRIATE ASSESSMENT OF ITS IMPLICATIONS FOR THE SITE IN VIEW OF THE SITE'S CONSERVATION OBJECTIVES'?

4.6.1. What is meant by an 'appropriate' assessment?

The purpose of the appropriate assessment is to assess the implications of the plan or project in respect of the *site's conservation objectives*, either individually or in combination with other plans or projects. The conclusions should enable the competent authorities to ascertain *whether the plan or project will adversely affect the integrity of the site concerned*. The focus of the appropriate assessment is therefore specifically on the species and/or the habitats for which the Natura 2000 site is designated.

In its *Waddenzee* ruling (C-127/02 paragraphs 52-54, 59) the Court emphasized the importance of using the best scientific knowledge when carrying out the appropriate assessment in order to enable the competent authorities to conclude with certainty that there will be no adverse effects on the site's integrity:

'*As regards the concept of "appropriate assessment" within the meaning of Article 6(3) of the Habitats Directive, it must be pointed out that the provision does not define any particular method for carrying out such an assessment. None the less, according to the wording of that provision, an appropriate assessment of the implications for the site concerned of the plan or project* ***must precede its approval*** *and take into account the cumulative effects which result from the combination of that plan or project with other plans or projects in view of the site's conservation objectives.*'

'*Such an assessment therefore implies that* ***all the aspects of the plan or project which can, either individually or in combination with other plans or projects, affect those (conservation) objectives must be identified in the light of the best scientific knowledge in the field***.'

'*The competent national authorities, taking account of the appropriate assessment of the implications of the plan or project for the site concerned in the light of the site's conservation objectives, are to authorise such an activity only if they have made certain that it will not adversely affect the integrity of that site. That is the case* ***where no reasonable scientific doubt remains as to the absence of such effects***.'

Assessments that confine themselves to general descriptions and a superficial review of existing data on 'nature' within the area cannot therefore be considered as 'appropriate' for the purposes of Article 6(3). According to the Court **the appropriate assessment should contain *complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt*** as to the effects of the works proposed on the site concerned (C-304/05 paragraph 69) ([52]). It cannot be held that an assessment is appropriate where information and reliable updated data concerning the habitats and species in the site are lacking (C-43/10 paragraph 115).

It is at the time of adoption of the decision authorising implementation of the project that there must be no reasonable scientific doubt remaining as to the absence of adverse effects on the integrity of the site in question (C-239/04, paragraph 24).

Furthermore, as regards multi-phase monitoring, such monitoring cannot be considered as sufficient to ensure performance of the obligation laid down in Article 6(3) of the Habitats Directive (C-142/16, paragraph 43).

It follows from the above that the appropriate assessment should **be reasoned and recorded**. If the record of the assessment does not disclose the reasoned basis for the subsequent decision (i.e. if the record is a simple unreasoned positive or negative view of a plan or project), the assessment does not fulfil its purpose and cannot be considered 'appropriate'.

Finally, **timing** is also important. The assessment is a step preceding and providing a basis for the other steps — in particular, an approval or refusal of a plan or project. The assessment must therefore be undertaken ***before*** the competent authority decides whether or not to undertake or authorise the plan or project (C-127/02 paragraph 42). Of course, where a plan or project undergoes re-design before a decision is taken on it, it is quite in order to revise the assessment as part of an iterative process. However, it should not be open to authorities to add retrospectively to an assessment once the subsequent step in the sequence of steps set out in Article 6(3) and 6(4) has been taken.

Relationship with the EIA and SEA Directives

The Appropriate Assessment is often undertaken as part of or alongside the EIA or SEA process, and its results are included in the relevant EIA or SEA report. This approach can help to streamline the administrative steps involved in obtaining development authorisations under EU environmental legislation ([53]). The revised EIA Directive ([54]) (Article 2 (3)) stipulates that, in the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from the EIA and the Habitats Directives, Member States shall, where appropriate, ensure the use of coordinated and/or joint procedures. Relevant guidance on this has been issued ([55]).

Nevertheless it is essential that the information relevant to the Appropriate Assessment and its conclusions remain clearly distinguishable and identifiable in the environmental impact assessment report, so that they can be differentiated from those of the general EIA or SEA. This is necessary as there are a number of important distinctions between the EIA/SEA and the Appropriate Assessment procedures, which means that **an SEA or an EIA cannot replace, or be a substitute for, an Appropriate Assessment as neither procedure overrides the other**.

([52]) See also cases C-239/04 and C-404/09.
([53]) Such streamlining can also cover assessments required under Article 4(7) of the Water Framework Directive — see also http://ec.europa.eu/environment/eia/pdf/PCI_guidance.pdf.
([54]) Directive 2011/92/EU as amended by Directive 2014/52/EU.
([55]) Commission guidance on streamlining environmental assessments conducted under Article 2(3) of the revised EIA Directive (Commission notice 2016/C 273/01, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2016:273:TOC)

This was further confirmed by the Court (C-418/04): '*Those two (EIA and SEA) Directives contain provisions relating to the deliberation procedure, without binding the Member States as to the decision, and relate to only certain projects and plans. By contrast, under the second sentence of Article 6(3) of the Habitats Directive, a plan or project can be authorised only after the national authorities have ascertained that it will not adversely affect the integrity of the site. Accordingly,* ***assessments carried out pursuant to the EIA Directive or SEA Directive cannot replace the procedure provided for in Article 6(3) and (4) of the Habitats Directive***'.

Key similarities and differences between the Appropriate Assessment and the EIA and SEA are set out in Annex I.

4.6.2. Content of the appropriate assessment

The appropriate assessment of plans or projects likely to affect Natura 2000 sites should guarantee full consideration of all elements contributing to the site integrity (see section 3.7.4), both in defining the baseline conditions and in the stages leading to identification of potential impacts, mitigation measures and residual impacts.

In this respect it must be ensured that the appropriate assessment addresses all elements contributing to the site's integrity as specified in the site's conservation objectives and Standard Data Form, and is based on the **best available scientific knowledge in the field**.

The **information required should be up-to-date** (C-43/10, paragraph 115) and may include the following issues, as appropriate:

— structure and function, and the respective role of the site's ecological assets;

— the area, representativity and degree of conservation of the habitat types on the site;

— population size, degree of isolation, ecotype, genetic pool, age class structure, and degree of conservation of species under Annex II to the Habitats Directive present on the site or of the bird species for which a given SPA was classified;

— any other ecological assets and functions identified on the site; and

— any threats affecting or representing a potential risk to habitats and species present on the site.

The appropriate assessment should also include a **comprehensive identification of all the potential effects** of the plan or project likely to be significant on the site, taking into account cumulative and other effects likely to arise as a result of the combined action of the plan or project under assessment with other plans or projects.

It **should apply the best available techniques and methods to assess the extent of the effects** of the plan or project on the integrity of the site(s). The description of the site's integrity and the impact assessment should be based on the best possible indicators specific to the Natura 2000 features, which can also be useful in monitoring the impact of the plan or project implementation.

The appropriate assessment report should be sufficiently detailed to demonstrate how the final conclusion was reached, and on what scientific grounds. For instance, in its ruling in case C-404/09 the Court identified a number of gaps in the appropriate assessment under question (namely, that it did not give sufficient consideration to the possible disturbances to various species on the sites in question, such as noise and vibrations or to the risk of isolating sub-populations by blocking communication corridors linking those sub-populations to other populations) ([56]).

([56]) See also C-441/17 paragraphs 134-144.

4.6.3. … in view of the site's conservation objectives

The appropriate assessment focuses on **assessing the implications for the site** of the plan or project, individually or in combination with other plans or projects, **in view of the site's conservation objectives**. Article 6(3) must therefore be read in close conjunction with Article 6(1) and 6(2) since the conservation objectives to be used in the appropriate assessment are linked also to these two earlier paragraphs.

As explained in section 2.3.1, 'conservation objectives' should be set at the level of each individual site and should concern, within that site, all the species and habitat types for which the site has been designated under the Habitats Directive or classified under the Birds Directive.

These **conservation objectives** should be based on the ecological requirements of the species and habitats present and should define the desired conservation condition of these species and habitat types on the site. This should be established in function of the conservation condition of each species and habitat type as recorded in the Standard Data Form. The conservation objectives should also reflect the importance of the site for the coherence of Natura 2000 so that each site contributes in the best possible way to achieving Favourable Conservation Status at the appropriate geographical level within the natural range of the respective species or habitat types.

Where such conservation objectives have been set for a site, the effects must be assessed against these objectives.

This was confirmed by the Court in its *Waddenzee* Ruling (C-127/02 paragraphs 46-48): '*As is clear from the first sentence of Article 6(3) of the Habitats Directive in conjunction with the 10th recital in its preamble, the significant nature of the effect on a site of a plan or project not directly connected with or necessary to the management of the site is linked to the site's conservation objectives. So, where such a plan or project has an effect on that site but is not likely to undermine its conservation objectives, it cannot be considered likely to have a significant effect on the site concerned.*'

'*Conversely, **where such a plan or project is likely to undermine the conservation objectives of the site concerned, it must necessarily be considered likely to have a significant effect** on the site. As the Commission in essence maintains, in assessing the potential effects of a plan or project, their significance must be established in the light, inter alia, of the characteristics and specific environmental conditions of the site concerned by that plan or project.*'

Where conservation objectives have not yet been set for a site, and until this is done, then the appropriate assessment must assume as a minimum that the objective is to ensure that the habitat types or habitats of species present do not deteriorate below the current level or the species are not significantly disturbed, in accordance with the requirements of Article 6(2) and without prejudice to the effectiveness of the conservation measures necessary for the fulfilment of the requirements of Article 6(1).

This position has been confirmed by the Court (C-127/02 paragraph 36) '*Authorisation of a plan or project granted in accordance with Article 6(3) of the Habitats Directive necessarily assumes that it is considered not likely to adversely affect the integrity of the site concerned and, consequently, not likely to give rise to deterioration or significant disturbances within the meaning of Article 6(2).*'

4.6.4. The concept of the 'Integrity of the site'

It is clear from the context and from the purpose of the Directive that the 'integrity of a site' relates to the site's conservation objectives (see point 4.6.3 above). For example, it is possible that a plan or project will adversely affect the site only in a visual sense or only affect habitat types or species other than those listed in Annex I or Annex II for which the site has been designated. In such cases, the effects do not amount to an adverse effect for purposes of Article 6(3).

In other words if none of the habitat types or species for which the site has been designated is significantly affected then the site's integrity cannot be considered to be adversely affected. However, if just one of them is significantly affected, taking into account the site's conservation objectives, then the site integrity is necessarily adversely affected.

This is supported by the Court in its ruling in case C-258/11, paragraph 48: *'Article 6(3) of the Habitats Directive must be interpreted as meaning that* ***a plan or project*** *not directly connected with or necessary to the management of a site* ***will adversely affect the integrity of that site if it is liable to prevent the lasting preservation of the constitutive characteristics of the site that are connected to the presence of a priority natural habitat*** *whose conservation was the objective justifying the designation of the site in the list of SCIs, in accordance with the directive. The precautionary principle should be applied for the purposes of that appraisal.'* The logic of such an interpretation would also be relevant to non-priority habitat types and to habitats of species.

The expression 'integrity of the site' shows that the focus is here on the specific site. Thus, it is not allowed to destroy a site or part of it on the basis that the conservation status of the habitat types and species it hosts will anyway remain favourable within the European territory of the Member State.

As regards the connotation or meaning of 'integrity', this clearly relates to **ecological integrity**. This can be considered as a quality or condition of being whole or complete. In a dynamic ecological context, it can also be considered as having the sense of resilience and ability to evolve in ways that are favourable to conservation.

The 'integrity of the site' can be usefully defined as the coherent sum of the site's ecological structure, function and ecological processes, across its whole area, which enables it to sustain the habitats, complex of habitats and/or populations of species for which the site is designated.

A site can be described as having a high degree of integrity where the inherent potential for meeting site conservation objectives is realised, the capacity for self-repair and self-renewal under dynamic conditions is maintained, and a minimum of external management support is required.

When looking at the 'integrity of the site', it is therefore important to take into account a range of factors, including the possibility of effects materialising in the short, medium and long-term.

The integrity of the site involves its constitutive characteristics and ecological functions. The decision as to whether it is adversely affected should focus on and be limited to the habitats and species for which the site has been designated and the site's conservation objectives.

4.6.5. Assessing the implications for the site

The appropriate assessment itself involves looking at all the aspects of the plan or project that could cause a significant effect on the Natura 2000 site. In this context, each element of the plan or project should be examined in turn and their potential effects should be considered in relation to each of the species or habitat types for which the site has been designated ([57]). Thereafter, the effects of the different features within the plan or project should be looked at together, and in relation to each other, so that the interactions between them can also be identified.

For instance, it may be that the risk of collision mortality with wind turbines alone is not likely to be significant but if it is taken in combination with the installation of overhead power lines, which could also cause collision mortality, then the effects for particular bird population could become significant.

It is evident that the effects of each project will be unique and must be evaluated on a case-by-case basis. According to the *Waddenzee* ruling (C-127/02 paragraph 48), *'in assessing the potential effects of a plan or project, their significance must be established in the light, inter alia, of the characteristics and specific environmental conditions of the site concerned by that plan or project.'* Relevant general regulations and specifications established by the Member States may also be used for that purpose.

([57]) Work under Mapping and Assessment of Ecosystems and their Services can support the appraisal of effects, e.g. to identify ecological assets and functions in the site, define threats to habitats and species, measure ecological structure and functions of broad habitat types relevant to site integrity — see especially 5th technical report on ecological condition (http://ec.europa.eu/environment/nature/knowledge/ecosystem_assessment/index_en.htm)

Whilst the focus should be on the species and habitats of Community interest (including birds identified according to Article 4(1) and 4(2) of the Birds Directive) that have justified the site designation, it should not be forgotten that these target features also interact with other species and habitats, as well as the physical environment in complex ways.

It is therefore important to consider all the elements that are essential to the functions and the structure of the site and to the habitat types and species present. Furthermore, other species can also be relevant in determining the potential effects on protected habitats if they constitute typical species of the habitat in question ([58]) or play a role in the food chain on which the site's target features depend.

The **appraisal of effects must be based on objective** and, if possible, **quantifiable criteria**. Impacts should be predicted as precisely as possible, and the basis of these predictions should be made clear and recorded in the appropriate assessment report (this means also including some explanation of the degree of certainty in the prediction). As with all impact assessments, the appropriate assessment should be undertaken within a structured framework to ensure that the predictions can be made as objectively and accurately as possible.

Bearing in mind that the Court has stressed the importance of using the best scientific knowledge when carrying out the appropriate assessment, further ecological and survey field work may be necessary to supplement existing data. Detailed surveys and fieldwork should be sufficiently long in duration and focus on those target features that are sensitive to the project actions. Sensitivity should be analysed taking into account the possible interactions between the project activities (nature, extent, methods, etc.) and the habitats and species concerned (location, ecological requirements, vital areas, behaviour, etc.).

4.6.6. Considering suitable mitigation measures to avoid or reduce the impacts

If adverse impacts on the site's integrity have been identified during the appropriate assessment or cannot be ruled out, the plan or project in question cannot be approved. However, depending on the degree of impact identified, it may be possible to introduce certain mitigation measures that will avoid these impacts or reduce them to a level where they will no longer adversely affect the integrity of the site.

Mitigation measures must be directly linked to the likely impacts that have been identified in the appropriate assessment and can only be defined once these impacts have been fully assessed and described in the appropriate assessment. Thus, as pointed out in section 4.5.1, mitigation measures can only be considered at this stage and not at the screening stage.

The identification of mitigation measures, like the impact assessment itself, must be based on a sound understanding of the species and habitats concerned. For example, they may cover:

— the dates and the timetable of implementation (e.g.: do not operate during the breeding season of a particular species);

— the type of tools and operation to be carried out (e.g.: to use a specific dredge at a distance agreed upon from the shore in order not to affect a fragile habitat, or to reduce emissions which may cause harmful deposition of pollutants); and

— the strictly inaccessible areas inside a site (e.g. hibernation burrows of an animal species).

Mitigation measures, which aim to avoid or reduce impacts or prevent them from happening in the first place, must not be confused with compensatory measures, which are intended to compensate for any damage that may be caused by the project. Compensatory measures can only be considered under Article 6(4) if the plan or project has been accepted as necessary for imperative reasons of overriding public interest and where no alternatives exist (see Section 5).

([58]) For explanation of particular terms, see the *Interpretation Manual of European Union Habitats — EUR28* at http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm#interpretation

This distinction was confirmed by the Court which found that '*Article 6(3) of the Habitats Directive must be interpreted as meaning that a plan or project not directly connected with or necessary to the management of a site of Community importance, which has negative implications for a type of natural habitat present thereon and which provides for the creation of an area of equal or greater size of the same natural habitat type within the same site, has an effect on the integrity of that site. Such measures can be categorised as "compensatory measures" within the meaning of Article 6(4) only if the conditions laid down therein are satisfied. (…) It is clear that these measures are not aimed either at avoiding or reducing the significant adverse effects for that habitat type caused by the project; rather, they tend to compensate after the fact for those effects. They do not guarantee that the project will not adversely affect the integrity of the site within the meaning of Article 6(3) of the Habitats Directive.*' (C-521/12 paragraphs 29-35, 38-39; see also C-387&388/15 paragraph 48).

In connection with these findings, the Court stated that '*…measures, contained in a plan or project not directly connected with or necessary to the management of a site of Community importance, providing, prior to the occurrence of adverse effects on a natural habitat type present thereon, for the future creation of an area of that type, but the completion of which will take place subsequently to the assessment of the significance of any adverse effects on the integrity of that site, may not be taken into consideration in that assessment.*' (C- 387&388/15 paragraph 64).

Of course, well designed and implemented mitigation measures will limit the extent of the necessary compensatory measures (if applicable, in the context of Article 6(4)), by reducing the residual impacts that require compensation.

For the competent authority to be able to decide if the mitigation measures are sufficient to remove any potential adverse effects of the plan or project on the site (and do not inadvertently cause other adverse effects on the species and habitat types in question), each **mitigation measure must be described in detail**, with an explanation based on scientific evidence of how it will eliminate or reduce the adverse impacts which have been identified. Information should also be provided of how, when and by whom they will be implemented, and what arrangements will be put in place to monitor their effectiveness and take corrective measures if necessary. The need for definitive data at the time of authorization is also raised in case C-142/16, paragraphs 37-45.

If the competent authority considers the mitigation measures are sufficient to avoid the adverse effects on site integrity identified in the appropriate assessment, they will become an integral part of the specification of the final plan or project or may be listed as a condition for project approval. If, however, there is still a residual adverse effect on the integrity of the site, even after the introduction of mitigation measures, then the plan or project cannot be approved (unless the conditions set out in Article 6(4) are fulfilled).

Mitigation measures may be proposed by the plan or project proponent and/or required by the competent national authorities in order to avoid the potential impacts identified in the appropriate assessment or reduce them to a level where they will no longer adversely affect the site's integrity.

The identification of mitigation measures, like the impact assessment itself, must be based on a sound understanding of the species and habitats concerned and must be described in detail. Well designed and implemented mitigation measures will limit the extent of any necessary compensatory measures, if applicable in the context of Article 6(4), by reducing the residual impacts which require compensation.

4.7. DECISION MAKING

4.7.1. The 'competent national authorities'

It is clear that the word 'national' in this expression has been used in contrast with the word 'EU' or 'international'. Thus, the term refers not only to authorities within the central administration but also to regional, provincial or municipal authorities that have to give an authorisation or consent to a plan or project. A court may constitute a competent authority if it has the discretion to make a decision on the substance of a proposed plan or project for purposes of Article 6(3) (C-127/04, paragraph 69).

Under certain circumstances, authorisation of a plan or project may be granted by a legislative authority (national or regional parliament) and take the form of a legislative text. In this context, in case C-182/10 paragraphs 69-70, the Court has ruled that: '*Those [Article 6(3)] obligations are incumbent on the Member States by virtue of the Habitats Directive* ***regardless of the nature of the national authority with competence to authorise the plan or project concerned****. Article 6(3) of the Habitats Directive, which refers to the "competent national authorities", does not lay down any special rule for plans or projects approved by a legislative authority. That status consequently has no effect on the extent or scope of the obligations imposed on the Member States by Article 6(3) of the Habitats Directive… Article 6(3) of the Habitats Directive must be interpreted as not allowing a national authority, even if it is a legislative authority, to authorise a plan or project without having ascertained that it will not adversely affect the integrity of the site concerned*'

In other words, permission cannot be granted to a plan or project by means of law if an appropriate assessment has not been undertaken beforehand, in accordance with Article 6(3) of the Habitats Directive, or if the appropriate assessment has not concluded with certainty that there will be no adverse effect on the integrity of the site ([59]).

Competent national authorities are those entitled to give authorisation or consent to a plan or project.

4.7.2. When is it appropriate to obtain the opinion of the general public?

The Habitats Directive does not contain an explicit obligation to obtain the opinion of the general public when authorising plans or projects requiring an appropriate assessment. According to the wording of Article 6(3) this has only to be done if it is '*considered appropriate*'. However, consultation of the public is an essential feature of the EIA and SEA directives. Clearly therefore, where the assessment required by Article 6(3) is coordinated with the assessment under these directives, public consultation is necessary in line with their requirements.

Nonetheless, even if a plan or project does not fall under the scope of the SEA or EIA directives and is assessed solely on the basis of Article 6(3) of the Habitats Directive, the Court has clarified in a recent judgment on the basis of the requirements of the Aarhus Convention ([60]), that the public concerned, including recognised environmental NGOs, has the right to participate in the authorisation procedure (C-243/15 paragraph 49). This right involves in particular, '*the right to participate "effectively during the environmental decision-making" by submitting, "in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity"*' (C-243/15, paragraph 46).

In this context, it is also worth mentioning that the Court, on the basis of the public participation rights, provides in particular for recognised environmental NGOs a right to challenge '*decisions adopted by the competent national authorities within the framework of Article 6(3) of Directive 92/43/EC, whether they concern a request to participate in the authorisation procedure, the assessment of the need for an environmental assessment of the implications of a plan or project for a protected site, or the appropriateness of the conclusions drawn from such an assessment as regards the risks of that plan or project for the integrity of the site*' (C-243/15, paragraph 56).

4.7.3. Making a decision on the basis of the appropriate assessment

It is for the competent national authorities, in the light of the conclusions of the appropriate assessment into the implications of a plan or project for the Natura 2000 site concerned, to approve the plan or project. This can be done **only after they have made certain that the plan or project will not adversely affect the integrity of the site**. That is the case where no reasonable scientific doubt remains as to the absence of such effects.

([59]) See also C-142/16, para 33: '*As the Court has previously held, competent national authorities may authorise an activity subject to an assessment only if they have made certain that it will not adversely affect the integrity of the protected site. This is so when there is no reasonable doubt from a scientific point of view as to the absence of such adverse effects*'.

([60]) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. This Convention was concluded in Aarhus, Denmark in June 1998. The EU is one of the signatories since 2005 under Decision 2005/370/EC http://ec.europa.eu/environment/aarhus/legislation.htm.

Where doubt remains as to the absence of adverse effects on the integrity of the site linked to the plan or project being considered, the competent authority will have to refuse authorisation (C-127/02 paragraph 57).

Furthermore, *'The authorisation criterion laid down in the second sentence of Article 6(3) of the Habitats Directive integrates the precautionary principle and makes it possible effectively to prevent adverse effects on the integrity of protected sites as the result of the plans or projects being considered. A less stringent authorisation criterion than that in question could not as effectively ensure the fulfilment of the objective of site protection intended under that provision'* (C-127/02, paragraph 58).

The onus is therefore on demonstrating the absence of adverse effects rather than their presence, reflecting the precautionary principle (C-157/96 paragraph 63). It follows that the appropriate assessment must be sufficiently detailed and reasoned to demonstrate the absence of adverse effects, in light of the best scientific knowledge in the field (C-127/02 paragraph 61).

5. **ARTICLE 6(4)**

Clarification of the Concepts of: Alternative solutions, Imperative reasons of overriding public interest, Compensatory measures, Overall Coherence, Opinion of the Commission

5.1. TEXT

'If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest'.

5.2. SCOPE

This provision forms part of the procedure of assessment and possible authorisation, by the competent national authorities, of plans and projects likely to affect a Special Area of Conservation (SAC), a Special Protection Area (SPA) or a Site of Community Importance (SCI). Two fundamental considerations arise:

— on the one hand, it deals with exceptions to the general rule in Article 6(3), according to which authorisation can only be granted to plans or projects not affecting the integrity of the site(s) concerned;

— on the other hand, its application in practice has to abide by the various steps provided for and in the sequential order established by the Directive. This has been repeatedly confirmed by the Court (C-209/02, C-239/04, C-304/05, C-560/08, C-404/09).

In its ruling in case C-304/05, paragraph 83, the Court clearly stated that: *'Article 6(4) of Directive 92/43/EC* ***can apply only after the implications of a plan or project have been studied in accordance with Article 6(3)*** *of that directive.* ***Knowledge of those implications in the light of the conservation objectives relating to the site in question is a necessary prerequisite for application of Article 6(4)*** *since, in the absence thereof, no condition for application of that derogating provision can be assessed.* ***The assessment of any imperative reasons of overriding public interest and that of the existence of less harmful alternatives require a weighing up against the damage caused to the site by the plan or project under consideration. In addition, in order to determine the nature of any compensatory measures, the damage to the site must be precisely identified'*** (see also C-399/14, C-387&388/15, C-142/16).

The application of Article 6(4) is not automatic. It is up to the authorities to decide whether the conditions for a derogation from Article 6(3) can be applied in the event that the appropriate assessment has concluded that the plan or project will adversely affect the integrity of the site concerned, or in case of doubt over the absence of such adverse effects.

The optional nature of Article 6(4) was confirmed by the Court in case C-241/08, paragraph 72: *'Thus, following the assessment of the implications undertaken pursuant to Article 6(3) of the Habitats Directive and in the event of a negative assessment,* ***the competent authorities have the choice of either refusing authorisation*** *for the plan or project* ***or of granting authorisation under Article 6(4)*** *of that directive, provided that the conditions laid down in that provision are satisfied'.*

The decision to go ahead with a plan or project must meet the conditions and requirements of Article 6(4). In particular, it must be documented that:

1. the alternative put forward for approval is the least damaging for habitats, for species and for the integrity of the Natura 2000 site(s), regardless of economic considerations, and that no other feasible alternative exists that would not adversely affect the integrity of the site(s);

2. there are imperative reasons of overriding public interest, including 'those of a social or economic nature';

3. all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected are taken.

Being an exception to Article 6(3), this provision must be interpreted strictly (C-239/04 paragraphs 25 — 39) and can only be applied to circumstances where all the conditions required by the Directive are fully satisfied. In this regard, it falls on whoever wants to make use of this exception to prove, as a prerequisite, that the aforementioned conditions are indeed met in each particular case.

Once the lack of suitable alternatives and the acceptance of imperative reasons of overriding public interest are fully ascertained and documented, all compensatory measures that are needed to ensure the protection of the overall coherence of the Natura 2000 network have to be taken. The compensatory measures adopted must always be communicated to the Commission.

Article 6(4) allows for exceptions to the general rule of Article 6(3) but its application is not automatic. It is up to the authority to decide whether a derogation from Article 6(3) can be applied. Article 6(4) must be applied in the sequential order established by the Directive — that is after all the provisions of Article 6(3) have been undertaken in a satisfactory manner.

5.3. INITIAL CONSIDERATIONS

5.3.1. Examining alternative solutions

The first obligation of the Article 6(4) derogation procedure is to examine whether there are alternative solutions to the plan or project. In this respect the Court has made it clear that this examination falls formally within the scope of Article 6 (4) and not Article 6(3) (C-441/03 paragraph 15, C-241/08 paragraph 69, C-142/16 paragraph 72).

In line with the need to prevent undesired impairment to the Natura 2000 network, the thorough revision and/or withdrawal of a proposed plan or project should be considered when negative effects on the integrity of a site have been identified. Thus, the competent authorities have to analyse and demonstrate the need of the plan or project concerned, considering the zero option too at this stage.

Subsequently, the competent authorities should examine the possibility of resorting to alternative solutions which better respect the integrity of the site in question. All feasible alternatives that meet the plan or project aims, in particular, their relative performance with regard to the site's conservation objectives, integrity and contribution to the overall coherence of the Natura 2000 network have to be analysed, taking also into account their proportionality in terms of cost. They might involve alternative locations or routes, different scales or designs of development, or alternative processes.

As concerns the economic cost of the steps that may be considered in the review of alternatives, it cannot be the sole determining factor in the choice of alternative solutions (C-399/14, paragraph 77). In other words, a project proponent cannot claim that alternatives have not been examined because they would cost too much.

In line with the principle of subsidiarity, it is for the competent national authorities to assess the relative impact of these alternative solutions on the site concerned. It should be stressed that the reference parameters for such comparisons deal with aspects concerning the conservation and the maintenance of the integrity of the site and of its ecological functions. In this phase, therefore, other assessment criteria, such as economic criteria, cannot be seen as overruling ecological criteria.

The **absence of alternatives must be demonstrated**, before proceeding with the examination of whether the plan or project is necessary for imperative reasons of public interest (Court ruling in Castro Verde case C-239/04 paragraphs 36-39).

It is for the competent national authorities to ensure that all feasible alternative solutions that meet the plan/project aims have been explored to the same level of detail. This assessment should be made against the species and habitats for which the site has been designated and the site's conservation objectives.

5.3.2. Examining imperative reasons of overriding public interest

In the absence of alternative solutions — or in the presence of solutions having even more negative environmental effects on the site(s) concerned, with regard to the above-mentioned conservation aims of the Directive — the competent authorities have to examine the existence of imperative reasons of overriding public interest, including those of a social or economic nature, which require the carrying out of the plan or project in question.

The concept of 'imperative reason of overriding public interest' is not defined in the Directive. However, Article 6(4) second subparagraph mentions human health, public safety and beneficial consequences of primary importance for the environment as examples of such reasons. As regards the *'other imperative reasons of overriding public interest'* of a social or economic nature, it is clear from the wording that only public interests, irrespective of whether they are promoted either by public or private bodies, can be balanced against the conservation aims of the Directive. Thus, projects developed by private bodies can only be considered where such public interests are served and demonstrated.

This was confirmed by the Court in its ruling in case C-182/10, paragraphs 75-78: *'An interest capable of justifying, within the meaning of Article 6(4) of the Habitats Directive, the implementation of a plan or project* ***must be both "public" and "overriding"****,* ***which means that it must be of such an importance that it can be weighed up against that directive's objective of the conservation of natural habitats and wild fauna and flora****. Works intended for the location or expansion of an undertaking satisfy those conditions only in exceptional circumstances. It* ***cannot be ruled out that*** *that is the case* ***where a project, although of a private character,*** *in fact by its very nature and* ***by its economic and social context presents an overriding public interest*** *and it has been shown that there are no alternative solutions. In the light of those criteria, the mere construction of infrastructure designed to accommodate a management centre cannot constitute an imperative reason of overriding public interest within the meaning of Article 6(4) of the Habitats Directive.'*

It may also be helpful to refer to other fields of EU law, where similar concepts appear.

The 'imperative requirement' concept was worked out by the Court as an exception to the principle of free movement of goods. Among the imperative requirements which can justify national measures restricting freedom of movement, the Court recognised public health and environmental protection, as well as the pursuit of legitimate goals of economic and social policy.

In addition, EU law also recognises the concept of 'service of general economic interest', evoked in Article 106(2) of the Treaty on the Functioning of the European Union, within the framework of the exception to the rules of competition envisaged for companies responsible for managing such services. In a Communication on services of general interest in Europe ([61]), the Commission, taking account of case law on the matter, gave the following definition of services of general economic interest: '*economic activities which deliver outcomes in the overall public good that would not be supplied (or would be supplied under different conditions in terms of quality, safety, affordability, equal treatment or universal access) by the market without public intervention*'.

Having regard to the *structure of the provision*, in the specific cases the competent national authorities have to make their approval of the plans and projects in question subject to the condition that the balance of interests between the conservation objectives of the site affected by those initiatives and the above-mentioned imperative reasons weighs in favour of the latter. This should be determined according to the following considerations:

a) There must be an **imperative reason** for implementing the plan or project;

b) the public interest must be **overriding**: it is therefore clear that not every kind of public interest of a social or economic nature is sufficient, in particular when seen against the particular weight of the interests protected by the Directive (see for instance recital 4, which refers to *'Community's natural heritage');*

c) in this context, it seems also reasonable to assume that the public interest can only be overriding if it is a **long-term interest**; short term economic interests or other interests yielding only short-term benefits for the society would not appear to be sufficient to outweigh the long-term conservation interests protected by the Directive.

As an example of what are considered imperative reasons of overriding public interest, the Court ruled, in a case concerning a large region (region of Thessaly in Greece), that: *'Irrigation and the supply of drinking water meet, in principle, those conditions and are therefore capable of justifying the implementation of a project for the diversion of water in the absence of alternative solutions'* (C-43/10, paragraph 122) ([62]).

It is reasonable to consider that the 'imperative reasons of overriding public interest, including those of social and economic nature' refer to situations where plans or projects envisaged prove to be indispensable:

— **within the framework of actions or policies aiming to protect fundamental values for the citizens' life (health, safety, the environment);**

— **within the framework of fundamental policies for the State and the society;**

— **within the framework of carrying out activities of an economic or social nature, fulfilling specific obligations of public service.**

It is for the competent authorities to weigh up the imperative reasons of overriding public interest of the plan or project against the objective of conserving natural habitats and wild fauna and flora. They can only approve the plan or project if the imperative reasons for the plan or project outweigh its impact on the conservation objectives.

To provide readers with a more precise indication of what might legitimately be considered as potential imperative reasons of overriding public interest, examples can be extracted from the Opinions delivered by the Commission in the framework of Article 6(4), second subparagraph, and the related reasoning given by the Member States: http://ec.europa.eu/environment/nature/natura2000/management/opinion_en.htm

([61]) A Quality Framework for Services of General Interest in Europe, COM(2011) 900 final 20.12.2011.
([62]) In this context, this does not mean that drinking water supply and irrigation projects can always be justified for imperative reasons of overriding public interest.

5.4. ADOPTING COMPENSATORY MEASURES

5.4.1. What is meant by 'compensatory measures' and when should they be considered?

The term *'compensatory measures'* is not defined in the Habitats Directive. Experience would suggest the following distinction between compensatory and mitigation measures:

— mitigation measures in the broader sense, are those measures that aim to minimise, or even eliminate, the negative impacts likely to arise from the implementation of a plan or project so that the site's integrity is not adversely affected. These measures are considered in the context of Article 6(3) and are an integral part of the specifications of a plan or project or conditional to its authorisation (see section 4.6.5);

— compensatory measures are independent of the project (including any associated mitigation measures). They are intended to offset the residual negative effects of the plan or project so that the overall ecological coherence of the Natura 2000 network is maintained. They can only be considered in the context of Article 6(4).

Of course, well-designed and implemented mitigation measures may limit the extent of the necessary compensatory measures by reducing the residual negative impacts that require compensation.

For instance, an extension of a colliery's underground coal mining activities into areas which so far have not been exploited will cause large scale ground subsidence, accompanied by flooding and increase of ground water levels with considerable impacts on all ecosystems in the area. To compensate for the negative effects of the project, land will be selected following ecological criteria for the creation of non-priority habitat types (beech and oak forests) through re-afforestation or transformation/improvement of existing forests. It is also considered to create and improve alluvial forests and restore or optimise riverbeds to compensate for the loss of a priority habitat type (alluvial forests with Alnion glutinoso-incanae*) and a non-priority habitat type (water courses of plain to montane levels with floating vegetation). The measure will also help counteract the negative impact of the project on the* Lampetra planeri *species.*

Compensatory measures should be additional to the actions that are normal practice under the Habitats and Birds Directives or obligations laid down in EU law. For example, the implementation of conservation measures under Article 6(1), or the proposal/designation of a new area already inventoried as being of Community importance, constitute 'normal' measures for a Member State. Thus, compensatory measures should go beyond the normal/standard measures required for the designation, protection and management of Natura 2000 sites.

Another example of compensation relates to a harbour extension leading to the destruction of a roosting site for birds and the decrease of low depth inter-tidal mudflats and reedbeds. The recreation of a high tide roosting site and of shallow mudflats, coupled with the habitat restoration of reedbeds and wet meadows through hydraulic works and with environmental measures for the agricultural use of reedbeds and meadows, would compensate for the negative impact caused by the project.

Consequently, compensatory measures are not a means to allow the implementation of plans or projects while escaping the appropriate assessment obligations under Article 6. It is clear from the sequence of Article 6(4) that **they constitute the 'last resort'**. They are to be considered only when a negative impact on the integrity of a Natura 2000 site is ascertained or it cannot be excluded, despite all other measures taken to avoid or reduce adverse effects on it, and once it is decided that the project/plan should proceed for imperative reasons of overriding public interest and in absence of alternative solutions.

The compensatory measures constitute measures specific to a project or plan, additional to the normal duties stemming from the Birds and Habitats Directives. These measures aim to offset precisely the negative impact of a plan or project on the species or habitats concerned. They constitute the 'last resort' and are used only when the other safeguards provided for by the directive are exhausted and the decision has been taken to consider, nevertheless, a project/plan having a negative impact on the integrity of a Natura 2000 site or when such an impact cannot be excluded.

5.4.2. 'Overall coherence' of the Natura 2000 network

The expression *'overall coherence'* appears in Article 6(4) in the context where a plan or project is allowed to be carried out for imperative reasons of overriding public interest and measures are to be taken to compensate for the damage.

It also appears in Article 3(1) which states that Natura 2000 is a *'coherent European ecological network of special areas of conservation'* that shall enable *'the natural habitats types and the species' habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range'*. Hence, two different criteria are considered, on the one hand the targeted species and habitats in terms of quantity and quality, and on the other hand the role of the site in ensuring the adequate geographical distribution in relation to the range.

Article 3(3) stipulates that *'where they consider it necessary, Member States shall endeavour to improve the ecological coherence of Natura 2000 by maintaining, and where appropriate developing, features of the landscape which are of major importance for wild fauna and flora, as referred to in Article 10.'*

Article 10, which deals more generally with land-use planning and development policy, stipulates that

'Member States shall endeavour, where they consider it necessary, in their land-use planning and development policies and, in particular, with a view to improving the ecological coherence of the Natura 2000 network, to encourage the features of the landscape which are of major importance for wild fauna and flora.

Such features are those which, by virtue of their linear and continuous structure (such as rivers with their banks…) or their function as stepping stones (such as ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species.'

The word 'ecological' is used both in Article 3 and Article 10 to explain the nature of the coherence. It is obvious that the expression *'overall coherence'* in Article 6(4) is used in the same meaning.

Having said this, it is clear that the importance of a site to the coherence of the network depends on the site's conservation objectives, on the number and status of the habitats and species for which it has been designated, and on its role in securing an adequate geographical distribution in relation to the range of the habitats and species concerned.

For instance, if the plan or project will damage an area of a rare habitat type which has a very restricted range, which is very hard to recreate and for which the site in question is only one of 10 sites designated for that habitat type, the compensatory measures will clearly need to be very substantial if they are to be capable of protecting the overall coherence of Natura 2000. If on the other hand, the plan or project will damage a habitat for a species (e.g. Triturus cristatus*) which has a wide range across the EU, which is relatively straightforward to recreate, and for which the site in question has only a minor role to play in its conservation, the compensatory measures will be more feasible and much less onerous.*

Article 6(4) requires that the overall coherence of Natura 2000 is protected. Thus, the Directive presumes that the 'original' network has been coherent. If the exception regime is used, the situation must be corrected so that the coherence is fully restored.

With regard to a plan or project, the compensatory measures defined to protect the overall coherence of Natura 2000 network will have to address the criteria mentioned above. This would mean that compensation should refer to the site's conservation objectives and to the habitats and species negatively affected in comparable proportions in terms of number and status. At the same time the role played by the site concerned in relation to the bio-geographical distribution has to be replaced adequately.

At this stage it would be useful to recall that under the Habitats Directive the selection of a site for the Natura 2000 network takes into account:

— the habitat(s) and species in proportions (surface areas, populations) described in the Standard Data Form;

— the location of the site within the respective biogeographical region; and

— the selection criteria established by the Habitats Committee and used by the European Topic Centre on Biological Diversity to advise the Commission to place a site on the Union list ([63]).

Competent authorities should be looking at these criteria when designing the compensatory measures for a project, and should ensure that the measures provide properties and functions comparable to those which had justified the selection of the original site.

The Birds Directive does not provide for biogeographical regions, or selection at EU level. However by analogy, it could be considered that *the overall coherence of the network* is ensured if:

— compensation fulfils the same purposes that motivated the site's classification under Article 4(1) and 4(2) of the Birds Directive;

— compensation fulfils the same function along the same migration path; and

— the compensation areas are accessible with certainty by the birds usually occurring on the site affected by the project.

For instance, if an SPA, whose specific function is to provide resting areas for migratory bird species in their way towards the north, is negatively affected by a project, the compensatory measures proposed should focus on the specific function played by the site. Therefore, compensating with measures that could recreate the necessary conditions for resting of the same species in an area outside the migratory path or within the migratory path but at some distance, would not be sufficient to ensure the overall coherence of the network. In this case, compensation should provide for suitable resting areas for the targeted species located correctly in the migratory path so that they will be realistically accessible to the birds which would have used the original site affected by the project.

In order to ensure the overall coherence of Natura 2000, the compensatory measures proposed for a project should therefore: a) address, in comparable proportions, the habitats and species negatively affected; and b) provide functions comparable to those which had justified the selection criteria for the original site, particularly regarding the adequate geographical distribution. Thus, it would not be enough for the compensatory measures to concern the same biogeographical region in the same Member State.

The distance between the original site and the place of the compensatory measures is not necessarily an obstacle as long as it does not affect the functionality of the site, its role in the geographical distribution and the reasons for its initial selection.

5.4.3. Objective and general content of compensatory measures

The compensatory measures have to ensure that a site continues contributing to the conservation at a favourable status of natural habitats types and habitats of species 'within the biogeographical region concerned', in short, ensure the maintenance of the overall coherence of the Natura 2000 network. It follows from this, that:

— as a general principle, a site should not be irreversibly affected by a project before the compensation is in place. However, there may be situations where it will not be possible to meet this condition. For example, the recreation of a forest habitat would take many years to ensure the same functions as the original habitat negatively affected by a project. Therefore, best efforts should be made to *ensure* that compensation is in place beforehand and, in the case this is not fully achievable, the competent authorities should consider extra compensation for the interim losses that would occur in the meantime;

— the compensation must be additional to the contribution to the Natura 2000 network that the Member State should have made under the Directives.

([63]) https://biodiversity.eionet.europa.eu/activities/Natura_2000/chapter6

Member States should pay particular attention when the negative effects of a plan or project are produced in rare natural habitats types or in natural habitats that need a long period of time to provide the same ecological functionality.

While designations of new Natura 2000 sites can be part of a compensation package under Article 6(4), the designations alone are insufficient without the accompanying management measures.

In terms of the Birds Directive, compensation might for example include work to improve the biological value of an area, which is or will be classified, so that the carrying capacity or the food potential are increased by a quantity corresponding to the loss on the site affected by the project. Accordingly, the re-creation of a habitat favourable to the bird species concerned is acceptable provided that the created site is available at the time when the affected site loses its natural value.

In terms of the Habitats Directive, the compensation might, similarly, consist of the re-creation of a comparable habitat or the biological improvement of a substandard habitat of the same type within an existing designated site, or even the addition to the Natura 2000 network of a new site of comparable quality to the original site. In the last of these cases one might argue that overall the project would result in a net loss for this habitat at Member State level. However, at EU level, a new site would benefit from the protection provided for in Article 6, thus contributing to the objectives of the Directive.

Compensatory measures appropriate or necessary to offset the adverse effects on a Natura 2000 site (i.e. in addition to what is already required under the Directives) may consist of:

— habitat improvement in existing sites: improving the remaining habitat on the site concerned or restoring the habitat on another Natura 2000 site, in proportion to the loss due to the plan or project;

— habitat re-creation: creating a habitat on a new or enlarged site, to be incorporated into Natura 2000; or

— as described above, and in association with other works, proposing a new site of sufficient quality under the Habitats or Birds Directive and establishing/implementing conservation measures for this new site.

The range of compensatory and accompanying measures found in current practice in the EU under the Habitats Directive also includes:

— species reintroduction;

— species recovery and reinforcement, including reinforcement of prey species;

— land purchase;

— rights acquisition;

— reserve creation (including strong restrictions in land use);

— incentives for certain economic activities that sustain key ecological functions;

— reduction in (other) threats, usually to species, either through action on a single source or through coordinated action on all threat factors (e.g. factors stemming from from space-crowded effects).

In principle, the result of compensation measures has to be achieved at the time when the damage occurs on the site concerned. Under certain circumstances where this cannot be fully achieved, overcompensation would be required for the interim losses.

5.4.4. Key elements to consider in the compensation measures

The compensatory measures under Article 6(4) must address all issues, be they technical, legal or financial, needed to offset the negative effects of a plan or project and to maintain the overall coherence of the Natura 2000 network.

The following list provides an overview of elements to consider:

— Tight coordination and cooperation between Natura 2000 authorities, assessment authorities and the proponent of the plan or project.

— Clear objectives and target values according to the site's conservation objectives.

— Description of the compensatory measures, accompanied by a scientifically robust explanation of how they will effectively compensate for the negative effects of the plan or project on the species and habitats affected in light of the site's conservation objectives, and how they will ensure that the overall coherence of Natura 2000 is protected.

— Demonstration of the technical feasibility of the measures in relation to their objectives.

— Demonstration of the legal and/or financial feasibility of the measures according to the timing required.

— Analysis of suitable locations and acquisition of the rights (purchase, lease…) to the land to be used for the compensatory measures.

— Explanation of the time-frame in which the compensation measures are expected to achieve their objectives.

— Timetable for implementation and coordination with the schedule for the plan or project implementation.

— Public information and/or consultation stages.

— Specific monitoring and reporting schedules based on progress indicators according to the objectives of compensation measures.

— The financing programme approved during the necessary period to guarantee the success of the measures.

5.5. CRITERIA FOR DESIGNING COMPENSATORY MEASURES

5.5.1. Targeted compensation

Compensatory measures under the Habitats Directive must be established according to reference conditions that are defined after the description of the integrity of the site likely to be lost or deteriorated, and according to the likely significant negative effects that would remain after mitigation.

Once the integrity of the site likely to be damaged and the actual extent of the damage have been identified, the compensatory measures must address these issues specifically, so that the elements of integrity contributing to the overall coherence of the Natura 2000 network are compensated for in the long term. Thus, these measures should be the most appropriate to the type of impact predicted and should be focused on objectives and targets clearly addressing the Natura 2000 elements affected. They must clearly refer to the structural and functional aspects of the site integrity, and the related types of habitats and species populations that are affected.

This entails that the compensatory measures must necessarily consist of ecological measures. Therefore, payments to individuals or towards special funds, regardless of whether or not these are ultimately allocated to nature conservation projects are not suitable under the Habitats Directive. In addition, any secondary or indirect measure that might be proposed to enhance the performance of the core compensatory measures must have a clear relationship to the objectives and targets of the compensatory measures themselves.

As an example, in designing compensatory measures for species, there is a need to identify:

— the species adversely affected, their total numbers and the proportion of the total population(s) that these occur in;

— the principal function(s) of the habitats that will be adversely affected that the species depend on e.g. feeding, roosting, etc.;

— the measures needed to compensate for the damage to the habitat functions and species affected so that they are restored to a state that reflects the favourable condition of the area affected.

5.5.2. Effective compensation

The feasibility and effectiveness of compensatory measures are critical to the implementation of Article 6(4) of the Habitats Directive, in keeping with the precautionary principle and good practice. In ensuring effectiveness, technical feasibility must go hand in hand with the appropriate extent, timing and location of the compensatory measures.

Compensatory measures must be feasible and operational in reinstating the ecological conditions needed to ensure the overall coherence of the Natura 2000 network. The estimated timescale and any maintenance action required to enhance performance should be known and/or foreseen right from the start before the measures are rolled out. This must be based on the best scientific knowledge available, together with specific investigations for the precise location where the compensatory measures will be implemented. Measures for which there is no reasonable guarantee of success should not be considered under Article 6(4), and the likely success of the compensation scheme should influence the final approval of the plan or project in line with the prevention principle. In addition, when it comes to deciding between different possibilities for compensation, the most effective options, with the greatest chances of success, must be chosen.

The programme of compensatory measures needs to include detailed monitoring during implementation to ensure effectiveness in the long term. Being in the framework of the Natura 2000 network, such monitoring should be coordinated with, and possibly integrated into monitoring under Article 11 of the Habitats Directive.

Measures showing in practice a low level of effectiveness in contributing to the objectives should be modified accordingly.

5.5.3. Technical feasibility

According to current knowledge, it is highly unlikely that the ecological structure and function or the related habitats and species populations can be reinstated to the status they had before the damage by a plan or project. To overcome the intrinsic difficulties standing in the way of full success for the ecological conditions, the design of compensatory measures must:

(1) follow scientific criteria and evaluation in accordance with best scientific knowledge, and

(2) take into account the specific requirements of the ecological features to be reinstated (e.g. soil, humidity, exposure, existing threats and other conditions critical to the success of reinstatement).

The aspects critical to technical feasibility will determine the suitability of the location of compensatory measures (spatial feasibility), the appropriate timing and their required extent.

In addition, the choice of particular measures and their design must follow the existing guidance for each particular practice, i.e. habitat creation, habitat restoration, population reinforcement, species reintroduction, or any other measure considered in the compensatory programme.

5.5.4. Extent of compensation

The extent required for the compensatory measures to be effective is directly related to the quantitative and qualitative aspects inherent to the elements of integrity (i.e. including structure and functionality and their role in the overall coherence of the Natura 2000 network) likely to be impaired and to the estimated effectiveness of the measures.

Consequently, compensation ratios are best set on a case-by-case basis and must be initially determined in the light of the information from the Article 6(3) appropriate assessment and ensure ecological functionality. The ratios may then be redefined according to the results observed when monitoring the effectiveness, and the final decision on the proportion of compensation must be justified.

There is wide acknowledgement that ratios should be generally well above 1:1. Thus, compensation ratios of 1:1 or below should only be considered when it is shown that with such an extent the measures will be fully effective in reinstating structure and functionality within a short period of time (e.g. without compromising the preservation of the habitats or the populations of key species likely to be affected by the plan or project nor their conservation objectives).

5.5.5. Location of compensatory measures

Compensatory measures should be located in areas where they will be most highest effective in maintaining the overall coherence of the Natura 2000 network. This entails a set of pre- conditions that any compensatory measure should meet:

— The area selected for compensation must be within the same biogeographical region (for sites designated under the Habitats Directive) or within the same range, migration route or wintering area for bird species (i.e. sites designated under the Birds Directive) in the Member State concerned. Furthermore, the area should provide functions comparable to those which had justified selecting the original site, particularly regarding adequate geographical distribution.

— The area selected for compensation must have — or must be able to develop — the specific features attached to the ecological structure and functions, and required by the habitats and species populations. This relates to qualitative aspects like the uniqueness of the assets impaired and requires that local ecological conditions be taken into account.

— Compensatory measures must not jeopardize the preservation of the integrity of any other Natura 2000 site contributing to the overall coherence of the network. When carried out on existing Natura 2000 site(s), the measures must be consistent with the conservation objectives of the site(s) and go above the conservation measures established under Article 6(1). Management plans will be a useful reference to steer sensible compensation measures.

In addition, there is general agreement that the local conditions necessary to reinstate the ecological assets at stake are found as close as possible to the area affected by the plan or project. Therefore, locating compensation within or near the Natura 2000 site concerned where suitable conditions for the measures to be successful seems the most preferred option. However, this is not always possible and a range of priorities should therefore be applied when searching locations that meet the requirements of the Habitats Directive:

1) Compensation within the Natura 2000 site, provided the necessary elements to ensure ecological coherence and network functionality exist within the site.

2) Compensation outside the Natura 2000 site concerned, but within a common topographical or landscape unit, provided the same contribution to the ecological structure and/or network function is feasible. The new location can be in another designated Natura 2000 site or a non-designated location. In the latter case, the location must be designated as a Natura 2000 site and be subject to all the requirements of the Nature Directives.

3) Compensation outside the Natura 2000 site, in a different topographical or landscape unit. The new location can be another designated Natura 2000 site. If compensation takes place on a non-designated location, this location must then be designated as a Natura 2000 site and be subject to all the requirements of the Nature Directives.

New designations forming part of compensation measures must be submitted to the Commission before the measures are implemented and before the carrying out of the project but after its authorisation. The new designations should be made available to the Commission through the established channels and procedures as happens with SCI lists and SPA classifications, and qualify for designation according to relevant criteria under the Habitats and Birds directives respectively.

Best cooperation and coordination shall be ensured by Member States when dealing with the location of compensatory measures in the frame of transboundary projects.

5.5.6. Timing of compensation

Timing the compensatory measures calls for a case-by-case approach. The schedule adopted must provide continuity in the ecological processes essential for maintaining the structure and functions that contribute to the overall coherence of the Natura 2000 network. This requires a tight coordination between the implementation of the plan or project and the implementation of the compensatory measures, and relies on issues such as the time required for habitats to develop and/or for species populations to recover or establish in a given area.

In addition, other factors and processes must also be considered:

— A site must not be irreversibly affected before compensation is in place.

— The result of compensation should be operational at the time the damage occurs on the site concerned. Under certain circumstances where this cannot be fully achieved, overcompensation would be required for the interim losses.

— Time lags might only be admissible when it is ascertained that they would not compromise the objective of ‘no net losses’ to the overall coherence of the Natura 2000 network.

— Time lags must not be permitted, for example, if they lead to population losses for any species protected on the site under Annex II to the Habitats Directive or Annex I to the Birds Directive; priority species listed in Annex II to the Habitats Directive merit special attention.

— It may be possible to scale down in time compensatory measures, depending whether the significant negative effects are expected to arise in the short, medium or long term.

Specific measures to outweigh interim losses that would occur until the conservation objectives are met may be advisable. All technical, legal or financial provisions needed to implement the compensatory measures must be completed before the plan or project implementation starts, so as to prevent any unforeseen delays that may hinder the effectiveness of the measures.

5.5.7. Long term implementation

Compensatory measures require that a sound legal and financial basis for long-term implementation and for the protection, monitoring and maintenance of the sites be secured before impacts on habitats and/or species occur. This could involve:

— Providing for temporary protection, even if the SCI/SPA status is only granted later.

— Applying binding enforcement tools at the national level to ensure the full implementation and effectiveness of compensation (e.g. linked to the EIA Directive, if applicable, or to the Environmental Liability Directive; or linking the plan or project approval to the robustness of the relevant provisions for implementing compensatory measures).

— Applying the necessary legal means in case land or rights purchase is deemed essential for the effective implementation of the measures in line with good practice (e.g. standard procedures for compulsory purchase on grounds of nature conservation).

— Establishing monitoring programmes to ensure that the compensatory measures reach their objective and are maintained over the longer term, and if not, that corrective measures are taken to address this, including objectives, responsible bodies and resource needs, indicators, and requirements for reporting to the Commission. This could be best performed by independent bodies specifically set up for the purpose and in close coordination and cooperation with the Natura 2000 authorities.

5.6. WHO BEARS THE COST OF THE COMPENSATION MEASURES?

It appears logical that, in line with the 'polluter pays' principle, the promoter of a plan or project bears the cost of the compensatory measures. It may include it in the total budget submitted to the public authorities in the event of co-financing. In that regard, EU funds could, for example, co-finance the compensatory measures for transport infrastructure that is part of the TEN (Trans-European Networks) and financed from these funds, provided such financial assistance complies with the objectives, rules and procedures applicable to the EU fund in question.

5.7. INFORMING THE COMMISSION OF THE COMPENSATORY MEASURES

The competent national authorities have to inform the Commission of the compensatory measures adopted. Article 6(4) does not specify the form nor the purpose of this information. However, in order to facilitate the process the Commission has prepared a standard form ([64]) for supplying it with information under Article 6(4). In any case, it is not the Commission's role either to suggest compensatory measures or to validate them scientifically.

The information should enable the Commission to assess the manner in which the adverse effects are compensated for, so that the elements of integrity contributing to the overall coherence of the Natura 2000 network are maintained in the long term. While the national authorities are only specifically obliged to communicate the compensatory measures adopted, it may also prove necessary to provide certain elements relating to the studied alternative solutions and to the imperative reasons for overriding public interest which have led to the approval of the plan or project, insofar as these elements have affected the choice of the compensatory measures.

The obligation to inform the Commission of the compensatory measures adopted — which is set out in the second sentence of the first subparagraph of Article 6(4) — has to be fully transposed into national law. If that provision, laying down adequate detailed rules concerning information on the compensatory measures adopted, is absent from national law, '*it is not possible to ensure that the second sentence of the first subparagraph of Article 6(4) has full effect and attains its objective*' (C-324/01 paragraph 21).

— *When in the planning process must the Commission be informed about compensatory measures and who is responsible for this information?*

In order to allow the Commission to request additional information on the measures taken or to take actions in case it considers that the legal requirements of the Directive have not been applied correctly, compensatory measures should be submitted to the Commission before they are implemented — and, indeed, before the implementation of the plan or project concerned but after its authorisation. Compensatory measures should therefore be submitted to the Commission as soon as they have been adopted to allow the Commission, within its competence as Guardian of the Treaties, to assess whether the provisions of the Directive are being applied correctly.

As those responsible for the maintenance of the overall coherence of, and updating the information on, the Natura 2000 network, the authorities in charge of Natura 2000 in each Member State must play an important role in this process. The information should be submitted by the national authority via the Permanent Representation of each Member State, as happens with the process for adopting site lists.

([64]) Available at: http://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm

The information about compensatory measures must enable the Commission to assess the manner in which the adverse effects are offset, so that the elements of integrity contributing to the overall coherence of the Natura 2000 network are maintained in the long term. However, it is not the Commission's role to suggest compensatory measures.

5.8. WHAT HAPPENS WITH SITES HOSTING PRIORITY HABITATS AND/OR SPECIES?

The second subparagraph of Article 6(4) provides for a special treatment whenever the plan or project concerns a site hosting priority habitats and/or species and will affect these priority habitats and/or species. In such cases carrying out the plan or project could be justified only if the evoked imperative reasons of overriding public interest concern human health and public safety or overriding beneficial consequences for the environment, or if, before granting approval to the plan or project, the Commission expresses an opinion on the envisaged initiative.

In other words, damage to the sites would only be accepted as overruling the fulfilment of the objectives of the directive when the specific imperative reasons mentioned above occur or, alternatively, after the additional procedural safeguard of an independent appraisal by the Commission.

This provision raises a number of questions relating to:

— the identification of sites concerned;

— the interpretation of the concepts of human health, public safety and the primary beneficial consequences for the environment; and

— the procedure for adopting the Commission's opinion and the consequences arising from this opinion.

5.8.1. The sites concerned

Article 6(4), second subparagraph, applies when carrying out the plan or project will affect a site hosting priority habitats and/or species. In this regard, it would be reasonable to consider that a plan or project:

a) not affecting, in any manner, a priority habitat/species; or

b) affecting a habitat/species which has not been taken into account in the selection of a site ('non-significant presence' in the Standard Data Form)

should not de facto justify making a site subject to this second subparagraph.

Since the Birds Directive does not rank any species as priority, compensatory measures aiming to offset effects on SPAs' bird populations would never require the Commission's opinion.

Article 6(4), second subparagraph may be understood as applying to all sites hosting priority habitats and/or species, when these habitats and species are affected.

5.8.2. The concepts of 'human health', 'public safety' and 'primary beneficial consequences for the environment'

Human health, public safety and primary beneficial consequences for the environment constitute the most important imperative reasons of overriding public interest. However, like the concept of 'imperative reasons of overriding public interest' these three categories are not expressly defined.

As mentioned in section 5.3.2, EU law refers to public health and public safety as reasons justifying the adoption of restrictive national measures on the free movement of goods, workers and services, as well as on the right of establishment. In addition, the protection of people's health is one of the fundamental aims of EU environment policy. In the same vein, the primary beneficial consequences for the environment constitute a category which must be included in these fundamental aims of environment policy.

In line with the subsidiarity principle, it is for the competent national authorities to check whether such a situation exists. Of course, any such situation is likely to be examined by the Commission under its work to monitor the correct application of EU law.

As regards the concept of 'public safety', it is useful to refer to the judgement of the Court in case C-57/89 (*'Leybucht Dykes'*). That judgement preceded the adoption of Directive 92/43/EEC and hence Article 6. However, it is still relevant, not least because the Court's approach influenced the drafting of Article 6. At issue were construction works to reinforce dykes on the North Sea at Leybucht. These works involved reducing the area of an SPA. As a matter of general principle, the Court stated that the grounds for such a reduction must correspond to a general interest superior to the general interest represented by the ecological objective of the relevant directive. In this specific case the Court confirmed that the danger of flooding and the protection of the coast constituted sufficiently serious reasons to justify the dyke works and the strengthening of coastal structures as long as the measures were kept to a strict minimum.

In a subsequent case (C-43/10 paragraph 128) the Court held that: *'Where such a project adversely affects the integrity of a SCI hosting a priority natural habitat type and/or a priority species, its implementation may, in principle, be justified by grounds linked with the supply of drinking water. In some circumstances, it might be justified by reference to beneficial consequences of primary importance which irrigation has for the environment. On the other hand, irrigation cannot, in principle, qualify as a consideration relating to human health or public safety, justifying the implementation of a project such as that at issue in the main proceedings.'*

In case C-504/14 paragraph 77 the Court stated that *'…the construction of a platform designed to facilitate the movement of disabled persons may, in principle, be regarded as having been carried out for imperative reasons of overriding public interest relating to human health…'.*

The national authorities may authorize a plan or project only if the proof of the existence of the afore mentioned reasons of overriding public interest is given and within the limits within which the plan or project in question proves necessary for the fulfilment of the public interest in question.

5.8.3. The adoption of Commission's opinion and its consequences

In the case of imperative reasons of overriding public interest other that human health, safety and environmental benefits, the prior opinion of the Commission is a necessary procedural step. Article 6(4), second subparagraph, does not specify a procedure or the specific contents of such an opinion ([65]). We must therefore refer once again to the economy and to the aims pursued by the provision in question.

The opinion has to cover the assessment of the ecological values which are likely to be affected by the plan or project, the relevance of the invoked imperative reasons and the balance of these two opposed interests, as well as an evaluation of the compensatory measures. That assessment involves both a scientific and economic appraisal as well as an examination of the necessity and proportionality of the plan or project with regard to the invoked imperative reason.

The Commission can assess whether the implementation of the plan or project meets the requirements of EU law and, if necessary, initiate the appropriate legal action.

While the Directive does not include a specific deadline for adopting its opinion, the Commission will make all necessary efforts to carry out the assessments and issue its opinion as speedily as possible.

The Commission, in delivering its opinion, should check the balance between the ecological values affected and the invoked imperative reasons, and evaluate the compensation measures.

([65]) The relevant standard form (at: http://ec.europa.eu/environment/nature/natura2000/management/ guidance_en.htm) covers also the request for a Commission opinion under Article 6(4), second subparagraph.

ANNEX I

Comparison of procedures under Appropriate Assessment (AA), EIA and SEA

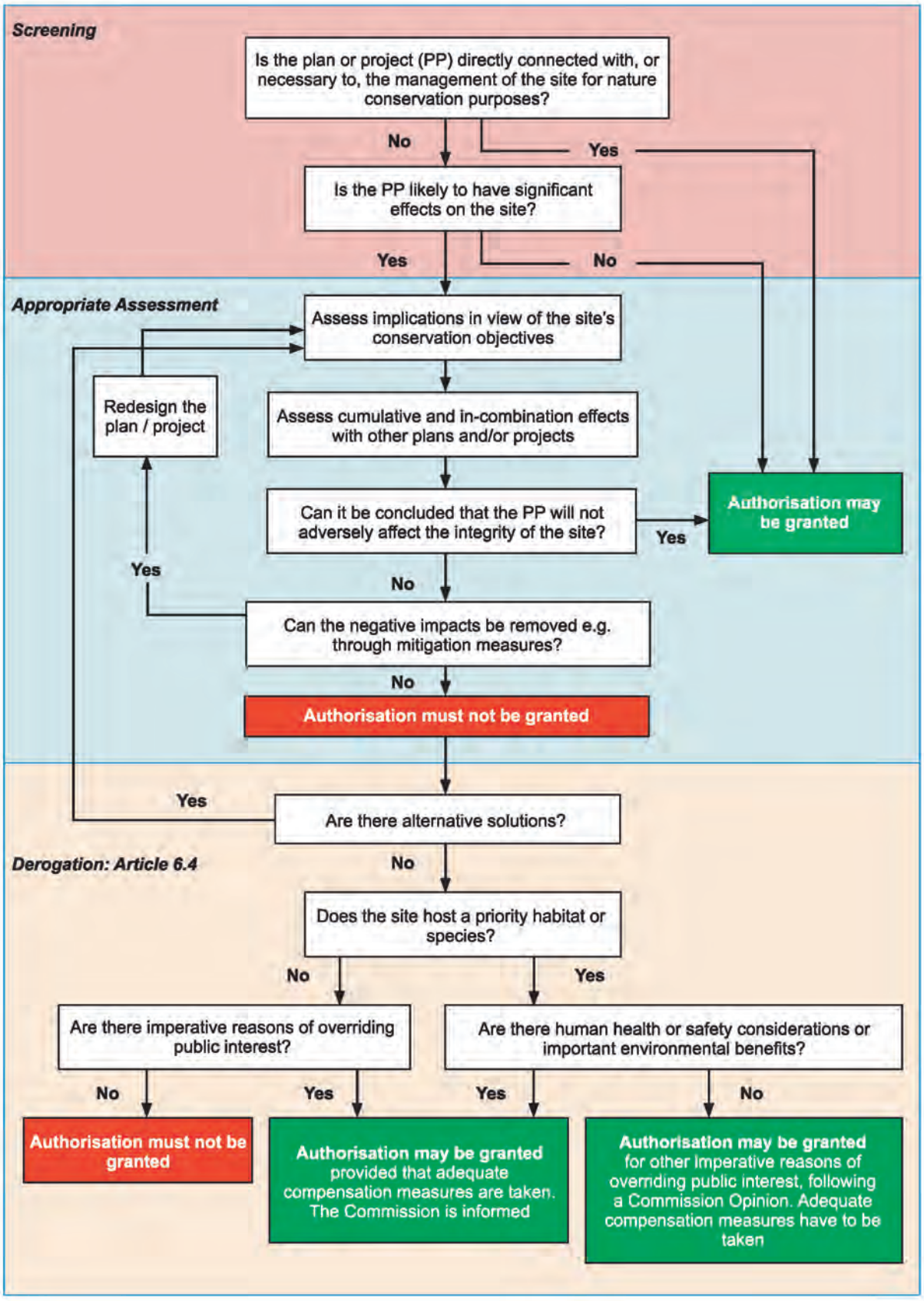
	AA	EIA	SEA
Which types of developments are targeted?	Any **plan** or **project** which — either individually or in combination with other plans/projects — is likely to have a significant effect on a Natura 2000 site (excluding plans or projects directly connected to the conservation management of the site).	All **projects** listed in Annex I. For projects listed in Annex II the need for an EIA shall be determined on a case-by-case basis or through thresholds or criteria set by Member States (taking into account criteria in Annex III).	All **plans** and **programmes**, or amendments thereof, which: (a) are subject to preparation and/or adoption by an authority and national, regional and local level; (b) are required by legislative, regulatory or administrative provisions; (c) are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and set the framework for future development consent of projects listed in Annexes I and II to the EIA Directive; or which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC.
What impacts need to be assessed relevant to nature?	The assessment should be made in view of the **site's conservation objectives** (which relate to the species/habitat types for which the site was designated). The impacts should be assessed to determine whether or not they will adversely affect the integrity of the site concerned.	Direct and indirect, secondary, cumulative, transboundary, short, medium and long-term, permanent and temporary, positive and negative significant effects on population and human health; biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC; land, soil, water, air and climate and landscape; material assets, cultural heritage and the landscape; and the interaction between these factors.	Likely significant effects on the environment, including on issues such as biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between the above factors.

	AA	EIA	SEA
Who is responsible for the Assessment?	It is the responsibility of the competent authority to ensure that the AA is carried out. In that context the developer may be required to carry out all necessary studies and to provide all necessary information to the competent authority in order to enable it to take a fully informed decision. In so doing the competent authority may also collect relevant information from other sources as appropriate.	The developer supplies the necessary information to be duly taken into account, together with the results of consultations, by the competent authority issuing the development consent.	The SEA Directive leaves Member States with a wide margin of discretion in assigning the responsible authorities for SEA. These could either be the authorities in charge of making a plan/programme, the environmental authorities, who are consulted *ex lege* on the scope and level of detail of the information that must be included in the environmental report, as well as the draft plan/programme and the accompanying environmental report; or the authorities specifically entrusted with running the SEA procedure.
Are the public/other authorities consulted?	Compulsory — consultation of the general public before the authorisation of the plan of project Member States shall ensure that the public concerned, in particular environmental NGOs, can participate early and effectively, already at screening, in an authorisation procedure following an appropriate assessment. This involves in particular the possibility to submit any comments, information, analyses or opinions that are considered relevant to the proposed activity.	Compulsory — consultation before adoption of the development proposal. Member States shall take the measures necessary to ensure that the authorities likely to be concerned by the project (including environmental, local and regional authorities) are given an opportunity to express their opinion on the request for development consent. The same principles apply for consulting the public concerned. In case of likely significant effects on the environment in another Member State, the relevant authorities and the public in that Member State must be consulted.	Compulsory — consultation before adoption of the plan or programme. Member States shall consult the authorities, which by reason of their specific environmental responsibilities are likely to be concerned by the environmental effects of implementing a plan/programme. The public, including the public affected or likely to be affected or having an interest in, the decision-making, including NGOs, should be consulted. The authorities and the public shall be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or programme and the accompanying environmental report before the adoption of the plan or programme or its submission to the legislative procedure. In case of likely significant effects on the environment in another Member State, the relevant authorities and the public in that Member State must be consulted.

	AA	EIA	SEA
How binding are the outcomes of the Assessment?	**Binding**. The competent authorities may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site.	The results of the consultations and the information gathered as part of the EIA ***shall be duly taken into account*** in the development consent procedure. The decision to grant development consent shall incorporate at least the reasoned conclusion (i.e. the EIA decision) and any environmental conditions attached to the decision.	The environmental report and the opinions expressed ***shall be taken into account*** during the preparation of the plan or programme and before its adoption or submission to the legislative procedure.

ANNEX II

Consideration of plans and projects affecting Natura 2000 sites



ANNEX III

Form for submission of information to the European Commission according to Article 6(4)

Member State: Date:

Information to the European Commission according to Article 6 of the Habitats Directive (92/43/EEC)

Documentation sent for: ☐ information (Article 6(4).1) ☐ opinion (Article 6(4).2)

Competent national authority:

Address:

Contact person:

Tel., fax, email:

Does the notification contain sensitive information? If yes, please specify and justify

1. PLAN OR PROJECT

Name of the plan/project:

Promoted by:

Summary of the plan or project having an effect on the site:

Description and location of the elements and actions of the project having potential impacts and identification of the areas affected (include maps):

2. ASSESSMENT OF NEGATIVE EFFECTS [1]

Name and code of Natura 2000 site(s) affected:

This site is:

☐ an SPA under the Birds directive

☐ an SCI/SAC under the Habitats directive

☐ hosting a priority habitat/species

☐ priority habitats/species are affected

Site's conservation objectives and key features contributing to the site integrity:

Habitats and species that will be adversely affected (e.g. indicate their representativity, if applicable their conservation status according to Article 17 on national and biogeographic level and degree of isolation, their roles and functions in the site concerned).

Importance of the site for the habitats and species that will be affected (e.g. explain the role of the site within the national and biogeographical region and in the coherence of the Natura 2000 network).

Description of adverse effects expected (loss, deterioration, disturbance, direct and indirect effects, etc.); extent of the effects (habitat surface and species numbers or areas of occurrence affected by the project); importance and magnitude (e.g. considering the affected area or population in relation to the total area and population in the site, and possibly in the country) and location (include maps).

Potential cumulative impacts and other impacts likely to arise as a result of the combined action of the plan or project under assessment and other plans or projects.

Mitigation measures included in the project (indicate how these will be implemented and how they will avoid or reduce negative impacts on the site).

[1] *NB.*: focus on the adverse effects expected on the habitats and species for which the site has been proposed for the Natura 2000 network. Include all the information that may be relevant in each case, depending on the impacts identified for the species and habitats affected.

3. ALTERNATIVE SOLUTIONS

Identification and description of possible alternative solutions, including the zero option (indicate how they were identified, procedure, methods)

Evaluation of alternatives considered and justification of the alternative chosen (reasons why the competent national authorities have concluded that there is absence of alternative solutions)

4. IMPERATIVE REASONS OF OVERRIDING PUBLIC INTEREST

Reasons to carry out this plan or project in spite of its negative effects

☐ Imperative reasons of overriding public interest, including those of a social or economic nature (in the absence of priority habitats/species)

☐ human health

☐ public safety

☐ beneficial consequences of primary importance for the environment

☐ other imperative reasons of overriding public interest

Description and justification of the reasons and why they are overriding [1]:

[1] A different level of detail may be required depending on whether the notification is submitted for information or for opinion.

5. COMPENSATORY MEASURES [1]

Objectives, target features (habitats and species) and ecological processes/functions to be compensated (reasons, why this measures are suitable to compensate the negative effects)

Extent of the compensatory measures (surface areas, population numbers)

Identification and location of compensation areas (including maps)

Former status and conditions in the compensation areas (existing habitats and their status, type of land, existing land uses, etc.)

Expected results and explanation of how the proposed measures will compensate the adverse effects on the integrity of the site and will allow preserving the coherence of the Natura 2000 network

Time schedule for the implementation of the compensatory measures (including long-term implementation), indicating when the expected results will be achieved.

Methods and techniques proposed for the implementation of the compensatory measures, evaluation of their feasibility and possible effectiveness

Costs and financing of the proposed compensatory measures

Responsibilities for implementation of compensatory measures

Monitoring of the compensatory measures, where envisaged (e.g. if there are uncertainties concerning the effectiveness of the measures), assessment of results and follow-up

[1] A different level of detail may be required depending on whether the notification is submitted for information or for opinion.



Ministry of Housing,
Communities &
Local Government

National Planning Policy Framework

1045



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or complete the form at http://forms.communities.gov.uk/

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1. Introduction

1. The National Planning Policy Framework sets out the Government's planning policies for England and how these should be applied[1]. It provides a framework within which locally-prepared plans for housing and other development can be produced.

2. Planning law requires that applications for planning permission be determined in accordance with the development plan[2], unless material considerations indicate otherwise[3]. The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.

3. The Framework should be read as a whole (including its footnotes and annexes). General references to planning policies in the Framework should be applied in a way that is appropriate to the type of plan being produced, taking into account policy on plan-making in chapter 3.

4. The Framework should be read in conjunction with the Government's planning policy for traveller sites, and its planning policy for waste. When preparing plans or making decisions on applications for these types of development, regard should also be had to the policies in this Framework, where relevant.

5. The Framework does not contain specific policies for nationally significant infrastructure projects. These are determined in accordance with the decision-making framework in the Planning Act 2008 (as amended) and relevant national policy statements for major infrastructure, as well as any other matters that are relevant (which may include the National Planning Policy Framework). National policy statements form part of the overall framework of national planning policy, and may be a material consideration in preparing plans and making decisions on planning applications.

6. Other statements of government policy may be material when preparing plans or deciding applications, such as relevant Written Ministerial Statements and endorsed recommendations of the National Infrastructure Commission.

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[1] This document replaces the previous version of the National Planning Policy Framework published in February 2019.
[2] This includes local and neighbourhood plans that have been brought into force and any spatial development strategies produced by combined authorities or elected Mayors (see Glossary).
[3] Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

2. Achieving sustainable development

7. The purpose of the planning system is to contribute to the achievement of sustainable development. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs[4]. At a similarly high level, members of the United Nations – including the United Kingdom – have agreed to pursue the 17 Global Goals for Sustainable Development in the period to 2030. These address social progress, economic well-being and environmental protection[5].

8. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):

   a) **an economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;

   b) **a social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and

   c) **an environmental objective** – to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

9. These objectives should be delivered through the preparation and implementation of plans and the application of the policies in this Framework; they are not criteria against which every decision can or should be judged. Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area.

10. So that sustainable development is pursued in a positive way, at the heart of the Framework is a **presumption in favour of sustainable development** (paragraph 11).

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[4] Resolution 42/187 of the United Nations General Assembly.
[5] Transforming our World: the 2030 Agenda for Sustainable Development.

The presumption in favour of sustainable development

11. Plans and decisions should apply a presumption in favour of sustainable development.

For **plan-making** this means that:

a) all plans should promote a sustainable pattern of development that seeks to: meet the development needs of their area; align growth and infrastructure; improve the environment; mitigate climate change (including by making effective use of land in urban areas) and adapt to its effects;

b) strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas[6], unless:

   i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area[7]; or

   ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

For **decision-taking** this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date[8], granting permission unless:

   i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed[7]; or

   ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

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[6] As established through statements of common ground (see paragraph 27).

[7] The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 181) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 68); and areas at risk of flooding or coastal change.

[8] This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.

12. The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

13. The application of the presumption has implications for the way communities engage in neighbourhood planning. Neighbourhood plans should support the delivery of strategic policies contained in local plans or spatial development strategies; and should shape and direct development that is outside of these strategic policies.

14. In situations where the presumption (at paragraph 11d) applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided all of the following apply[9]:

    a) the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made;

    b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement;

    c) the local planning authority has at least a three year supply of deliverable housing sites (against its five year housing supply requirement, including the appropriate buffer as set out in paragraph 74); and

    d) the local planning authority's housing delivery was at least 45% of that required[10] over the previous three years.

[9] Transitional arrangements are set out in Annex 1.
[10] Assessed against the Housing Delivery Test, from November 2018 onwards.

3. Plan-making

15. The planning system should be genuinely plan-led. Succinct and up-to-date plans should provide a positive vision for the future of each area; a framework for addressing housing needs and other economic, social and environmental priorities; and a platform for local people to shape their surroundings.

16. Plans should:

a) be prepared with the objective of contributing to the achievement of sustainable development[11];

b) be prepared positively, in a way that is aspirational but deliverable;

c) be shaped by early, proportionate and effective engagement between plan-makers and communities, local organisations, businesses, infrastructure providers and operators and statutory consultees;

d) contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals;

e) be accessible through the use of digital tools to assist public involvement and policy presentation; and

f) serve a clear purpose, avoiding unnecessary duplication of policies that apply to a particular area (including policies in this Framework, where relevant).

The plan-making framework

17. The development plan must include strategic policies to address each local planning authority's priorities for the development and use of land in its area[12]. These strategic policies can be produced in different ways, depending on the issues and opportunities facing each area. They can be contained in:

a) joint or individual local plans, produced by authorities working together or independently (and which may also contain non-strategic policies); and/or

b) a spatial development strategy produced by an elected Mayor or combined authority, where plan-making powers have been conferred.

18. Policies to address non-strategic matters should be included in local plans that contain both strategic and non-strategic policies, and/or in local or neighbourhood plans that contain just non-strategic policies.

19. The development plan for an area comprises the combination of strategic and non-strategic policies which are in force at a particular time.

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[11] This is a legal requirement of local planning authorities exercising their plan-making functions (section 39(2) of the Planning and Compulsory Purchase Act 2004).
[12] Section 19(1B-1E) of the Planning and Compulsory Purchase Act 2004.

Strategic policies

20. Strategic policies should set out an overall strategy for the pattern, scale and design quality of places, and make sufficient provision[13] for:

    a) housing (including affordable housing), employment, retail, leisure and other commercial development;

    b) infrastructure for transport, telecommunications, security, waste management, water supply, wastewater, flood risk and coastal change management, and the provision of minerals and energy (including heat);

    c) community facilities (such as health, education and cultural infrastructure); and

    d) conservation and enhancement of the natural, built and historic environment, including landscapes and green infrastructure, and planning measures to address climate change mitigation and adaptation.

21. Plans should make explicit which policies are strategic policies[14]. These should be limited to those necessary to address the strategic priorities of the area (and any relevant cross-boundary issues), to provide a clear starting point for any non-strategic policies that are needed. Strategic policies should not extend to detailed matters that are more appropriately dealt with through neighbourhood plans or other non-strategic policies.

22. Strategic policies should look ahead over a minimum 15 year period from adoption[15], to anticipate and respond to long-term requirements and opportunities, such as those arising from major improvements in infrastructure. Where larger scale developments such as new settlements or significant extensions to existing villages and towns form part of the strategy for the area, policies should be set within a vision that looks further ahead (at least 30 years), to take into account the likely timescale for delivery.[16]

23. Broad locations for development should be indicated on a key diagram, and land-use designations and allocations identified on a policies map. Strategic policies should provide a clear strategy for bringing sufficient land forward, and at a sufficient rate, to address objectively assessed needs over the plan period, in line with the presumption in favour of sustainable development. This should include planning for and allocating sufficient sites to deliver the strategic priorities of the area (except insofar as these needs can be demonstrated to be met more appropriately through other mechanisms, such as brownfield registers or non-strategic policies)[17].

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[13] In line with the presumption in favour of sustainable development.
[14] Where a single local plan is prepared the non-strategic policies should be clearly distinguished from the strategic policies.
[15] Except in relation to town centre development, as set out in chapter 7.
[16] Transitional arrangements are set out in Annex 1.
[17] For spatial development strategies, allocations, land use designations and a policies map are needed only where the power to make allocations has been conferred.

Maintaining effective cooperation

24. Local planning authorities and county councils (in two-tier areas) are under a duty to cooperate with each other, and with other prescribed bodies, on strategic matters that cross administrative boundaries.

25. Strategic policy-making authorities should collaborate to identify the relevant strategic matters which they need to address in their plans. They should also engage with their local communities and relevant bodies including Local Enterprise Partnerships, Local Nature Partnerships, the Marine Management Organisation, county councils, infrastructure providers, elected Mayors and combined authorities (in cases where Mayors or combined authorities do not have plan-making powers).

26. Effective and on-going joint working between strategic policy-making authorities and relevant bodies is integral to the production of a positively prepared and justified strategy. In particular, joint working should help to determine where additional infrastructure is necessary, and whether development needs that cannot be met wholly within a particular plan area could be met elsewhere.

27. In order to demonstrate effective and on-going joint working, strategic policy-making authorities should prepare and maintain one or more statements of common ground, documenting the cross-boundary matters being addressed and progress in cooperating to address these. These should be produced using the approach set out in national planning guidance, and be made publicly available throughout the plan-making process to provide transparency.

Non-strategic policies

28. Non-strategic policies should be used by local planning authorities and communities to set out more detailed policies for specific areas, neighbourhoods or types of development. This can include allocating sites, the provision of infrastructure and community facilities at a local level, establishing design principles, conserving and enhancing the natural and historic environment and setting out other development management policies.

29. Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan. Neighbourhood plans should not promote less development than set out in the strategic policies for the area, or undermine those strategic policies[18].

30. Once a neighbourhood plan has been brought into force, the policies it contains take precedence over existing non-strategic policies in a local plan covering the neighbourhood area, where they are in conflict; unless they are superseded by strategic or non-strategic policies that are adopted subsequently.

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[18] Neighbourhood plans must be in general conformity with the strategic policies contained in any development plan that covers their area.

Preparing and reviewing plans

31. The preparation and review of all policies should be underpinned by relevant and up-to-date evidence. This should be adequate and proportionate, focused tightly on supporting and justifying the policies concerned, and take into account relevant market signals.

32. Local plans and spatial development strategies should be informed throughout their preparation by a sustainability appraisal that meets the relevant legal requirements[19]. This should demonstrate how the plan has addressed relevant economic, social and environmental objectives (including opportunities for net gains). Significant adverse impacts on these objectives should be avoided and, wherever possible, alternative options which reduce or eliminate such impacts should be pursued. Where significant adverse impacts are unavoidable, suitable mitigation measures should be proposed (or, where this is not possible, compensatory measures should be considered).

33. Policies in local plans and spatial development strategies should be reviewed to assess whether they need updating at least once every five years, and should then be updated as necessary[20]. Reviews should be completed no later than five years from the adoption date of a plan, and should take into account changing circumstances affecting the area, or any relevant changes in national policy. Relevant strategic policies will need updating at least once every five years if their applicable local housing need figure has changed significantly; and they are likely to require earlier review if local housing need is expected to change significantly in the near future.

Development contributions

34. Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure). Such policies should not undermine the deliverability of the plan.

Examining plans

35. Local plans and spatial development strategies are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. Plans are ‘sound’ if they are:

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[19] The reference to relevant legal requirements refers to Strategic Environmental Assessment. Neighbourhood plans may require Strategic Environmental Assessment, but only where there are potentially significant environmental effects.

[20] Reviews at least every five years are a legal requirement for all local plans (Regulation 10A of the Town and Country Planning (Local Planning) (England) Regulations 2012).

a) **Positively prepared** – providing a strategy which, as a minimum, seeks to meet the area's objectively assessed needs[21]; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;

b) **Justified** – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;

c) **Effective** – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and

d) **Consistent with national policy** – enabling the delivery of sustainable development in accordance with the policies in this Framework and other statements of national planning policy, where relevant.

36. These tests of soundness will be applied to non-strategic policies[22] in a proportionate way, taking into account the extent to which they are consistent with relevant strategic policies for the area.

37. Neighbourhood plans must meet certain 'basic conditions' and other legal requirements[23] before they can come into force. These are tested through an independent examination before the neighbourhood plan may proceed to referendum.

[21] Where this relates to housing, such needs should be assessed using a clear and justified method, as set out in paragraph 61 of this Framework.
[22] Where these are contained in a local plan.
[23] As set out in paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990 (as amended).

4. Decision-making

38. Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.

Pre-application engagement and front-loading

39. Early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. Good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community.

40. Local planning authorities have a key role to play in encouraging other parties to take maximum advantage of the pre-application stage. They cannot require that a developer engages with them before submitting a planning application, but they should encourage take-up of any pre-application services they offer. They should also, where they think this would be beneficial, encourage any applicants who are not already required to do so by law to engage with the local community and, where relevant, with statutory and non-statutory consultees, before submitting their applications.

41. The more issues that can be resolved at pre-application stage, including the need to deliver improvements in infrastructure and affordable housing, the greater the benefits. For their role in the planning system to be effective and positive, statutory planning consultees will need to take the same early, pro-active approach, and provide advice in a timely manner throughout the development process. This assists local planning authorities in issuing timely decisions, helping to ensure that applicants do not experience unnecessary delays and costs.

42. The participation of other consenting bodies in pre-application discussions should enable early consideration of all the fundamental issues relating to whether a particular development will be acceptable in principle, even where other consents relating to how a development is built or operated are needed at a later stage. Wherever possible, parallel processing of other consents should be encouraged to help speed up the process and resolve any issues as early as possible.

43. The right information is crucial to good decision-making, particularly where formal assessments are required (such as Environmental Impact Assessment, Habitats Regulations assessment and flood risk assessment). To avoid delay, applicants should discuss what information is needed with the local planning authority and expert bodies as early as possible.

44. Local planning authorities should publish a list of their information requirements for applications for planning permission. These requirements should be kept to the minimum needed to make decisions, and should be reviewed at least every two

years. Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question.

45. Local planning authorities should consult the appropriate bodies when considering applications for the siting of, or changes to, major hazard sites, installations or pipelines, or for development around them.

46. Applicants and local planning authorities should consider the potential for voluntary planning performance agreements, where this might achieve a faster and more effective application process. Planning performance agreements are likely to be needed for applications that are particularly large or complex to determine.

Determining applications

47. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing.

48. Local planning authorities may give weight to relevant policies in emerging plans according to:

a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);

b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and

c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)[24].

49. However, in the context of the Framework – and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than in the limited circumstances where both:

a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and

b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

[24] During the transitional period for emerging plans submitted for examination (set out in paragraph 220), consistency should be tested against the original Framework published in March 2012.

50. Refusal of planning permission on grounds of prematurity will seldom be justified where a draft plan has yet to be submitted for examination; or – in the case of a neighbourhood plan – before the end of the local planning authority publicity period on the draft plan. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how granting permission for the development concerned would prejudice the outcome of the plan-making process.

Tailoring planning controls to local circumstances

51. Local planning authorities are encouraged to use Local Development Orders to set the planning framework for particular areas or categories of development where the impacts would be acceptable, and in particular where this would promote economic, social or environmental gains for the area.

52. Communities can use Neighbourhood Development Orders and Community Right to Build Orders to grant planning permission. These require the support of the local community through a referendum. Local planning authorities should take a proactive and positive approach to such proposals, working collaboratively with community organisations to resolve any issues before draft orders are submitted for examination.

53. The use of Article 4 directions to remove national permitted development rights should:

- where they relate to change from non-residential use to residential use, be limited to situations where an Article 4 direction is necessary to avoid wholly unacceptable adverse impacts (this could include the loss of the essential core of a primary shopping area which would seriously undermine its vitality and viability, but would be very unlikely to extend to the whole of a town centre)
- in other cases, be limited to situations where an Article 4 direction is necessary to protect local amenity or the well-being of the area (this could include the use of Article 4 directions to require planning permission for the demolition of local facilities)
- in all cases, be based on robust evidence, and apply to the smallest geographical area possible.

54. Similarly, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.

Planning conditions and obligations

55. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

56. Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision-making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification[25].

57. Planning obligations must only be sought where they meet all of the following tests[26]:

a) necessary to make the development acceptable in planning terms;

b) directly related to the development; and

c) fairly and reasonably related in scale and kind to the development.

58. Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.

Enforcement

59. Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.

[25] Sections 100ZA(4-6) of the Town and Country Planning Act 1990 will require the applicant's written agreement to the terms of a pre-commencement condition, unless prescribed circumstances apply.
[26] Set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

5. Delivering a sufficient supply of homes

60. To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.

61. To determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance – unless exceptional circumstances justify an alternative approach which also reflects current and future demographic trends and market signals. In addition to the local housing need figure, any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for.

62. Within this context, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing, families with children, older people, students, people with disabilities, service families, travellers[27], people who rent their homes and people wishing to commission or build their own homes[28]).

63. Where a need for affordable housing is identified, planning policies should specify the type of affordable housing required[29], and expect it to be met on-site unless:

    a) off-site provision or an appropriate financial contribution in lieu can be robustly justified; and

    b) the agreed approach contributes to the objective of creating mixed and balanced communities.

64. Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). To support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount[30].

65. Where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the total number of homes to

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[27] Planning Policy for Traveller Sites sets out how travellers' housing needs should be assessed for those covered by the definition in Annex 1 of that document.
[28] Under section 1 of the Self Build and Custom Housebuilding Act 2015, local authorities are required to keep a register of those seeking to acquire serviced plots in the area for their own self-build and custom house building. They are also subject to duties under sections 2 and 2A of the Act to have regard to this and to give enough suitable development permissions to meet the identified demand. Self and custom-build properties could provide market or affordable housing.
[29] Applying the definition in Annex 2 to this Framework.
[30] Equivalent to the existing gross floorspace of the existing buildings. This does not apply to vacant buildings which have been abandoned.

be available for affordable home ownership[31], unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups. Exemptions to this 10% requirement should also be made where the site or proposed development:

a) provides solely for Build to Rent homes;

b) provides specialist accommodation for a group of people with specific needs (such as purpose-built accommodation for the elderly or students);

c) is proposed to be developed by people who wish to build or commission their own homes; or

d) is exclusively for affordable housing, an entry-level exception site or a rural exception site.

66. Strategic policy-making authorities should establish a housing requirement figure for their whole area, which shows the extent to which their identified housing need (and any needs that cannot be met within neighbouring areas) can be met over the plan period. Within this overall requirement, strategic policies should also set out a housing requirement for designated neighbourhood areas which reflects the overall strategy for the pattern and scale of development and any relevant allocations[32]. Once the strategic policies have been adopted, these figures should not need re-testing at the neighbourhood plan examination, unless there has been a significant change in circumstances that affects the requirement.

67. Where it is not possible to provide a requirement figure for a neighbourhood area[33], the local planning authority should provide an indicative figure, if requested to do so by the neighbourhood planning body. This figure should take into account factors such as the latest evidence of local housing need, the population of the neighbourhood area and the most recently available planning strategy of the local planning authority.

Identifying land for homes

68. Strategic policy-making authorities should have a clear understanding of the land available in their area through the preparation of a strategic housing land availability assessment. From this, planning policies should identify a sufficient supply and mix of sites, taking into account their availability, suitability and likely economic viability. Planning policies should identify a supply of:

a) specific, deliverable sites for years one to five of the plan period[34]; and

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[31] As part of the overall affordable housing contribution from the site.
[32] Except where a Mayoral, combined authority or high-level joint plan is being prepared as a framework for strategic policies at the individual local authority level; in which case it may be most appropriate for the local authority plans to provide the requirement figure.
[33] Because a neighbourhood area is designated at a late stage in the strategic policy-making process, or after strategic policies have been adopted; or in instances where strategic policies for housing are out of date.
[34] With an appropriate buffer, as set out in paragraph 74. See Glossary for definitions of deliverable and developable.

b) specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15 of the plan.

69. Small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. To promote the development of a good mix of sites local planning authorities should:

a) identify, through the development plan and brownfield registers, land to accommodate at least 10% of their housing requirement on sites no larger than one hectare; unless it can be shown, through the preparation of relevant plan policies, that there are strong reasons why this 10% target cannot be achieved;

b) use tools such as area-wide design assessments and Local Development Orders to help bring small and medium sized sites forward;

c) support the development of windfall sites through their policies and decisions – giving great weight to the benefits of using suitable sites within existing settlements for homes; and

d) work with developers to encourage the sub-division of large sites where this could help to speed up the delivery of homes.

70. Neighbourhood planning groups should also give particular consideration to the opportunities for allocating small and medium-sized sites (of a size consistent with paragraph 69a) suitable for housing in their area.

71. Where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. Any allowance should be realistic having regard to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends. Plans should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.

72. Local planning authorities should support the development of entry-level exception sites, suitable for first time buyers (or those looking to rent their first home), unless the need for such homes is already being met within the authority's area. These sites should be on land which is not already allocated for housing and should:

a) comprise of entry-level homes that offer one or more types of affordable housing as defined in Annex 2 of this Framework; and

b) be adjacent to existing settlements, proportionate in size to them[35], not compromise the protection given to areas or assets of particular importance in this Framework[36], and comply with any local design policies and standards.

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[35] Entry-level exception sites should not be larger than one hectare in size or exceed 5% of the size of the existing settlement.

[36] i.e. the areas referred to in footnote 7. Entry-level exception sites should not be permitted in National Parks (or within the Broads Authority), Areas of Outstanding Natural Beauty or land designated as Green Belt.

73. The supply of large numbers of new homes can often be best achieved through planning for larger scale development, such as new settlements or significant extensions to existing villages and towns, provided they are well located and designed, and supported by the necessary infrastructure and facilities (including a genuine choice of transport modes). Working with the support of their communities, and with other authorities if appropriate, strategic policy-making authorities should identify suitable locations for such development where this can help to meet identified needs in a sustainable way. In doing so, they should:

a) consider the opportunities presented by existing or planned investment in infrastructure, the area's economic potential and the scope for net environmental gains;

b) ensure that their size and location will support a sustainable community, with sufficient access to services and employment opportunities within the development itself (without expecting an unrealistic level of self-containment), or in larger towns to which there is good access;

c) set clear expectations for the quality of the places to be created and how this can be maintained (such as by following Garden City principles); and ensure that appropriate tools such as masterplans and design guides or codes are used to secure a variety of well-designed and beautiful homes to meet the needs of different groups in the community;

d) make a realistic assessment of likely rates of delivery, given the lead-in times for large scale sites, and identify opportunities for supporting rapid implementation (such as through joint ventures or locally-led development corporations)[37]; and

e) consider whether it is appropriate to establish Green Belt around or adjoining new developments of significant size.

Maintaining supply and delivery

74. Strategic policies should include a trajectory illustrating the expected rate of housing delivery over the plan period, and all plans should consider whether it is appropriate to set out the anticipated rate of development for specific sites. Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies[38], or against their local housing need where the strategic policies are more than five years old[39].

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[37] The delivery of large scale developments may need to extend beyond an individual plan period, and the associated infrastructure requirements may not be capable of being identified fully at the outset. Anticipated rates of delivery and infrastructure requirements should, therefore, be kept under review and reflected as policies are updated.

[38] For the avoidance of doubt, a five year supply of deliverable sites for travellers – as defined in Annex 1 to Planning Policy for Traveller Sites – should be assessed separately, in line with the policy in that document.

[39] Unless these strategic policies have been reviewed and found not to require updating. Where local housing need is used as the basis for assessing whether a five year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance.

The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:

a) 5% to ensure choice and competition in the market for land; or

b) 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently adopted plan[40], to account for any fluctuations in the market during that year; or

c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply[41].

75. A five year supply of deliverable housing sites, with the appropriate buffer, can be demonstrated where it has been established in a recently adopted plan, or in a subsequent annual position statement which:

a) has been produced through engagement with developers and others who have an impact on delivery, and been considered by the Secretary of State; and

b) incorporates the recommendation of the Secretary of State, where the position on specific sites could not be agreed during the engagement process.

76. To maintain the supply of housing, local planning authorities should monitor progress in building out sites which have permission. Where the Housing Delivery Test indicates that delivery has fallen below 95% of the local planning authority's housing requirement over the previous three years, the authority should prepare an action plan in line with national planning guidance, to assess the causes of under-delivery and identify actions to increase delivery in future years.

77. To help ensure that proposals for housing development are implemented in a timely manner, local planning authorities should consider imposing a planning condition providing that development must begin within a timescale shorter than the relevant default period, where this would expedite the development without threatening its deliverability or viability. For major development involving the provision of housing, local planning authorities should also assess why any earlier grant of planning permission for a similar development on the same site did not start.

Rural housing

78. In rural areas, planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs. Local planning authorities should support opportunities to bring forward rural exception sites that will provide affordable housing to meet identified local needs, and consider whether allowing some market housing on these sites would help to facilitate this.

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[40] For the purposes of paragraphs 74b and 75 a plan adopted between 1 May and 31 October will be considered 'recently adopted' until 31 October of the following year; and a plan adopted between 1 November and 30 April will be considered recently adopted until 31 October in the same year.
[41] This will be measured against the Housing Delivery Test, where this indicates that delivery was below 85% of the housing requirement.

79. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby.

80. Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:

a) there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;

b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;

c) the development would re-use redundant or disused buildings and enhance its immediate setting;

d) the development would involve the subdivision of an existing residential building; or

e) the design is of exceptional quality, in that it:

- is truly outstanding, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and
- would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.

6. Building a strong, competitive economy

81. Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future. This is particularly important where Britain can be a global leader in driving innovation[42], and in areas with high levels of productivity, which should be able to capitalise on their performance and potential.

82. Planning policies should:

a) set out a clear economic vision and strategy which positively and proactively encourages sustainable economic growth, having regard to Local Industrial Strategies and other local policies for economic development and regeneration;

b) set criteria, or identify strategic sites, for local and inward investment to match the strategy and to meet anticipated needs over the plan period;

c) seek to address potential barriers to investment, such as inadequate infrastructure, services or housing, or a poor environment; and

d) be flexible enough to accommodate needs not anticipated in the plan, allow for new and flexible working practices (such as live-work accommodation), and to enable a rapid response to changes in economic circumstances.

83. Planning policies and decisions should recognise and address the specific locational requirements of different sectors. This includes making provision for clusters or networks of knowledge and data-driven, creative or high technology industries; and for storage and distribution operations at a variety of scales and in suitably accessible locations.

Supporting a prosperous rural economy

84. Planning policies and decisions should enable:

a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings;

b) the development and diversification of agricultural and other land-based rural businesses;

[42] The Government's Industrial Strategy sets out a vision to drive productivity improvements across the UK, identifies a number of Grand Challenges facing all nations, and sets out a delivery programme to make the UK a leader in four of these: artificial intelligence and big data; clean growth; future mobility; and catering for an ageing society. HM Government (2017) *Industrial Strategy: Building a Britain fit for the future.*

c) sustainable rural tourism and leisure developments which respect the character of the countryside; and

d) the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship.

85. Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.

7. Ensuring the vitality of town centres

86. Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. Planning policies should:

a) define a network and hierarchy of town centres and promote their long-term vitality and viability – by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses (including housing) and reflects their distinctive characters;

b) define the extent of town centres and primary shopping areas, and make clear the range of uses permitted in such locations, as part of a positive strategy for the future of each centre;

c) retain and enhance existing markets and, where appropriate, re-introduce or create new ones;

d) allocate a range of suitable sites in town centres to meet the scale and type of development likely to be needed, looking at least ten years ahead. Meeting anticipated needs for retail, leisure, office and other main town centre uses over this period should not be compromised by limited site availability, so town centre boundaries should be kept under review where necessary;

e) where suitable and viable town centre sites are not available for main town centre uses, allocate appropriate edge of centre sites that are well connected to the town centre. If sufficient edge of centre sites cannot be identified, policies should explain how identified needs can be met in other accessible locations that are well connected to the town centre; and

f) recognise that residential development often plays an important role in ensuring the vitality of centres and encourage residential development on appropriate sites.

87. Local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.

88. When considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.

89. This sequential approach should not be applied to applications for small scale rural offices or other small scale rural development.

90. When assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500m^2 of gross floorspace). This should include assessment of:

a) the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and

b) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme).

91. Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the considerations in paragraph 90, it should be refused.

8. Promoting healthy and safe communities

92. Planning policies and decisions should aim to achieve healthy, inclusive and safe places which:

a) promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other – for example through mixed-use developments, strong neighbourhood centres, street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods, and active street frontages;

b) are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion – for example through the use of attractive, well-designed, clear and legible pedestrian and cycle routes, and high quality public space, which encourage the active and continual use of public areas; and

c) enable and support healthy lifestyles, especially where this would address identified local health and well-being needs – for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling.

93. To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:

a) plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments;

b) take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community;

c) guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs;

d) ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community; and

e) ensure an integrated approach to considering the location of housing, economic uses and community facilities and services.

94. Planning policies and decisions should consider the social, economic and environmental benefits of estate regeneration. Local planning authorities should use their planning powers to help deliver estate regeneration to a high standard.

95. It is important that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education. They should:

a) give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications; and

b) work with school promoters, delivery partners and statutory bodies to identify and resolve key planning issues before applications are submitted.

96. To ensure faster delivery of other public service infrastructure such as further education colleges, hospitals and criminal justice accommodation, local planning authorities should also work proactively and positively with promoters, delivery partners and statutory bodies to plan for required facilities and resolve key planning issues before applications are submitted.

97. Planning policies and decisions should promote public safety and take into account wider security and defence requirements by:

a) anticipating and addressing possible malicious threats and natural hazards, especially in locations where large numbers of people are expected to congregate[43]. Policies for relevant areas (such as town centre and regeneration frameworks), and the layout and design of developments, should be informed by the most up-to-date information available from the police and other agencies about the nature of potential threats and their implications. This includes appropriate and proportionate steps that can be taken to reduce vulnerability, increase resilience and ensure public safety and security; and

b) recognising and supporting development required for operational defence and security purposes, and ensuring that operational sites are not affected adversely by the impact of other development proposed in the area.

Open space and recreation

98. Access to a network of high quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities, and can deliver wider benefits for nature and support efforts to address climate change. Planning policies should be based on robust and up-to-date assessments of the need for open space, sport and recreation facilities (including quantitative or qualitative deficits or surpluses) and opportunities for new provision. Information gained from the assessments should be used to determine what open space, sport and recreational provision is needed, which plans should then seek to accommodate.

99. Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or

[43] This includes transport hubs, night-time economy venues, cinemas and theatres, sports stadia and arenas, shopping centres, health and education establishments, places of worship, hotels and restaurants, visitor attractions and commercial centres.

b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or

c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.

100. Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails.

101. The designation of land as Local Green Space through local and neighbourhood plans allows communities to identify and protect green areas of particular importance to them. Designating land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or updated, and be capable of enduring beyond the end of the plan period.

102. The Local Green Space designation should only be used where the green space is:

a) in reasonably close proximity to the community it serves;

b) demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and

c) local in character and is not an extensive tract of land.

103. Policies for managing development within a Local Green Space should be consistent with those for Green Belts.

9. Promoting sustainable transport

104. Transport issues should be considered from the earliest stages of plan-making and development proposals, so that:

a) the potential impacts of development on transport networks can be addressed;

b) opportunities from existing or proposed transport infrastructure, and changing transport technology and usage, are realised – for example in relation to the scale, location or density of development that can be accommodated;

c) opportunities to promote walking, cycling and public transport use are identified and pursued;

d) the environmental impacts of traffic and transport infrastructure can be identified, assessed and taken into account – including appropriate opportunities for avoiding and mitigating any adverse effects, and for net environmental gains; and

e) patterns of movement, streets, parking and other transport considerations are integral to the design of schemes, and contribute to making high quality places.

105. The planning system should actively manage patterns of growth in support of these objectives. Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.

106. Planning policies should:

a) support an appropriate mix of uses across an area, and within larger scale sites, to minimise the number and length of journeys needed for employment, shopping, leisure, education and other activities;

b) be prepared with the active involvement of local highways authorities, other transport infrastructure providers and operators and neighbouring councils, so that strategies and investments for supporting sustainable transport and development patterns are aligned;

c) identify and protect, where there is robust evidence, sites and routes which could be critical in developing infrastructure to widen transport choice and realise opportunities for large scale development;

d) provide for attractive and well-designed walking and cycling networks with supporting facilities such as secure cycle parking (drawing on Local Cycling and Walking Infrastructure Plans);

e) provide for any large scale transport facilities that need to be located in the area[44], and the infrastructure and wider development required to support their operation, expansion and contribution to the wider economy. In doing so they should take into account whether such development is likely to be a nationally significant infrastructure project and any relevant national policy statements; and

f) recognise the importance of maintaining a national network of general aviation airfields, and their need to adapt and change over time – taking into account their economic value in serving business, leisure, training and emergency service needs, and the Government's General Aviation Strategy[45].

107. If setting local parking standards for residential and non-residential development, policies should take into account:

a) the accessibility of the development;

b) the type, mix and use of development;

c) the availability of and opportunities for public transport;

d) local car ownership levels; and

e) the need to ensure an adequate provision of spaces for charging plug-in and other ultra-low emission vehicles.

108. Maximum parking standards for residential and non-residential development should only be set where there is a clear and compelling justification that they are necessary for managing the local road network, or for optimising the density of development in city and town centres and other locations that are well served by public transport (in accordance with chapter 11 of this Framework). In town centres, local authorities should seek to improve the quality of parking so that it is convenient, safe and secure, alongside measures to promote accessibility for pedestrians and cyclists.

109. Planning policies and decisions should recognise the importance of providing adequate overnight lorry parking facilities, taking into account any local shortages, to reduce the risk of parking in locations that lack proper facilities or could cause a nuisance. Proposals for new or expanded distribution centres should make provision for sufficient lorry parking to cater for their anticipated use.

Considering development proposals

110. In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:

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[44] Policies for large scale facilities should, where necessary, be developed through collaboration between strategic policy-making authorities and other relevant bodies. Examples of such facilities include ports, airports, interchanges for rail freight, public transport projects and roadside services. The primary function of roadside services should be to support the safety and welfare of the road user (and most such proposals are unlikely to be nationally significant infrastructure projects).

[45] Department for Transport (2015) *General Aviation Strategy.*

a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;

b) safe and suitable access to the site can be achieved for all users;

c) the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance, including the National Design Guide and the National Model Design Code [46]; and

d) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

111. Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

112. Within this context, applications for development should:

a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use;

b) address the needs of people with disabilities and reduced mobility in relation to all modes of transport;

c) create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards;

d) allow for the efficient delivery of goods, and access by service and emergency vehicles; and

e) be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.

113. All developments that will generate significant amounts of movement should be required to provide a travel plan, and the application should be supported by a transport statement or transport assessment so that the likely impacts of the proposal can be assessed.

[46] Policies and decisions should not make use of or reflect the former Design Bulletin 32, which was withdrawn in 2007.

10. Supporting high quality communications

114. Advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G) and full fibre broadband connections. Policies should set out how high quality digital infrastructure, providing access to services from a range of providers, is expected to be delivered and upgraded over time; and should prioritise full fibre connections to existing and new developments (as these connections will, in almost all cases, provide the optimum solution).

115. The number of radio and electronic communications masts, and the sites for such installations, should be kept to a minimum consistent with the needs of consumers, the efficient operation of the network and providing reasonable capacity for future expansion. Use of existing masts, buildings and other structures for new electronic communications capability (including wireless) should be encouraged. Where new sites are required (such as for new 5G networks, or for connected transport and smart city applications), equipment should be sympathetically designed and camouflaged where appropriate.

116. Local planning authorities should not impose a ban on new electronic communications development in certain areas, impose blanket Article 4 directions over a wide area or a wide range of electronic communications development, or insist on minimum distances between new electronic communications development and existing development. They should ensure that:

    a) they have evidence to demonstrate that electronic communications infrastructure is not expected to cause significant and irremediable interference with other electrical equipment, air traffic services or instrumentation operated in the national interest; and

    b) they have considered the possibility of the construction of new buildings or other structures interfering with broadcast and electronic communications services.

117. Applications for electronic communications development (including applications for prior approval under the General Permitted Development Order) should be supported by the necessary evidence to justify the proposed development. This should include:

    a) the outcome of consultations with organisations with an interest in the proposed development, in particular with the relevant body where a mast is to be installed near a school or college, or within a statutory safeguarding zone surrounding an aerodrome, technical site or military explosives storage area; and

    b) for an addition to an existing mast or base station, a statement that self-certifies that the cumulative exposure, when operational, will not exceed International Commission guidelines on non-ionising radiation protection; or

    c) for a new mast or base station, evidence that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure

and a statement that self-certifies that, when operational, International Commission guidelines will be met.

118. Local planning authorities must determine applications on planning grounds only. They should not seek to prevent competition between different operators, question the need for an electronic communications system, or set health safeguards different from the International Commission guidelines for public exposure.

11. Making effective use of land

119. Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land[47].

120. Planning policies and decisions should:

a) encourage multiple benefits from both urban and rural land, including through mixed use schemes and taking opportunities to achieve net environmental gains – such as developments that would enable new habitat creation or improve public access to the countryside;

b) recognise that some undeveloped land can perform many functions, such as for wildlife, recreation, flood risk mitigation, cooling/shading, carbon storage or food production;

c) give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land;

d) promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively (for example converting space above shops, and building on or above service yards, car parks, lock-ups and railway infrastructure)[48]; and

e) support opportunities to use the airspace above existing residential and commercial premises for new homes. In particular, they should allow upward extensions where the development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene, is well-designed (including complying with any local design policies and standards), and can maintain safe access and egress for occupiers.

121. Local planning authorities, and other plan-making bodies, should take a proactive role in identifying and helping to bring forward land that may be suitable for meeting development needs, including suitable sites on brownfield registers or held in public ownership, using the full range of powers available to them. This should include identifying opportunities to facilitate land assembly, supported where necessary by compulsory purchase powers, where this can help to bring more land forward for meeting development needs and/or secure better development outcomes.

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[47] Except where this would conflict with other policies in this Framework, including causing harm to designated sites of importance for biodiversity.

[48] As part of this approach, plans and decisions should support efforts to identify and bring back into residential use empty homes and other buildings, supported by the use of compulsory purchase powers where appropriate.

122. Planning policies and decisions need to reflect changes in the demand for land. They should be informed by regular reviews of both the land allocated for development in plans, and of land availability. Where the local planning authority considers there to be no reasonable prospect of an application coming forward for the use allocated in a plan:

a) it should, as part of plan updates, reallocate the land for a more deliverable use that can help to address identified needs (or, if appropriate, deallocate a site which is undeveloped); and

b) in the interim, prior to updating the plan, applications for alternative uses on the land should be supported, where the proposed use would contribute to meeting an unmet need for development in the area.

123. Local planning authorities should also take a positive approach to applications for alternative uses of land which is currently developed but not allocated for a specific purpose in plans, where this would help to meet identified development needs. In particular, they should support proposals to:

a) use retail and employment land for homes in areas of high housing demand, provided this would not undermine key economic sectors or sites or the vitality and viability of town centres, and would be compatible with other policies in this Framework; and

b) make more effective use of sites that provide community services such as schools and hospitals, provided this maintains or improves the quality of service provision and access to open space.

Achieving appropriate densities

124. Planning policies and decisions should support development that makes efficient use of land, taking into account:

a) the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it;

b) local market conditions and viability;

c) the availability and capacity of infrastructure and services – both existing and proposed – as well as their potential for further improvement and the scope to promote sustainable travel modes that limit future car use;

d) the desirability of maintaining an area's prevailing character and setting (including residential gardens), or of promoting regeneration and change; and

e) the importance of securing well-designed, attractive and healthy places.

125. Area-based character assessments, design guides and codes and masterplans can be used to help ensure that land is used efficiently while also creating beautiful and sustainable places. Where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies

and decisions avoid homes being built at low densities, and ensure that developments make optimal use of the potential of each site. In these circumstances:

a) plans should contain policies to optimise the use of land in their area and meet as much of the identified need for housing as possible. This will be tested robustly at examination, and should include the use of minimum density standards for city and town centres and other locations that are well served by public transport. These standards should seek a significant uplift in the average density of residential development within these areas, unless it can be shown that there are strong reasons why this would be inappropriate;

b) the use of minimum density standards should also be considered for other parts of the plan area. It may be appropriate to set out a range of densities that reflect the accessibility and potential of different areas, rather than one broad density range; and

c) local planning authorities should refuse applications which they consider fail to make efficient use of land, taking into account the policies in this Framework. In this context, when considering applications for housing, authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards).

12. Achieving well-designed places

126. The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations, and how these will be tested, is essential for achieving this. So too is effective engagement between applicants, communities, local planning authorities and other interests throughout the process.

127. Plans should, at the most appropriate level, set out a clear design vision and expectations, so that applicants have as much certainty as possible about what is likely to be acceptable. Design policies should be developed with local communities so they reflect local aspirations, and are grounded in an understanding and evaluation of each area's defining characteristics. Neighbourhood planning groups can play an important role in identifying the special qualities of each area and explaining how this should be reflected in development, both through their own plans and by engaging in the production of design policy, guidance and codes by local planning authorities and developers.

128. To provide maximum clarity about design expectations at an early stage, all local planning authorities should prepare design guides or codes consistent with the principles set out in the National Design Guide and National Model Design Code, and which reflect local character and design preferences. Design guides and codes provide a local framework for creating beautiful and distinctive places with a consistent and high quality standard of design. Their geographic coverage, level of detail and degree of prescription should be tailored to the circumstances and scale of change in each place, and should allow a suitable degree of variety.

129. Design guides and codes can be prepared at an area-wide, neighbourhood or site-specific scale, and to carry weight in decision-making should be produced either as part of a plan or as supplementary planning documents. Landowners and developers may contribute to these exercises, but may also choose to prepare design codes in support of a planning application for sites they wish to develop. Whoever prepares them, all guides and codes should be based on effective community engagement and reflect local aspirations for the development of their area, taking into account the guidance contained in the National Design Guide and the National Model Design Code. These national documents should be used to guide decisions on applications in the absence of locally produced design guides or design codes.

130. Planning policies and decisions should ensure that developments:

a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;

b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;

c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);

d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;

e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and

f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users[49]; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

131. Trees make an important contribution to the character and quality of urban environments, and can also help mitigate and adapt to climate change. Planning policies and decisions should ensure that new streets are tree-lined[50], that opportunities are taken to incorporate trees elsewhere in developments (such as parks and community orchards), that appropriate measures are in place to secure the long-term maintenance of newly-planted trees, and that existing trees are retained wherever possible. Applicants and local planning authorities should work with highways officers and tree officers to ensure that the right trees are planted in the right places, and solutions are found that are compatible with highways standards and the needs of different users.

132. Design quality should be considered throughout the evolution and assessment of individual proposals. Early discussion between applicants, the local planning authority and local community about the design and style of emerging schemes is important for clarifying expectations and reconciling local and commercial interests. Applicants should work closely with those affected by their proposals to evolve designs that take account of the views of the community. Applications that can demonstrate early, proactive and effective engagement with the community should be looked on more favourably than those that cannot.

133. Local planning authorities should ensure that they have access to, and make appropriate use of, tools and processes for assessing and improving the design of development. These include workshops to engage the local community, design advice and review arrangements, and assessment frameworks such as Building for a Healthy Life[51]. These are of most benefit if used as early as possible in the evolution of schemes, and are particularly important for significant projects such as large scale housing and mixed use developments. In assessing applications, local

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[49] Planning policies for housing should make use of the Government's optional technical standards for accessible and adaptable housing, where this would address an identified need for such properties. Policies may also make use of the nationally described space standard, where the need for an internal space standard can be justified.

[50] Unless, in specific cases, there are clear, justifiable and compelling reasons why this would be inappropriate.

[51] Birkbeck D and Kruczkowski S et al (2020) *Building for a Healthy Life*

planning authorities should have regard to the outcome from these processes, including any recommendations made by design review panels.

134. Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design[52], taking into account any local design guidance and supplementary planning documents such as design guides and codes. Conversely, significant weight should be given to:

a) development which reflects local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes; and/or
b) outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.

135. Local planning authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used).

136. The quality and character of places can suffer when advertisements are poorly sited and designed. A separate consent process within the planning system controls the display of advertisements, which should be operated in a way which is simple, efficient and effective. Advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts.

[52] Contained in the National Design Guide and National Model Design Code.

13. Protecting Green Belt land

137. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

138. Green Belt serves five purposes:

a) to check the unrestricted sprawl of large built-up areas;

b) to prevent neighbouring towns merging into one another;

c) to assist in safeguarding the countryside from encroachment;

d) to preserve the setting and special character of historic towns; and

e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

139. The general extent of Green Belts across the country is already established. New Green Belts should only be established in exceptional circumstances, for example when planning for larger scale development such as new settlements or major urban extensions. Any proposals for new Green Belts should be set out in strategic policies, which should:

a) demonstrate why normal planning and development management policies would not be adequate;

b) set out whether any major changes in circumstances have made the adoption of this exceptional measure necessary;

c) show what the consequences of the proposal would be for sustainable development;

d) demonstrate the necessity for the Green Belt and its consistency with strategic policies for adjoining areas; and

e) show how the Green Belt would meet the other objectives of the Framework.

140. Once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified, through the preparation or updating of plans. Strategic policies should establish the need for any changes to Green Belt boundaries, having regard to their intended permanence in the long term, so they can endure beyond the plan period. Where a need for changes to Green Belt boundaries has been established through strategic policies, detailed amendments to those boundaries may be made through non-strategic policies, including neighbourhood plans.

141. Before concluding that exceptional circumstances exist to justify changes to Green Belt boundaries, the strategic policy-making authority should be able to demonstrate that it has examined fully all other reasonable options for meeting its identified need for development. This will be assessed through the examination of its strategic policies, which will take into account the preceding paragraph, and whether the strategy:

a) makes as much use as possible of suitable brownfield sites and underutilised land;

b) optimises the density of development in line with the policies in chapter 11 of this Framework, including whether policies promote a significant uplift in minimum density standards in town and city centres and other locations well served by public transport; and

c) has been informed by discussions with neighbouring authorities about whether they could accommodate some of the identified need for development, as demonstrated through the statement of common ground.

142. When drawing up or reviewing Green Belt boundaries, the need to promote sustainable patterns of development should be taken into account. Strategic policy-making authorities should consider the consequences for sustainable development of channelling development towards urban areas inside the Green Belt boundary, towards towns and villages inset within the Green Belt or towards locations beyond the outer Green Belt boundary. Where it has been concluded that it is necessary to release Green Belt land for development, plans should give first consideration to land which has been previously-developed and/or is well-served by public transport. They should also set out ways in which the impact of removing land from the Green Belt can be offset through compensatory improvements to the environmental quality and accessibility of remaining Green Belt land.

143. When defining Green Belt boundaries, plans should:

a) ensure consistency with the development plan's strategy for meeting identified requirements for sustainable development;

b) not include land which it is unnecessary to keep permanently open;

c) where necessary, identify areas of safeguarded land between the urban area and the Green Belt, in order to meet longer-term development needs stretching well beyond the plan period;

d) make clear that the safeguarded land is not allocated for development at the present time. Planning permission for the permanent development of safeguarded land should only be granted following an update to a plan which proposes the development;

e) be able to demonstrate that Green Belt boundaries will not need to be altered at the end of the plan period; and

f) define boundaries clearly, using physical features that are readily recognisable and likely to be permanent.

144. If it is necessary to restrict development in a village primarily because of the important contribution which the open character of the village makes to the openness of the Green Belt, the village should be included in the Green Belt. If, however, the character of the village needs to be protected for other reasons, other means should be used, such as conservation area or normal development management policies, and the village should be excluded from the Green Belt.

145. Once Green Belts have been defined, local planning authorities should plan positively to enhance their beneficial use, such as looking for opportunities to provide access; to provide opportunities for outdoor sport and recreation; to retain and enhance landscapes, visual amenity and biodiversity; or to improve damaged and derelict land.

146. The National Forest and Community Forests offer valuable opportunities for improving the environment around towns and cities, by upgrading the landscape and providing for recreation and wildlife. The National Forest Strategy and an approved Community Forest Plan may be a material consideration in preparing development plans and in deciding planning applications. Any development proposals within the National Forest and Community Forests in the Green Belt should be subject to the normal policies for controlling development in Green Belts.

Proposals affecting the Green Belt

147. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

148. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

149. A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:

a) buildings for agriculture and forestry;

b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;

c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;

d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;

e) limited infilling in villages;

f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and

g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:

- not have a greater impact on the openness of the Green Belt than the existing development; or
- not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.

150. Certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These are:

a) mineral extraction;

b) engineering operations;

c) local transport infrastructure which can demonstrate a requirement for a Green Belt location;

d) the re-use of buildings provided that the buildings are of permanent and substantial construction;

e) material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds); and

f) development, including buildings, brought forward under a Community Right to Build Order or Neighbourhood Development Order.

151. When located in the Green Belt, elements of many renewable energy projects will comprise inappropriate development. In such cases developers will need to demonstrate very special circumstances if projects are to proceed. Such very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.

14. Meeting the challenge of climate change, flooding and coastal change

152. The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.

Planning for climate change

153. Plans should take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications for flood risk, coastal change, water supply, biodiversity and landscapes, and the risk of overheating from rising temperatures[53]. Policies should support appropriate measures to ensure the future resilience of communities and infrastructure to climate change impacts, such as providing space for physical protection measures, or making provision for the possible future relocation of vulnerable development and infrastructure.

154. New development should be planned for in ways that:

a) avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, including through the planning of green infrastructure; and

b) can help to reduce greenhouse gas emissions, such as through its location, orientation and design. Any local requirements for the sustainability of buildings should reflect the Government's policy for national technical standards.

155. To help increase the use and supply of renewable and low carbon energy and heat, plans should:

a) provide a positive strategy for energy from these sources, that maximises the potential for suitable development, while ensuring that adverse impacts are addressed satisfactorily (including cumulative landscape and visual impacts);

b) consider identifying suitable areas for renewable and low carbon energy sources, and supporting infrastructure, where this would help secure their development; and

[53] In line with the objectives and provisions of the Climate Change Act 2008.

c) identify opportunities for development to draw its energy supply from decentralised, renewable or low carbon energy supply systems and for co-locating potential heat customers and suppliers.

156. Local planning authorities should support community-led initiatives for renewable and low carbon energy, including developments outside areas identified in local plans or other strategic policies that are being taken forward through neighbourhood planning.

157. In determining planning applications, local planning authorities should expect new development to:

a) comply with any development plan policies on local requirements for decentralised energy supply unless it can be demonstrated by the applicant, having regard to the type of development involved and its design, that this is not feasible or viable; and

b) take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption.

158. When determining planning applications for renewable and low carbon development, local planning authorities should:

a) not require applicants to demonstrate the overall need for renewable or low carbon energy, and recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions; and

b) approve the application if its impacts are (or can be made) acceptable[54]. Once suitable areas for renewable and low carbon energy have been identified in plans, local planning authorities should expect subsequent applications for commercial scale projects outside these areas to demonstrate that the proposed location meets the criteria used in identifying suitable areas.

Planning and flood risk

159. Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.

160. Strategic policies should be informed by a strategic flood risk assessment, and should manage flood risk from all sources. They should consider cumulative impacts in, or affecting, local areas susceptible to flooding, and take account of advice from the Environment Agency and other relevant flood risk management authorities, such as lead local flood authorities and internal drainage boards.

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[54] Except for applications for the repowering of existing wind turbines, a proposed wind energy development involving one or more turbines should not be considered acceptable unless it is in an area identified as suitable for wind energy development in the development plan; and, following consultation, it can be demonstrated that the planning impacts identified by the affected local community have been fully addressed and the proposal has their backing.

161. All plans should apply a sequential, risk-based approach to the location of development – taking into account all sources of flood risk and the current and future impacts of climate change – so as to avoid, where possible, flood risk to people and property. They should do this, and manage any residual risk, by:

a) applying the sequential test and then, if necessary, the exception test as set out below;

b) safeguarding land from development that is required, or likely to be required, for current or future flood management;

c) using opportunities provided by new development and improvements in green and other infrastructure to reduce the causes and impacts of flooding, (making as much use as possible of natural flood management techniques as part of an integrated approach to flood risk management); and

d) where climate change is expected to increase flood risk so that some existing development may not be sustainable in the long-term, seeking opportunities to relocate development, including housing, to more sustainable locations.

162. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.

163. If it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may have to be applied. The need for the exception test will depend on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification set out in Annex 3.

164. The application of the exception test should be informed by a strategic or site-specific flood risk assessment, depending on whether it is being applied during plan production or at the application stage. To pass the exception test it should be demonstrated that:

a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and

b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

165. Both elements of the exception test should be satisfied for development to be allocated or permitted.

166. Where planning applications come forward on sites allocated in the development plan through the sequential test, applicants need not apply the sequential test again. However, the exception test may need to be reapplied if relevant aspects of the proposal had not been considered when the test was applied at the plan-

making stage, or if more recent information about existing or potential flood risk should be taken into account.

167. When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment[55]. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:

a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;

b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;

c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;

d) any residual risk can be safely managed; and

e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

168. Applications for some minor development and changes of use[56] should not be subject to the sequential or exception tests but should still meet the requirements for site-specific flood risk assessments set out in footnote 55.

169. Major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. The systems used should:

a) take account of advice from the lead local flood authority;

b) have appropriate proposed minimum operational standards;

c) have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development; and

d) where possible, provide multifunctional benefits.

Coastal change

[55] A site-specific flood risk assessment should be provided for all development in Flood Zones 2 and 3. In Flood Zone 1, an assessment should accompany all proposals involving: sites of 1 hectare or more; land which has been identified by the Environment Agency as having critical drainage problems; land identified in a strategic flood risk assessment as being at increased flood risk in future; or land that may be subject to other sources of flooding, where its development would introduce a more vulnerable use.

[56] This includes householder development, small non-residential extensions (with a footprint of less than 250m^2) and changes of use; except for changes of use to a caravan, camping or chalet site, or to a mobile home or park home site, where the sequential and exception tests should be applied as appropriate.

170. In coastal areas, planning policies and decisions should take account of the UK Marine Policy Statement and marine plans. Integrated Coastal Zone Management should be pursued across local authority and land/sea boundaries, to ensure effective alignment of the terrestrial and marine planning regimes.

171. Plans should reduce risk from coastal change by avoiding inappropriate development in vulnerable areas and not exacerbating the impacts of physical changes to the coast. They should identify as a Coastal Change Management Area any area likely to be affected by physical changes to the coast, and:

a) be clear as to what development will be appropriate in such areas and in what circumstances; and

b) make provision for development and infrastructure that needs to be relocated away from Coastal Change Management Areas.

172. Development in a Coastal Change Management Area will be appropriate only where it is demonstrated that:

a) it will be safe over its planned lifetime and not have an unacceptable impact on coastal change;

b) the character of the coast including designations is not compromised;

c) the development provides wider sustainability benefits; and

d) the development does not hinder the creation and maintenance of a continuous signed and managed route around the coast[57].

173. Local planning authorities should limit the planned lifetime of development in a Coastal Change Management Area through temporary permission and restoration conditions, where this is necessary to reduce a potentially unacceptable level of future risk to people and the development.

[57] As required by the Marine and Coastal Access Act 2009.

15. Conserving and enhancing the natural environment

174. Planning policies and decisions should contribute to and enhance the natural and local environment by:

a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);

b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;

c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate;

d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;

e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and

f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

175. Plans should: distinguish between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value, where consistent with other policies in this Framework[58]; take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure; and plan for the enhancement of natural capital at a catchment or landscape scale across local authority boundaries.

176. Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks

[58] Where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.

and the Broads[59]. The scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.

177. When considering applications for development within National Parks, the Broads and Areas of Outstanding Natural Beauty, permission should be refused for major development[60] other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:

a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;

b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and

c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

178. Within areas defined as Heritage Coast (and that do not already fall within one of the designated areas mentioned in paragraph 176), planning policies and decisions should be consistent with the special character of the area and the importance of its conservation. Major development within a Heritage Coast is unlikely to be appropriate, unless it is compatible with its special character.

Habitats and biodiversity

179. To protect and enhance biodiversity and geodiversity, plans should:

a) Identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity[61]; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation[62]; and

b) promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.

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[59] *English National Parks and the Broads: UK Government Vision and Circular 2010* provides further guidance and information about their statutory purposes, management and other matters.
[60] For the purposes of paragraphs 176 and 177, whether a proposal is 'major development' is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined.
[61] Circular 06/2005 provides further guidance in respect of statutory obligations for biodiversity and geological conservation and their impact within the planning system.
[62] Where areas that are part of the Nature Recovery Network are identified in plans, it may be appropriate to specify the types of development that may be suitable within them.

180. When determining planning applications, local planning authorities should apply the following principles:

a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;

b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;

c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons[63] and a suitable compensation strategy exists; and

d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.

181. The following should be given the same protection as habitats sites:

a) potential Special Protection Areas and possible Special Areas of Conservation;

b) listed or proposed Ramsar sites[64]; and

c) sites identified, or required, as compensatory measures for adverse effects on habitats sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.

182. The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.

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[63] For example, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat.

[64] Potential Special Protection Areas, possible Special Areas of Conservation and proposed Ramsar sites are sites on which Government has initiated public consultation on the scientific case for designation as a Special Protection Area, candidate Special Area of Conservation or Ramsar site.

Ground conditions and pollution

183. Planning policies and decisions should ensure that:

a) a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation);

b) after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and

c) adequate site investigation information, prepared by a competent person, is available to inform these assessments.

184. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.

185. Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life[65];

b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason; and

c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.

186. Planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas. Opportunities to improve air quality or mitigate impacts should be identified, such as through traffic and travel management, and green infrastructure provision and enhancement. So far as possible these opportunities should be considered at the plan-making stage, to ensure a strategic approach and limit the need for issues to be reconsidered when

[65] See Explanatory Note to the *Noise Policy Statement for England* (Department for Environment, Food & Rural Affairs, 2010).

determining individual applications. Planning decisions should ensure that any new development in Air Quality Management Areas and Clean Air Zones is consistent with the local air quality action plan.

187. Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed.

188. The focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities.

16. Conserving and enhancing the historic environment

189. Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value[66]. These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations[67].

190. Plans should set out a positive strategy for the conservation and enjoyment of the historic environment, including heritage assets most at risk through neglect, decay or other threats. This strategy should take into account:

a) the desirability of sustaining and enhancing the significance of heritage assets, and putting them to viable uses consistent with their conservation;

b) the wider social, cultural, economic and environmental benefits that conservation of the historic environment can bring;

c) the desirability of new development making a positive contribution to local character and distinctiveness; and

d) opportunities to draw on the contribution made by the historic environment to the character of a place.

191. When considering the designation of conservation areas, local planning authorities should ensure that an area justifies such status because of its special architectural or historic interest, and that the concept of conservation is not devalued through the designation of areas that lack special interest.

192. Local planning authorities should maintain or have access to a historic environment record. This should contain up-to-date evidence about the historic environment in their area and be used to:

a) assess the significance of heritage assets and the contribution they make to their environment; and

b) predict the likelihood that currently unidentified heritage assets, particularly sites of historic and archaeological interest, will be discovered in the future.

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[66] Some World Heritage Sites are inscribed by UNESCO to be of natural significance rather than cultural significance; and in some cases they are inscribed for both their natural and cultural significance.
[67] The policies set out in this chapter relate, as applicable, to the heritage-related consent regimes for which local planning authorities are responsible under the Planning (Listed Buildings and Conservation Areas) Act 1990, as well as to plan-making and decision-making.

193. Local planning authorities should make information about the historic environment, gathered as part of policy-making or development management, publicly accessible.

Proposals affecting heritage assets

194. In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.

195. Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal.

196. Where there is evidence of deliberate neglect of, or damage to, a heritage asset, the deteriorated state of the heritage asset should not be taken into account in any decision.

197. In determining applications, local planning authorities should take account of:

a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;

b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and

c) the desirability of new development making a positive contribution to local character and distinctiveness.

198. In considering any applications to remove or alter a historic statue, plaque, memorial or monument (whether listed or not), local planning authorities should have regard to the importance of their retention in situ and, where appropriate, of explaining their historic and social context rather than removal.

Considering potential impacts

199. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

200. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of:

a) grade II listed buildings, or grade II registered parks or gardens, should be exceptional;

b) assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional[68].

201. Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

a) the nature of the heritage asset prevents all reasonable uses of the site; and

b) no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and

c) conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and

d) the harm or loss is outweighed by the benefit of bringing the site back into use.

202. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

203. The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing

[68] Non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.

applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

204. Local planning authorities should not permit the loss of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred.

205. Local planning authorities should require developers to record and advance understanding of the significance of any heritage assets to be lost (wholly or in part) in a manner proportionate to their importance and the impact, and to make this evidence (and any archive generated) publicly accessible[69]. However, the ability to record evidence of our past should not be a factor in deciding whether such loss should be permitted.

206. Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.

207. Not all elements of a Conservation Area or World Heritage Site will necessarily contribute to its significance. Loss of a building (or other element) which makes a positive contribution to the significance of the Conservation Area or World Heritage Site should be treated either as substantial harm under paragraph 201 or less than substantial harm under paragraph 202, as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of the Conservation Area or World Heritage Site as a whole.

208. Local planning authorities should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies but which would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies.

[69] Copies of evidence should be deposited with the relevant historic environment record, and any archives with a local museum or other public depository.

17. Facilitating the sustainable use of minerals

209. It is essential that there is a sufficient supply of minerals to provide the infrastructure, buildings, energy and goods that the country needs. Since minerals are a finite natural resource, and can only be worked where they are found, best use needs to be made of them to secure their long-term conservation.

210. Planning policies should:

a) provide for the extraction of mineral resources of local and national importance, but not identify new sites or extensions to existing sites for peat extraction;

b) so far as practicable, take account of the contribution that substitute or secondary and recycled materials and minerals waste would make to the supply of materials, before considering extraction of primary materials, whilst aiming to source minerals supplies indigenously;

c) safeguard mineral resources by defining Mineral Safeguarding Areas and Mineral Consultation Areas[70]; and adopt appropriate policies so that known locations of specific minerals resources of local and national importance are not sterilised by non-mineral development where this should be avoided (whilst not creating a presumption that the resources defined will be worked);

d) set out policies to encourage the prior extraction of minerals, where practical and environmentally feasible, if it is necessary for non-mineral development to take place;

e) safeguard existing, planned and potential sites for: the bulk transport, handling and processing of minerals; the manufacture of concrete and concrete products; and the handling, processing and distribution of substitute, recycled and secondary aggregate material;

f) set out criteria or requirements to ensure that permitted and proposed operations do not have unacceptable adverse impacts on the natural and historic environment or human health, taking into account the cumulative effects of multiple impacts from individual sites and/or a number of sites in a locality;

g) when developing noise limits, recognise that some noisy short-term activities, which may otherwise be regarded as unacceptable, are unavoidable to facilitate minerals extraction; and

h) ensure that worked land is reclaimed at the earliest opportunity, taking account of aviation safety, and that high quality restoration and aftercare of mineral sites takes place.

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[70] Primarily in two tier areas as stated in Annex 2: Glossary

211. When determining planning applications, great weight should be given to the benefits of mineral extraction, including to the economy[71]. In considering proposals for mineral extraction, minerals planning authorities should:

a) as far as is practical, provide for the maintenance of landbanks of non-energy minerals from outside National Parks, the Broads, Areas of Outstanding Natural Beauty and World Heritage Sites, scheduled monuments and conservation areas;

b) ensure that there are no unacceptable adverse impacts on the natural and historic environment, human health or aviation safety, and take into account the cumulative effect of multiple impacts from individual sites and/or from a number of sites in a locality;

c) ensure that any unavoidable noise, dust and particle emissions and any blasting vibrations are controlled, mitigated or removed at source[72], and establish appropriate noise limits for extraction in proximity to noise sensitive properties;

d) not grant planning permission for peat extraction from new or extended sites;

e) provide for restoration and aftercare at the earliest opportunity, to be carried out to high environmental standards, through the application of appropriate conditions. Bonds or other financial guarantees to underpin planning conditions should only be sought in exceptional circumstances;

f) consider how to meet any demand for the extraction of building stone needed for the repair of heritage assets, taking account of the need to protect designated sites; and

g) recognise the small-scale nature and impact of building and roofing stone quarries, and the need for a flexible approach to the duration of planning permissions reflecting the intermittent or low rate of working at many sites.

212. Local planning authorities should not normally permit other development proposals in Mineral Safeguarding Areas if it might constrain potential future use for mineral working.

Maintaining supply

213. Minerals planning authorities should plan for a steady and adequate supply of aggregates by:

a) preparing an annual Local Aggregate Assessment, either individually or jointly, to forecast future demand, based on a rolling average of 10 years' sales data and other relevant local information, and an assessment of all supply options (including marine dredged, secondary and recycled sources);

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[71] Except in relation to the extraction of coal, where the policy at paragraph 217 of this Framework applies.
[72] National planning guidance on minerals sets out how these policies should be implemented.

b) participating in the operation of an Aggregate Working Party and taking the advice of that party into account when preparing their Local Aggregate Assessment;

c) making provision for the land-won and other elements of their Local Aggregate Assessment in their mineral plans, taking account of the advice of the Aggregate Working Parties and the National Aggregate Co-ordinating Group as appropriate. Such provision should take the form of specific sites, preferred areas and/or areas of search and locational criteria as appropriate;

d) taking account of any published National and Sub National Guidelines on future provision which should be used as a guideline when planning for the future demand for and supply of aggregates;

e) using landbanks of aggregate minerals reserves principally as an indicator of the security of aggregate minerals supply, and to indicate the additional provision that needs to be made for new aggregate extraction and alternative supplies in mineral plans;

f) maintaining landbanks of at least 7 years for sand and gravel and at least 10 years for crushed rock, whilst ensuring that the capacity of operations to supply a wide range of materials is not compromised[73];

g) ensuring that large landbanks bound up in very few sites do not stifle competition; and

h) calculating and maintaining separate landbanks for any aggregate materials of a specific type or quality which have a distinct and separate market.

214. Minerals planning authorities should plan for a steady and adequate supply of industrial minerals by:

a) co-operating with neighbouring and more distant authorities to ensure an adequate provision of industrial minerals to support their likely use in industrial and manufacturing processes;

b) encouraging safeguarding or stockpiling so that important minerals remain available for use;

c) maintaining a stock of permitted reserves to support the level of actual and proposed investment required for new or existing plant, and the maintenance and improvement of existing plant and equipment[74]; and

d) taking account of the need for provision of brick clay from a number of different sources to enable appropriate blends to be made.

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[73] Longer periods may be appropriate to take account of the need to supply a range of types of aggregates, locations of permitted reserves relative to markets, and productive capacity of permitted sites.
[74] These reserves should be at least 10 years for individual silica sand sites; at least 15 years for cement primary (chalk and limestone) and secondary (clay and shale) materials to maintain an existing plant, and for silica sand sites where significant new capital is required; and at least 25 years for brick clay, and for cement primary and secondary materials to support a new kiln.

Oil, gas and coal exploration and extraction

215. Minerals planning authorities should:

a) when planning for on-shore oil and gas development, clearly distinguish between, and plan positively for, the three phases of development (exploration, appraisal and production), whilst ensuring appropriate monitoring and site restoration is provided for;

b) encourage underground gas and carbon storage and associated infrastructure if local geological circumstances indicate its feasibility;

c) indicate any areas where coal extraction and the disposal of colliery spoil may be acceptable;

d) encourage the capture and use of methane from coal mines in active and abandoned coalfield areas; and

e) provide for coal producers to extract separately, and if necessary stockpile, fireclay so that it remains available for use.

216. When determining planning applications, minerals planning authorities should ensure that the integrity and safety of underground storage facilities are appropriate, taking into account the maintenance of gas pressure, prevention of leakage of gas and the avoidance of pollution.

217. Planning permission should not be granted for the extraction of coal unless:

a) the proposal is environmentally acceptable, or can be made so by planning conditions or obligations; or

b) if it is not environmentally acceptable, then it provides national, local or community benefits which clearly outweigh its likely impacts (taking all relevant matters into account, including any residual environmental impacts).

Annex 1: Implementation

218. The policies in this Framework are material considerations which should be taken into account in dealing with applications from the day of its publication. Plans may also need to be revised to reflect policy changes which this Framework has made.

219. However, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

220. The policies in the original National Planning Policy Framework published in March 2012 will apply for the purpose of examining plans, where those plans were submitted on or before 24 January 2019. Where such plans are withdrawn or otherwise do not proceed to become part of the development plan, the policies contained in this Framework will apply to any subsequent plan produced for the area concerned.

221. For the purposes of the policy on larger-scale development in paragraph 22, this applies only to plans that have not reached Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (pre-submission) stage at the point this version is published (for Spatial Development Strategies this would refer to consultation under section 335(2) of the Greater London Authority Act 1999).

222. The Housing Delivery Test will apply the day following publication of the results, at which point they supersede previously published results. Until new Housing Delivery Test results are published, the previously published result should be used. For the purpose of footnote 8 in this Framework, delivery of housing which was substantially below the housing requirement means where the Housing Delivery Test results:

    a) for years 2016/17 to 2018/19 (Housing Delivery Test: 2019 Measurement, published 13 February 2020), indicated that delivery was below 45% of housing required over the previous three years;

    b) for years 2017/18 to 2019/20 (Housing Delivery Test: 2020 Measurement, published 19 January 2021), and in subsequent years indicate that delivery was below 75% of housing required over the previous three years.

223. The Government will continue to explore with individual areas the potential for planning freedoms and flexibilities, for example where this would facilitate an increase in the amount of housing that can be delivered.

Annex 2: Glossary

Affordable housing: housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the following definitions:

a) **Affordable housing for rent:** meets all of the following conditions: (a) the rent is set in accordance with the Government's rent policy for Social Rent or Affordable Rent, or is at least 20% below local market rents (including service charges where applicable); (b) the landlord is a registered provider, except where it is included as part of a Build to Rent scheme (in which case the landlord need not be a registered provider); and (c) it includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision. For Build to Rent schemes affordable housing for rent is expected to be the normal form of affordable housing provision (and, in this context, is known as Affordable Private Rent).

b) **Starter homes:** is as specified in Sections 2 and 3 of the Housing and Planning Act 2016 and any secondary legislation made under these sections. The definition of a starter home should reflect the meaning set out in statute and any such secondary legislation at the time of plan-preparation or decision-making. Where secondary legislation has the effect of limiting a household's eligibility to purchase a starter home to those with a particular maximum level of household income, those restrictions should be used.

c) **Discounted market sales housing:** is that sold at a discount of at least 20% below local market value. Eligibility is determined with regard to local incomes and local house prices. Provisions should be in place to ensure housing remains at a discount for future eligible households.

d) **Other affordable routes to home ownership:** is housing provided for sale that provides a route to ownership for those who could not achieve home ownership through the market. It includes shared ownership, relevant equity loans, other low cost homes for sale (at a price equivalent to at least 20% below local market value) and rent to buy (which includes a period of intermediate rent). Where public grant funding is provided, there should be provisions for the homes to remain at an affordable price for future eligible households, or for any receipts to be recycled for alternative affordable housing provision, or refunded to Government or the relevant authority specified in the funding agreement.

Air quality management areas: Areas designated by local authorities because they are not likely to achieve national air quality objectives by the relevant deadlines.

Ancient or veteran tree: A tree which, because of its age, size and condition, is of exceptional biodiversity, cultural or heritage value. All ancient trees are veteran trees. Not all veteran trees are old enough to be ancient, but are old relative to other trees of the same species. Very few trees of any species reach the ancient life-stage.

Ancient woodland: An area that has been wooded continuously since at least 1600 AD. It includes ancient semi-natural woodland and plantations on ancient woodland sites (PAWS).

Annual position statement: A document setting out the 5 year housing land supply position on 1st April each year, prepared by the local planning authority in consultation with developers and others who have an impact on delivery.

Archaeological interest: There will be archaeological interest in a heritage asset if it holds, or potentially holds, evidence of past human activity worthy of expert investigation at some point.

Article 4 direction: A direction made under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 which withdraws permitted development rights granted by that Order.

Best and most versatile agricultural land: Land in grades 1, 2 and 3a of the Agricultural Land Classification.

Brownfield land: See Previously developed land.

Brownfield land registers: Registers of previously developed land that local planning authorities consider to be appropriate for residential development, having regard to criteria in the Town and Country Planning (Brownfield Land Registers) Regulations 2017. Local planning authorities will be able to trigger a grant of permission in principle for residential development on suitable sites in their registers where they follow the required procedures.

Build to Rent: Purpose built housing that is typically 100% rented out. It can form part of a wider multi-tenure development comprising either flats or houses, but should be on the same site and/or contiguous with the main development. Schemes will usually offer longer tenancy agreements of three years or more, and will typically be professionally managed stock in single ownership and management control.

Climate change adaptation: Adjustments made to natural or human systems in response to the actual or anticipated impacts of climate change, to mitigate harm or exploit beneficial opportunities.

Climate change mitigation: Action to reduce the impact of human activity on the climate system, primarily through reducing greenhouse gas emissions.

Coastal change management area: An area identified in plans as likely to be affected by physical change to the shoreline through erosion, coastal landslip, permanent inundation or coastal accretion.

Community forest: An area identified through the England Community Forest Programme to revitalise countryside and green space in and around major conurbations.

Community Right to Build Order: An Order made by the local planning authority (under the Town and Country Planning Act 1990) that grants planning permission for a site-specific development proposal or classes of development.

Competent person (to prepare site investigation information): A person with a recognised relevant qualification, sufficient experience in dealing with the type(s) of pollution or land instability, and membership of a relevant professional organisation.

Conservation (for heritage policy): The process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance.

Decentralised energy: Local renewable and local low carbon energy sources.

Deliverable: To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:

a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).
b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.

Design code: A set of illustrated design requirements that provide specific, detailed parameters for the physical development of a site or area. The graphic and written components of the code should build upon a design vision, such as a masterplan or other design and development framework for a site or area.

Design guide: A document providing guidance on how development can be carried out in accordance with good design practice, often produced by a local authority.

Designated heritage asset: A World Heritage Site, Scheduled Monument, Listed Building, Protected Wreck Site, Registered Park and Garden, Registered Battlefield or Conservation Area designated under the relevant legislation.

Designated rural areas: National Parks, Areas of Outstanding Natural Beauty and areas designated as ‘rural’ under Section 157 of the Housing Act 1985.

Developable: To be considered developable, sites should be in a suitable location for housing development with a reasonable prospect that they will be available and could be viably developed at the point envisaged.

Development plan: Is defined in section 38 of the Planning and Compulsory Purchase Act 2004, and includes adopted local plans, neighbourhood plans that have been made and published spatial development strategies, together with any regional strategy policies that remain in force. Neighbourhood plans that have been approved at referendum are also part of the development plan, unless the local planning authority decides that the neighbourhood plan should not be made.

Edge of centre: For retail purposes, a location that is well connected to, and up to 300 metres from, the primary shopping area. For all other main town centre uses, a location within 300 metres of a town centre boundary. For office development, this includes locations outside the town centre but within 500 metres of a public transport interchange. In determining whether a site falls within the definition of edge of centre, account should be taken of local circumstances.

Entry-level exception site: A site that provides entry-level homes suitable for first time buyers (or equivalent, for those looking to rent), in line with paragraph 72 of this Framework.

Environmental impact assessment: A procedure to be followed for certain types of project to ensure that decisions are made in full knowledge of any likely significant effects on the environment.

Essential local workers: Public sector employees who provide frontline services in areas including health, education and community safety – such as NHS staff, teachers, police, firefighters and military personnel, social care and childcare workers.

General aviation airfields: Licenced or unlicenced aerodromes with hard or grass runways, often with extensive areas of open land related to aviation activity.

Geodiversity: The range of rocks, minerals, fossils, soils and landforms.

Green infrastructure: A network of multi-functional green and blue spaces and other natural features, urban and rural, which is capable of delivering a wide range of environmental, economic, health and wellbeing benefits for nature, climate, local and wider communities and prosperity.

Habitats site: Any site which would be included within the definition at regulation 8 of the Conservation of Habitats and Species Regulations 2017 for the purpose of those regulations, including candidate Special Areas of Conservation, Sites of Community Importance, Special Areas of Conservation, Special Protection Areas and any relevant Marine Sites.

Heritage asset: A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. It includes designated heritage assets and assets identified by the local planning authority (including local listing).

Heritage coast: Areas of undeveloped coastline which are managed to conserve their natural beauty and, where appropriate, to improve accessibility for visitors.

Historic environment: All aspects of the environment resulting from the interaction between people and places through time, including all surviving physical remains of past human activity, whether visible, buried or submerged, and landscaped and planted or managed flora.

Historic environment record: Information services that seek to provide access to comprehensive and dynamic resources relating to the historic environment of a defined geographic area for public benefit and use.

Housing Delivery Test: Measures net homes delivered in a local authority area against the homes required, using national statistics and local authority data. The Secretary of State will publish the Housing Delivery Test results for each local authority in England every November.

International, national and locally designated sites of importance for biodiversity: All international sites (Special Areas of Conservation, Special Protection Areas, and Ramsar sites), national sites (Sites of Special Scientific Interest) and locally designated sites including Local Wildlife Sites.

Irreplaceable habitat: Habitats which would be technically very difficult (or take a very significant time) to restore, recreate or replace once destroyed, taking into account their age, uniqueness, species diversity or rarity. They include ancient woodland, ancient and veteran trees, blanket bog, limestone pavement, sand dunes, salt marsh and lowland fen.

Local Development Order: An Order made by a local planning authority (under the Town and Country Planning Act 1990) that grants planning permission for a specific development proposal or classes of development.

Local Enterprise Partnership: A body, designated by the Secretary of State for Housing, Communities and Local Government, established for the purpose of creating or improving the conditions for economic growth in an area.

Local housing need: The number of homes identified as being needed through the application of the standard method set out in national planning guidance (or, in the context of preparing strategic policies only, this may be calculated using a justified alternative approach as provided for in paragraph 61 of this Framework).

Local Nature Partnership: A body, designated by the Secretary of State for Environment, Food and Rural Affairs, established for the purpose of protecting and improving the natural environment in an area and the benefits derived from it.

Local planning authority: The public authority whose duty it is to carry out specific planning functions for a particular area. All references to local planning authority include the district council, London borough council, county council, Broads Authority, National Park Authority, the Mayor of London and a development corporation, to the extent appropriate to their responsibilities.

Local plan: A plan for the future development of a local area, drawn up by the local planning authority in consultation with the community. In law this is described as the development plan documents adopted under the Planning and Compulsory Purchase Act 2004. A local plan can consist of either strategic or non-strategic policies, or a combination of the two.

Main town centre uses: Retail development (including warehouse clubs and factory outlet centres); leisure, entertainment and more intensive sport and recreation uses (including cinemas, restaurants, drive-through restaurants, bars and pubs, nightclubs, casinos, health and fitness centres, indoor bowling centres and bingo halls); offices; and arts, culture and tourism development (including theatres, museums, galleries and concert halls, hotels and conference facilities).

Major development[75]**:** For housing, development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more. For non-residential development

[75] Other than for the specific purposes of paragraphs 176 and 177 in this Framework.

it means additional floorspace of 1,000m^2 or more, or a site of 1 hectare or more, or as otherwise provided in the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Major hazard sites, installations and pipelines: Sites and infrastructure, including licensed explosive sites and nuclear installations, around which Health and Safety Executive (and Office for Nuclear Regulation) consultation distances to mitigate the consequences to public safety of major accidents may apply.

Minerals resources of local and national importance: Minerals which are necessary to meet society's needs, including aggregates, brickclay (especially Etruria Marl and fireclay), silica sand (including high grade silica sands), coal derived fly ash in single use deposits, cement raw materials, gypsum, salt, fluorspar, shallow and deep-mined coal, oil and gas (including conventional and unconventional hydrocarbons), tungsten, kaolin, ball clay, potash, polyhalite and local minerals of importance to heritage assets and local distinctiveness.

Mineral Consultation Area: a geographical area based on a Mineral Safeguarding Area, where the district or borough council should consult the Mineral Planning Authority for any proposals for non-minerals development.

Mineral Safeguarding Area: An area designated by minerals planning authorities which covers known deposits of minerals which are desired to be kept safeguarded from unnecessary sterilisation by non-mineral development.

National trails: Long distance routes for walking, cycling and horse riding.

Natural Flood Management: managing flood and coastal erosion risk by protecting, restoring and emulating the natural 'regulating' function of catchments, rivers, floodplains and coasts.

Nature Recovery Network: An expanding, increasingly connected, network of wildlife-rich habitats supporting species recovery, alongside wider benefits such as carbon capture, water quality improvements, natural flood risk management and recreation. It includes the existing network of protected sites and other wildlife rich habitats as well as and landscape or catchment scale recovery areas where there is coordinated action for species and habitats.

Neighbourhood Development Order: An Order made by a local planning authority (under the Town and Country Planning Act 1990) through which parish councils and neighbourhood forums can grant planning permission for a specific development proposal or classes of development.

Neighbourhood plan: A plan prepared by a parish council or neighbourhood forum for a designated neighbourhood area. In law this is described as a neighbourhood development plan in the Planning and Compulsory Purchase Act 2004.

Non-strategic policies: Policies contained in a neighbourhood plan, or those policies in a local plan that are not strategic policies.

Older people: People over or approaching retirement age, including the active, newly-retired through to the very frail elderly; and whose housing needs can encompass accessible, adaptable general needs housing through to the full range of retirement and specialised housing for those with support or care needs.

Open space: All open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity.

Original building: A building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally.

Out of centre: A location which is not in or on the edge of a centre but not necessarily outside the urban area.

Out of town: A location out of centre that is outside the existing urban area.

Outstanding universal value: Cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations. An individual Statement of Outstanding Universal Value is agreed and adopted by the UNESCO World Heritage Committee for each World Heritage Site.

People with disabilities: People have a disability if they have a physical or mental impairment, and that impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. These persons include, but are not limited to, people with ambulatory difficulties, blindness, learning difficulties, autism and mental health needs.

Permission in principle: A form of planning consent which establishes that a site is suitable for a specified amount of housing-led development in principle. Following a grant of permission in principle, the site must receive a grant of technical details consent before development can proceed.

Planning condition: A condition imposed on a grant of planning permission (in accordance with the Town and Country Planning Act 1990) or a condition included in a Local Development Order or Neighbourhood Development Order.

Planning obligation: A legal agreement entered into under section 106 of the Town and Country Planning Act 1990 to mitigate the impacts of a development proposal.

Playing field: The whole of a site which encompasses at least one playing pitch as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Previously developed land: Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds

and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.

Primary shopping area: Defined area where retail development is concentrated.

Priority habitats and species: Species and Habitats of Principal Importance included in the England Biodiversity List published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006.

Ramsar sites: Wetlands of international importance, designated under the 1971 Ramsar Convention.

Renewable and low carbon energy: Includes energy for heating and cooling as well as generating electricity. Renewable energy covers those energy flows that occur naturally and repeatedly in the environment – from the wind, the fall of water, the movement of the oceans, from the sun and also from biomass and deep geothermal heat. Low carbon technologies are those that can help reduce emissions (compared to conventional use of fossil fuels).

Rural exception sites: Small sites used for affordable housing in perpetuity where sites would not normally be used for housing. Rural exception sites seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection. A proportion of market homes may be allowed on the site at the local planning authority's discretion, for example where essential to enable the delivery of affordable units without grant funding.

Recycled aggregates: aggregates resulting from the processing of inorganic materials previously used in construction, e.g. construction and demolition waste.

Safeguarding zone: An area defined in Circular 01/03: *Safeguarding aerodromes, technical sites and military explosives storage areas*, to which specific safeguarding provisions apply.

Secondary aggregates: aggregates from industrial wastes such as glass (cullet), incinerator bottom ash, coal derived fly ash, railway ballast, fine ceramic waste (pitcher), and scrap tyres; and industrial and minerals by-products, notably waste from china clay, coal and slate extraction and spent foundry sand. These can also include hydraulically bound materials.

Self-build and custom-build housing: Housing built by an individual, a group of individuals, or persons working with or for them, to be occupied by that individual. Such housing can be either market or affordable housing. A legal definition, for the purpose of applying the Self-build and Custom Housebuilding Act 2015 (as amended), is contained in section 1(A1) and (A2) of that Act.

Setting of a heritage asset: The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.

Significance (for heritage policy): The value of a heritage asset to this and future

generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting. For World Heritage Sites, the cultural value described within each site's Statement of Outstanding Universal Value forms part of its significance.

Special Areas of Conservation: Areas defined by regulation 3 of the Conservation of Habitats and Species Regulations 2017 which have been given special protection as important conservation sites.

Special Protection Areas: Areas classified under regulation 15 of the Conservation of Habitats and Species Regulations 2017 which have been identified as being of international importance for the breeding, feeding, wintering or the migration of rare and vulnerable species of birds.

Site investigation information: Includes a risk assessment of land potentially affected by contamination, or ground stability and slope stability reports, as appropriate. All investigations of land potentially affected by contamination should be carried out in accordance with established procedures (such as BS10175 Investigation of Potentially Contaminated Sites – Code of Practice).

Site of Special Scientific Interest: Sites designated by Natural England under the Wildlife and Countryside Act 1981.

Spatial development strategy: A plan containing strategic policies prepared by a Mayor or a combined authority. It includes the London Plan (prepared under provisions in the Greater London Authority Act 1999) and plans prepared by combined authorities that have been given equivalent plan-making functions by an order made under the Local Democracy, Economic Development and Construction Act 2009 (as amended).

Stepping stones: Pockets of habitat that, while not necessarily connected, facilitate the movement of species across otherwise inhospitable landscapes.

Strategic environmental assessment: A procedure (set out in the Environmental Assessment of Plans and Programmes Regulations 2004) which requires the formal environmental assessment of certain plans and programmes which are likely to have significant effects on the environment.

Strategic policies: Policies and site allocations which address strategic priorities in line with the requirements of Section 19 (1B-E) of the Planning and Compulsory Purchase Act 2004.

Strategic policy-making authorities: Those authorities responsible for producing strategic policies (local planning authorities, and elected Mayors or combined authorities, where this power has been conferred). This definition applies whether the authority is in the process of producing strategic policies or not.

Supplementary planning documents: Documents which add further detail to the policies in the development plan. They can be used to provide further guidance for development on specific sites, or on particular issues, such as design. Supplementary planning documents are capable of being a material consideration in planning decisions but are not

part of the development plan.

Sustainable transport modes: Any efficient, safe and accessible means of transport with overall low impact on the environment, including walking and cycling, ultra low and zero emission vehicles, car sharing and public transport.

Town centre: Area defined on the local authority's policies map, including the primary shopping area and areas predominantly occupied by main town centre uses within or adjacent to the primary shopping area. References to town centres or centres apply to city centres, town centres, district centres and local centres but exclude small parades of shops of purely neighbourhood significance. Unless they are identified as centres in the development plan, existing out-of-centre developments, comprising or including main town centre uses, do not constitute town centres.

Transport assessment: A comprehensive and systematic process that sets out transport issues relating to a proposed development. It identifies measures required to improve accessibility and safety for all modes of travel, particularly for alternatives to the car such as walking, cycling and public transport, and measures that will be needed deal with the anticipated transport impacts of the development.

Transport statement: A simplified version of a transport assessment where it is agreed the transport issues arising from development proposals are limited and a full transport assessment is not required.

Travel plan: A long-term management strategy for an organisation or site that seeks to deliver sustainable transport objectives and is regularly reviewed.

Wildlife corridor: Areas of habitat connecting wildlife populations.

Windfall sites: Sites not specifically identified in the development plan.

Annex 3: Flood risk vulnerability classification

ESSENTIAL INFRASTRUCTURE

- Essential transport infrastructure (including mass evacuation routes) which has to cross the area at risk.
- Essential utility infrastructure which has to be located in a flood risk area for operational reasons, including infrastructure for electricity supply including generation, storage and distribution systems; and water treatment works that need to remain operational in times of flood.
- Wind turbines.
- Solar farms

HIGHLY VULNERABLE

- Police and ambulance stations; fire stations and command centres; telecommunications installations required to be operational during flooding.
- Emergency dispersal points.
- Basement dwellings.
- Caravans, mobile homes and park homes intended for permanent residential use.
- Installations requiring hazardous substances consent. (Where there is a demonstrable need to locate such installations for bulk storage of materials with port or other similar facilities, or such installations with energy infrastructure or carbon capture and storage installations, that require coastal or water-side locations, or need to be located in other high flood risk areas, in these instances the facilities should be classified as ‘Essential Infrastructure’.)

MORE VULNERABLE

- Hospitals
- Residential institutions such as residential care homes, children’s homes, social services homes, prisons and hostels.
- Buildings used for dwelling houses, student halls of residence, drinking establishments, nightclubs and hotels.
- Non–residential uses for health services, nurseries and educational establishments.
- Landfill* and sites used for waste management facilities for hazardous waste.
- Sites used for holiday or short-let caravans and camping, subject to a specific warning and evacuation plan.

LESS VULNERABLE

- Police, ambulance and fire stations which are not required to be operational during flooding.

- Buildings used for shops; financial, professional and other services; restaurants, cafes and hot food takeaways; offices; general industry, storage and distribution; non-residential institutions not included in the ‘more vulnerable’ class; and assembly and leisure.
- Land and buildings used for agriculture and forestry.
- Waste treatment (except landfill* and hazardous waste facilities).
- Minerals working and processing (except for sand and gravel working).
- Water treatment works which do not need to remain operational during times of flood.
- Sewage treatment works, if adequate measures to control pollution and manage sewage during flooding events are in place.
- Car parks.

WATER-COMPATIBLE DEVELOPMENT

- Flood control infrastructure.
- Water transmission infrastructure and pumping stations.
- Sewage transmission infrastructure and pumping stations.
- Sand and gravel working.
- Docks, marinas and wharves.
- Navigation facilities.
- Ministry of Defence installations.
- Ship building, repairing and dismantling, dockside fish processing and refrigeration and compatible activities requiring a waterside location.
- Water-based recreation (excluding sleeping accommodation).
- Lifeguard and coastguard stations.
- Amenity open space, nature conservation and biodiversity, outdoor sports and recreation and essential facilities such as changing rooms.
- Essential ancillary sleeping or residential accommodation for staff required by uses in this category, subject to a specific warning and evacuation plan.

* Landfill is as defined in Schedule 10 of the Environmental Permitting (England and Wales) Regulations 2010.

Department
for Environment
Food & Rural Affairs

Policy paper

Changes to the Habitats Regulations 2017

Published 1 January 2021

Applies to England and Wales

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This publication is available at https://www.gov.uk/government/publications/changes-to-the-habitats-regulations-2017/changes-to-the-habitats-regulations-2017

This document explains the changes made to the Conservation of Habitats and Species Regulations 2017 (as amended). In this document we call these the 2017 Regulations. The changes are made by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019. We call these the 2019 Regulations.

The 2017 Regulations are one of the pieces of domestic law that transposed the land and marine aspects of the Habitats Directive (Council Directive 92/43/EEC) and certain elements of the Wild Birds Directive (Directive 2009/147/EC)[footnote 1] (known as the Nature Directives).

This document:

- covers England and Wales including their inshore waters up to 12 nautical miles (nm)
- explains how the amendments to the legislation work

The document does not cover offshore waters beyond 12nm but similar processes are expected to be applied.

Scotland and Northern Ireland have made similar changes to their legislation.

What has changed

The Secretary of State for the Environment, Food and Rural Affairs and Welsh Ministers have made changes to parts of the 2017 Regulations so that they operate effectively.

Most of these changes involved transferring functions from the European Commission to the appropriate authorities in England and Wales.

All other processes or terms in the 2017 Regulations remain unchanged and existing guidance is still relevant.

The obligations of a competent authority in the 2017 Regulations for the protection of sites or species do not change. A competent authority is a public body, statutory undertaker, minister or department of government, or anyone holding public office.

The main changes to the 2017 Regulations are:

- the creation of a national site network within the UK territory comprising the protected sites already designated under the Nature Directives, and any further sites designated under these Regulations
- the establishment of management objectives for the national site network (the 'network objectives')
- a duty for appropriate authorities to manage and where necessary adapt the national site network as a whole to achieve the network objectives
- an amended process for the designation of Special Areas of Conservation (SACs)
- arrangements for reporting on the implementation of the Regulations, given that the UK no longer provides reports to the European Commission
- arrangements replacing the European Commission's functions with regard to the imperative reasons of overriding public interest (IROPI) test where a plan or project affects a priority habitat or species
- arrangements for amending the schedules to the Regulations and the annexes to the Nature Directives that apply to the UK

The 2017 Regulations (Regulation 9(1)), as amended by the 2019 Regulations, require the Secretary of State and Welsh Ministers to secure compliance with the requirements of the Nature Directives. Any new powers in the 2019 Regulations must be exercised in line with the Directives and retained EU case law up to 1 January 2021.

Creating a national site network

SACs and Special Protection Areas (SPAs) in the UK no longer form part of the EU's Natura 2000 ecological network. The 2019 Regulations have 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
- new SACs and SPAs designated under these Regulations

Any references to Natura 2000 in the 2017 Regulations and in guidance now refers to the new national site network.

Maintaining a coherent network of protected sites with overarching conservation objectives is still required in order to:

- fulfil the commitment made by government to maintain environmental protections
- continue to meet our international legal obligations, such as the Bern Convention, the Oslo and Paris Conventions (OSPAR), Bonn and Ramsar Conventions

Ramsar sites

Designated Wetlands of International Importance (known as Ramsar sites) do not form part of the national site network. Many Ramsar sites overlap with SACs and SPAs, and may be designated for the same or different species and habitats.

All Ramsar sites remain protected in the same way as SACs and SPAs.

Setting network objectives

The 2019 Regulations establish management objectives for the national site network. These are called the network objectives.

The UK Government and devolved administrations (in Wales, Northern Ireland and Scotland) will cooperate to manage, and where necessary, adapt the network to contribute towards meeting the network objectives.

Any references in the 2017 Regulations to meeting the ‘requirements of the Directives’ includes achieving the network objectives.

The appropriate authorities may publish guidance relating to these requirements. The appropriate authorities are the Secretary of State for Environment, Food and Rural Affairs in England and the Welsh Ministers in Wales.

The network objectives are to:

- maintain or, where appropriate, restore habitats and species listed in Annexes I and II of the Habitats Directive to a favourable conservation status (FCS)
- contribute to ensuring, in their area of distribution, the survival and reproduction of wild birds and securing compliance with the overarching aims of the Wild Birds Directive

The appropriate authorities must also have regard to the:

- importance of protected sites
- coherence of the national site network
- threats of degradation or destruction (including deterioration and disturbance of protected features) on SPAs and SACs

The network objectives contribute to the conservation of UK habitats and species that are also of pan-European importance, and to the achievement of their FCS within the UK.

Adapting the network

The appropriate authorities must adapt the network where necessary given that the abundance and distribution of habitats and species within the network might evolve over time. They may need to designate new SACs or SPAs to achieve the network objectives. They may also need to amend existing SACs or SPAs. For example:

- if their protected features have changed over time, including re-introduced species or a new or increasing population of birds on an existing site has reached internationally important numbers
- if the site boundary needs to be moved in response to storm events or natural processes
- to include an area which compensates for the loss of other areas within the network as a result of a plan or project proceeding for IROPI reasons

Declassifying SACs and SPAs

In exceptional circumstances, the appropriate authority can declassify all or part of a SAC or SPA in order to adapt the national site network in response to natural developments. The process for de-classification is the same as the process for designating a site.

The appropriate authority will assess if:

- the site continues to meet the criteria for designation
- the site's contribution to the achievement of the conservation of natural habitats and species has been irretrievably lost

De-classification may be appropriate where, for example, conservation measures based on best scientific and technical knowledge have been implemented but have not been successful.

De-classification cannot be based on a failure to comply with the obligations set out in the 2017 Regulations, as provided in case law such as the Tre Pini case[footnote 2].

De-classification is unlikely to result from a failure to adopt appropriate conservation measures to conserve, restore or avoid deterioration of the site, or a disturbance of the species for which the site is designated.

If the appropriate authority decides to declassify a site or part of a site, it must make sure the:

- coherence of the national site network is maintained
- network objectives are achieved in other ways, such as designating new SACs or SPAs

The appropriate authority will also consider the Joint Nature Conservation Committee's (JNCC) SAC selection guidelines (https://jncc.gov.uk/our-work/special-areas-of-conservation-overview/#sac-selection).

How proportionality is applied to network objectives of SACs in the national site network

An appropriate authority is only responsible for managing and adapting the national site network to secure FCS of a feature proportionately to the importance of the UK within the feature's natural range.

The extent to which action in the UK contributes towards securing FCS of a habitat or species varies. This will depend on how important the UK is as part of the overall natural range of that habitat or species.

For certain habitat types and species, the UK has particular responsibility, as a large proportion of them are found in the UK. For example Atlantic oak woods, active blanket bogs and grey seals.

Designating SACs

The European Commission no longer has a role in designating SACs in the UK. The 2019 Regulations establish a single stage designation process, where the appropriate authority is the decision maker.

The selection and designation of SACs is based on the criteria set out in Annex III of the Habitats Directive so far as it applies to the UK.

For new proposed sites, the appropriate authority will:

- consider the criteria in the first stage of Annex III of the Habitats Directive
- have regard to the advice of the appropriate nature conservation body - Natural England or Natural Resources Wales (NRW)

The JNCC will provide an assessment to ministers on how a proposed SAC meets the criteria in the second stage of Annex III.

New SACs may be identified in both the terrestrial and marine environment.

For wide-ranging aquatic species, designated sites should be an identifiable area that is distinct in providing the physical and biological factors essential to their life and reproduction. This includes marine mammals (seals, bottlenose dolphins and harbour porpoises). This is to emphasise the need for areas designated for wide-ranging aquatic species to be those areas which are of ecological importance to the species.

Core areas where populations of these species regularly and frequently congregate at certain sensitive times are important. For example, specific sites identified where species breed, give birth and feed their young should be selected as SACs, rather than the whole geographic area where they have been recorded or found.

Natural England, JNCC or NRW will publish and carry out a public consultation on any new SAC proposals and provide a report on the results of the consultation to ministers.

An approved SAC will become part of the national site network. The site will be entered into the Register of European sites maintained under Regulation 17. Interested parties will then be notified of the designation.

Reporting obligations

The appropriate authorities retain regular reporting obligations similar to that required under the Habitats and Wild Birds Directives. They must publish:

- a report every 6 years on implementation

- biennial derogation reports - reports on the licensed activities that are exceptions to the legislation

This ensures transparency for parliamentary and public scrutiny of our environmental performance in respect of the retained EU legislation.

The 2019 Regulations also place a duty on the Secretary of State to publish a composite report drawn from the 6-yearly reports of all the devolved administrations within 2 years of their publication.

Imperative reasons of overriding public interest (IROPI)

A competent authority is expected to ask the appropriate authority for its opinion on whether a plan or project affecting priority habitats or species constitute IROPI for reasons other than human health, public safety or primary environmental benefits.

The appropriate authority must consult with the devolved administrations, JNCC and any other person the appropriate authority considers appropriate in developing its opinion. The appropriate authority will also take account of the broader national interest in developing their IROPI opinion.

The appropriate authority will publish the IROPI opinion they give to the competent authority.

The habitats regulations assessment guidance (https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site) has been amended to reflect these changes.

Amending annexes and schedules

If any technical and scientific progress is made, the appropriate authority may amend the schedules to the Regulations, and the list of those habitats and species in the annexes to the EU Directives, which apply to the UK.

The prohibited methods of capturing and killing wild animals, which are listed in the main body of the Regulations, are transferred into new schedules to allow for future amendments.

It is anticipated that changes will be rare but could, for example, include additions of new species in response to climate change or their successful reintroduction into Great Britain.

Any proposed changes will be subject to public consultation and will be made using statutory instruments.

Changes to Annex IV of the Habitats Directive and Schedules 2 (list of European Protected Species of animal) or 5 (list of European Protected Species of plant) of the Regulations will require an affirmative statutory instrument and be debated by Parliament or Senedd Cymru. This will ensure appropriate scrutiny of the changes and replicates procedures formerly undertaken by the European Commission.

As statutory nature conservation bodies, Natural England, NRW and JNCC will provide technical or scientific advice to the Secretary of State and Welsh Ministers on any proposed amendments.

Ministers in each nation of the UK have similar powers for their own jurisdiction. We will work together across the UK, where it is desirable, to achieve consistency in our approach.

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Footnotes

1. The Wildlife and Countryside Act 1981 is also amended so that species of wild birds found in or regularly visiting either the UK or the European territory of a Member State will continue to be protected.
2. C – 301/12 Cascina Tre Pini Ss v Ministero dell'Ambiente e della Tutela del Territorio e del Mare and Others.

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Notice of a proposed

habitats regulations assessment (HRA) derogation in England and Wales

Notification submitted to the Secretary of State for [insert government department*] or [Welsh Ministers*] pursuant to regulation [64(5)*] or [107(5)*] of the Conservation of Habitats and Species Regulations 2017 (as amended).

(*delete as applicable)

As a competent authority, you must read the guidance on how to consider derogations (exceptions) in an HRA for European sites before you fill in this form.

Use this form to notify the relevant government department, and the Department for Environment, Food and Rural Affairs, that you have completed an appropriate assessment and intend to allow a plan or project with adverse effects on a European site to go ahead under an HRA derogation. You must do this and wait 21 days before you permit the project, carry it out yourself or adopt the plan.

You can adapt the form to suit your organisation.

You should download this form and save it to your computer before you fill it in. Remember to save your changes before you submit it.

Section 1: The plan or project subject to habitats regulations assessment (HRA)

Name or short title of the plan or project:

Location of the plan or project:

Proposed by:

[name of plan or project proposer - the person, organisation or body seeking the authorisation or proposing the plan or project]

Summary of the plan or project:

[brief description of the plan or project, including its nature, location, duration and purpose. Include any maps and supporting documents as email attachments]

Section 2: European sites affected by the plan or project

Name and site codes of the European sites affected:

[specify the Special Protection Area (SPA) or potential SPA, Special Area of Conservation (SAC) or proposed SAC, Wetland of International Importance (Ramsar site) or European site compensatory area (an area protected because it is already identified for, or providing compensation for, adverse effects of a different plan or project]

Advice on European site conservation objectives:

[link to relevant advice about the site's conservation objectives from either Natural England or Natural Resources Wales]

If a SAC is affected, list any priority habitats and species affected by the plan or project:

[either 'Not applicable' or specify the priority habitat and species]

Section 3: Adverse effects of the plan or project on the integrity of European sites

List the designated habitats and species adversely affected:

[the designated habitats and species that would or could be adversely affected by the plan or project if it goes ahead]

Describe the expected adverse effects:

[briefly describe the unavoidable adverse effects (either alone or in combination with other plans or projects) as predicted by the appropriate assessment. For example, any loss, deterioration, significant disturbance, direct and indirect effects on the species or habitats affected by the project]

Describe any restrictions or modifications you have applied (mitigation measures):

[briefly state what measures you will make sure are taken by the plan or project proposer, how the measures will avoid or reduce negative impacts on the site, who will carry them out and how they will do it]

Summary of the advice provided by Natural England or Natural Resources Wales and how you have taken it into account:

[confirm if the appropriate assessment is consistent with the advice and if not, indicate any differences and explain how you have responded to the advice. Attach a copy of the advice when you submit this form]

Attach a full copy of the HRA undertaken to date (screening, appropriate assessment and conclusions regarding site integrity) and copies of advice or representations received from the statutory nature conservation bodies.

[attach a copy when you submit this form]

Section 4: Consideration of alternative solutions

Show how you have considered and can demonstrate that there are no alternative and less damaging solutions to the plan or project as proposed:

[For example:

- identify and describe the range and type of possible and less damaging alternative solutions you have considered, including the 'zero option' and indicate how you identified these
- provide a full evaluation of the alternative solutions considered
- summarise any conclusions reached about the ecological effects of potential alternative solutions, including by reference to any advice received from Natural England or Natural Resources Wales
- give clear reasons why you have concluded that there are no feasible alternative solutions to the plan or project for which this derogation is proposed]

Section 5: Consideration of imperative reasons of overriding public interest (IROPI)

Describe your proposed reasons for authorising, undertaking or giving effect to this plan or project despite a negative assessment of its implications for European sites:

(a) imperative

[fully explain why you consider the plan or project to be essential or urgent enough that it should proceed]

(b) in the public interest

[fully explain why you consider the plan or project to be in the public interest and at which scale, such as national, regional or local]

(c) overriding the harm that would be caused to the European sites

[fully explain how you have weighed the imperative reasons of public interest (a) and (b) against the wider conservation importance of the affected European site for the habitats and species that will be affected. For example, you could use the following information, where applicable:

- the national contextual information provided by JNCC on UK SACs and UK SPAs
- the conservation status assessments for the affected features, based on the UK article 17 reports for SACs and article 12 reports for SPAs
- the UK biodiversity indicators on the status of habitats and species of European Importance (indicators C3a and C3b)]

Provide copies or a summary of any formal or informal advice you have received from Natural England or Natural Resources Wales, or any other statutory adviser, relevant to the consideration of IROPI:

[attach copies when you submit this form]

Summarise how you have taken this advice into account:

If a priority SAC habitat or species could be adversely affected by the plan or project, indicate which of the following public interests the reasons relate to:

[select from:

- human health
- public safety
- beneficial consequences of primary importance for the environment
- other imperative reasons of overriding public interest - describe what these are, and if you have previously sought and received an Opinion from the appropriate authority under regulation 64(3) or 107(3) of the Habitats Regulations about any other imperative reasons of overriding public interest, attach a copy of that Opinion]

Section 6: Consideration of the necessary compensatory measures

Provide an overview of the compensatory measures that have been secured, and which will be undertaken should the plan or project proceed:

[provide as complete an overview as possible, including:

- the objectives, target features (the affected habitats and species) and the ecological processes and functions to be compensated
- the precise extent of the compensatory measures - for example, surface areas, population numbers

- the precise location of compensation areas - include maps, and digitised data provided as an ESRI Shapefile
- the current status and condition of the compensation areas – for example existing habitats and their status, type of land, existing land uses
- time schedule for implementing the compensatory measures (including their long-term implementation), indicating the expected results and when they will be achieved
- methods and techniques for implementing the compensatory measures, evaluation of their feasibility and expected effectiveness
- costs and financing of the compensatory measures, including their design, establishment, and maintenance for the necessary duration
- responsibilities for implementing the compensatory measures
- how the compensatory measures will be monitored and by whom, including timescales, and where necessary (for example, if there are uncertainties concerning the effectiveness of the measures) assessment of results and what you will do if the compensatory measures do not work as planned
- enforcement of the necessary compensatory measures if required - how they will enforce them, and who will enforce them
- the process that will be used to confirm that the measures have been successfully completed]

Provide copies of the advice you have received from Natural England or Natural Resources Wales relating to the proposed compensatory measures:

[attach copies when you submit this form]

Section 7: Further information considered relevant to this notification

Give any further details that you feel are relevant to this notice:

[insert relevant information not already covered in this notice]

You must sign the declaration and send your completed derogation notice to the relevant postal or email address. Remember to attach all relevant supporting documents.

Declaration

In accordance with regulation [64(5) or 107(5)] [delete as appropriate] of the Conservation of Habitats and Species Regulations 2017 (as amended), we, [insert name of competent authority or plan-making authority], hereby notify [the Secretary of State] or [Welsh Ministers], as the appropriate authority under these Regulations, that we intend to authorise, undertake or give effect to the proposed plan or project described in this notice, notwithstanding a negative assessment of its implications for one or more European sites.

We will not authorise, undertake or give effect to the plan or project before the end of the period of 21 days beginning with the date you, as the appropriate authority, received this notification, unless you as the appropriate authority notify us that we may do so.

We note that, without prejudice to any other power, [the Secretary of State] or [Welsh Ministers] may give directions to us as the competent authority or plan-making authority in any such case prohibiting the authorisation or undertaking of the project or the giving of effect to the plan, either indefinitely or during such a period as may be specified in the direction.

We would be grateful if you would acknowledge your receipt of this notification to the person named below.

We look forward to receiving the views or further instructions from the [Secretary of State] or [Welsh Ministers].

Approved by:

[signature – an electronic signature is acceptable]

Name:

[print name]

Position held:

On behalf of:

[name of competent authority or plan-making authority]

Date this notice was sent to government department:

[date on which this form is sent or emailed]

Name of contact person:

Contact address:

Contact telephone or email:

Guidance

Duty to protect, conserve and restore European sites

Competent authorities must take action to help protect, conserve and restore the protected habitats and species of European sites.

From: Department for Environment, Food & Rural Affairs (/government/organisations/department-for-environment-food-rural-affairs), Welsh Government (/government/organisations/welsh-government), Natural England (/government/organisations/natural-england), and Natural Resources Wales (/government/organisations/natural-resources-wales)

Published 24 February 2021

Applies to England and Wales

Contents

- — Duty to conserve European sites
- — Meet conservation objectives
- — Identify when you need to take action
- — Put conservation measures in place
- — Get help and advice

Competent authorities are:

- public bodies, such as the local authority, the Environment Agency, Forestry England and Inshore Fisheries and Conservation Authorities
- the statutory nature conservation bodies (SNCBs) – Natural England and Natural Resources Wales (NRW)
- statutory undertakers, such as a water company, port authority, energy provider
- ministers or departments of government
- anyone holding public office, such as members of planning committees or councillors

This guide applies to the following European sites:

- Special Protection Areas (SPAs)
- Special Areas of Conservation (SACs)

Related content

Conservation objectives for land-based protected sites in England: how to use the site advice (/guidance/conservation-objectives-for-land-based-protected-sites-in-england-how-to-use-the-site-advice)

Habitats regulations assessments: protecting a European site (/guidance/habitats-regulations-assessments-protecting-a-european-site)

Marine Protected Areas: conservation advice packages (/government/collections/conservation-advice-packages-for-marine-protected-areas)

Get fast-track advice for SSSI assent (/government/publications/get-fast-track-advice-for-sssi-assent)

Detailed guidance

Conservation objectives for land-based protected sites in England: how to use the site advice

It includes their inshore waters within 12 nautical miles of the coast.

Find these sites on Magic map (https://magic.defra.gov.uk/MagicMap.aspx?chosenLayers=sacPIndex,sacIndex,sacwalPIndex,sacwalIndex,spaPIndex,spaIndex,spawalPIndex,spawalIndex,backdropDIndex,backdropIndex,europeIndex,vmlBWIndex,25kBWIndex,50kBWIndex,250kBWIndex,miniscaleBWIndex,baseIndex&box=-40031:-7459:678615:342541&useDefaultbackgroundMapping=false).

Duty to conserve European sites

As a competent authority, you have a duty to help protect, conserve and restore European sites. The duty applies when you:

- manage a site that you own or occupy
- take decisions that might affect a site
- get asked by a third party to use your powers to protect a site
- carry out your statutory work affecting a site

If you can take action but you decide not to, you should be able to give clear and proper reasons why you have made that decision. You may be asked to give reasons by the SNCB, government or a third party.

You have a duty to consider how you can help to:

- protect, conserve or restore the designated features of the site to meet their conservation objectives
- prevent the deterioration of the site's habitats from human activity or natural changes, including habitats that support designated species
- prevent significant disturbance of the site's designated species from human activity or natural changes

(/guidance/conservation-objectives-for-land-based-protected-sites-in-england-how-to-use-the-site-advice)

Habitats regulations assessments: protecting a European site (/guidance/habitats-regulations-assessments-protecting-a-european-site)

Sites of special scientific interest: public body responsibilities (/guidance/sites-of-special-scientific-interest-public-body-responsibilities)

Special Nature Conservation Orders and stop notices (/guidance/special-nature-conservation-orders-consent-and-stop-notices)

Work with other competent authorities

You may need to work with other competent authorities in your area and coordinate the use of your powers to protect, conserve or restore a site.

Duty for sites of special scientific interest

European sites on land will also be sites of special scientific interest (SSSI). When the site, or any part of it, is a SSSI, you also have other duties for the site. Read the guidance on public body responsibilities for a SSSI (https://www.gov.uk/guidance/sites-of-special-scientific-interest-public-body-responsibilities).

When you need to do a habitats regulations assessment

If a plan or project might impact on the features of a European site you must carry out a habitats regulations assessment (HRA). The HRA helps you decide if a plan or project can go ahead or not. It applies to your own proposals, and those you need to authorise. Read the guide on how to carry out an HRA (https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site).

Meet conservation objectives

You are expected to help achieve a European site's conservation objectives.

The SNCBs have published conservation objectives for each site:

- England: conservation objectives (https://designatedsites.naturalengland.org.uk/SiteSearch.aspx)

- Wales: conservation objectives (https://naturalresources.wales/guidance-and-advice/environmental-topics/wildlife-and-biodiversity/protected-areas-of-land-and-seas/find-protected-areas-of-land-and-sea/?lang=en)

You must consider the site's conservation objectives when you:

- develop, propose or assess an activity, plan or project that may affect the site
- identify measures to protect and conserve the site

You must also consider any supplementary advice and case-specific advice given by the SNCB.

The site's conservation objectives help you understand what you need to do to:

- conserve the site
- restore the site
- prevent deterioration or significant disturbance of its qualifying features

By meeting the objectives, the site will contribute to favourable conservation status (FCS) for that species or habitat type at a UK level.

The conservation status of a natural habitat is favourable when:

- its natural range and area are stable or increasing
- the processes that maintain the structure and function of the habitat are likely to continue on a long-term basis
- its typical species are stable or improving

The conservation status of a species is favourable when:

- the population is maintaining itself on a long-term basis
- the natural range of the species is stable or improving
- its habitat is stable or improving and can support the species on a long-term basis

Identify when you need to take action

You must consider how you can use your statutory powers to help European sites meet their conservation objectives. These actions are known as conservation measures.

When you consider what conservation measures may be necessary, you need to:

- anticipate the likely harm an activity may do to a site from human activity or natural processes
- look for evidence of deterioration or disturbance
- consider how your own decisions might affect a site's conservation objectives

You must not wait until a site is harmed to put conservation measures in place.

Anticipate likely harm

Past or existing activities may have a negative effect on a site now or in the future. For example, fishing, agriculture or recreational activities. You may need to use your powers to restrict, stop or change those activities. This can include activities taking place on the site and outside a site's boundary.

You should try to prevent harm to a site from natural catastrophes. For example, consider what you can do to reduce:

- flood risk in heavy rainfall
- fire risk in periods of drought

Natural changes may affect a site. For example, the invasion of trees and scrub onto heathland, grassland or sand dunes. You may need to stop this happening if it's harming the designated features of a site that you manage or can help to manage.

You could get advice from:

- an ecologist to help you anticipate likely harm
- the SNCB about the risk of harmful changes and how you could help protect the site

Look for signs of deterioration or disturbance

You need to look for signs of deterioration or disturbance at European sites that you're responsible for.

Deterioration of a site may:

- cause it to lose its essential ecological characteristics
- reduce the size or quality of its habitats
- weaken its ability to maintain its designated species, such as conditions for breeding

Disturbance on a site may cause a:

- decline of the species on it

- reduction in the range of a species

You could get ecological advice or ask the SNCB to tell you about any signs of deterioration or disturbance on your sites.

Put conservation measures in place

You must consider introducing appropriate conservation measures if you:

- can help conserve or restore a site
- have found deterioration or disturbance, or a risk of it occurring

These measures will help you protect and conserve the site and meet the conservation objectives.

You may need to take conservation measures outside the boundary of the site, or across sites. For example, when:

- fishing affects marine sites
- species of a site, such as birds and mammals, move around and use habitats outside the site

Conservation measures must be flexible to respond to changing conditions, such as:

- changes over time to the status of habitats or species protected on the site
- new threats to the site’s features
- new ecological information about the site
- local cultural, social and economic needs

Conservation measures must be:

- positive and proactive
- based on the ecological requirements of the site's designated features
- able to remain in place for as long as they're needed

You can use your powers to make conservation measures, for example:

- change how an activity is carried out on or near the site
- change or withdraw consents or permits you've given at the site
- take enforcement action against someone carrying out a harmful activity
- repair any damage caused to a site

When you consider introducing conservation measures you should use the:

- site's conservation objectives
- site's management statements for a SSSI in England (https://designatedsites.naturalengland.org.uk/SiteSearch.aspx)
- site's management statements for a SSSI in Wales (https://naturalresources.wales/guidance-and-advice/environmental-topics/wildlife-and-biodiversity/protected-areas-of-land-and-seas/find-protected-areas-of-land-and-sea/?lang=en)
- site improvement plan (http://publications.naturalengland.org.uk/category/5458594975711232) for a site in England
- core management plan (https://naturalresources.wales/guidance-and-advice/environmental-topics/wildlife-and-biodiversity/protected-areas-of-land-and-seas/find-protected-areas-of-land-and-sea/?lang=en) for a site in Wales
- prioritised action framework (https://gov.wales/sites/default/files/publications/2019-05/prioritised-action-framework-for-natura-2000-uk-wide.pdf) for all European sites in the UK

Get help and advice

The SNCBs can give advice on how to protect, conserve and restore European sites.

Contact Natural England (https://www.gov.uk/government/organisations/natural-england#org-contacts) for help in England.

Contact NRW (https://naturalresources.wales/about-us/contact-us?lang=en) for help in Wales.

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Guidance

Habitats regulations assessments: protecting a European site

How a competent authority must decide if a plan or project proposal that affects a European site can go ahead.

From:
Department for Environment, Food & Rural Affairs (/government/organisations/department-for-environment-food-rural-affairs), Natural England (/government/organisations/natural-england), Welsh Government (/government/organisations/welsh-government), and Natural Resources Wales (/government/organisations/natural-resources-wales)

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Applies to England and Wales

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This guide applies to European sites in England and Wales and their inshore waters (within 12 nautical miles of the coast).

A European site is protected by the Conservation of Habitats and Species Regulations 2017 as amended (known as the Habitats Regulations).

As a competent authority, you must carry out an assessment under the Habitats Regulations, known as a habitats regulations assessment (HRA), to test if a plan or project proposal could significantly harm the designated features of a European site.

From the assessment's outcome, you can decide whether to approve a project or adopt a plan ('a proposal'). This includes a proposal you will carry out yourself.

Use this guide to follow the HRA process.

A competent authority is:

- a public body (https://www.gov.uk/government/organisations) that decides to give a licence, permit, consent or other permission for work to happen, adopt a plan or carry out work for itself, such as a local planning authority
- a statutory undertaker carrying out its work, like a water company or an energy provider
- a minister or department of government, for example that makes national policy or decides an appeal against another competent authority's decision
- anyone holding public office, such as a planning inspector, ombudsman or commissioner

If you're a developer or a proposer planning an activity that might affect a European site, you can read this guide to understand what a competent authority should do to assess your proposal.

European sites

The following European sites are protected by the Habitats Regulations and any proposals that could affect them will require an HRA:

- Special Areas of Conservation (http://jncc.defra.gov.uk/protectedsites/sacselection/SAC_list.asp?Country=E) (SACs)
- Special Protection Areas (https://jncc.gov.uk/our-work/list-of-spas/) (SPAs)

Any proposals affecting the following sites would also require an HRA because these are protected by government policy:

- proposed SACs
- potential SPAs
- Ramsar sites (http://jncc.defra.gov.uk/page-1390) - wetlands of international importance (both listed and proposed)
- areas secured as sites compensating for damage to a European site

Before you start an HRA

Before you start an HRA, there are several factors you should consider.

Decide if the proposal is a plan or project

You should decide whether the proposal is a plan, a project or neither. Any proposal that might have an impact on a European site is likely to be a plan or project.

If you're sure that the proposal is not a plan or a project, you do not need to carry out an HRA. You must still consider your general duty to protect, conserve and restore European sites (https://www.gov.uk/guidance/duty-to-protect-conserve-and-restore-european-sites) before you make a decision or carry out your own work.

You should give the terms 'plan' and 'project' a very broad meaning to cover a wide range of activities.

When a proposal is a plan

A plan sets out where future activities or developments should take place within a certain area. This can include any changes that are proposed to an existing plan.

Examples of plans include:

- local plans and local development plans
- neighbourhood plans
- national policy statements
- marine spatial plans
- funding plans
- flood and coastal erosion risk management plans
- river basin management plans

When a proposal is a project

A project can be any activity or a number of activities that either needs a new or renewed permission from a competent authority before it goes ahead, or that a competent authority proposes to carry out itself. It can also include proposals to change an existing project.

Examples of projects include:

- building or installing transport schemes, housing, retail and industrial developments, wind farms, tidal energy schemes, and extraction of minerals, water or timber
- licensing, permitting or regulating an activity, for example, applications for planning permission, licences, consents or permits issued under byelaws and other legislation, and activities under permitted development rights
- your own statutory activities, such as maintaining highways and flood defences, repairing underground cables or keeping powerlines clear

Check if a proposal might affect a European site

You only need to carry out an HRA if the proposal might affect a European site. The effect of your proposal may depend on its location. It could be:

- on the site
- near the site
- some distance away, for example by causing air, water or noise pollution or affecting a feeding area used by one of the site's designated species

You can locate a European site using Magic map (https://magic.defra.gov.uk/MagicMap.aspx?chosenLayers=bwatersIndex,mnrIndex,mczIndex,marinesac,marinespa,protwreckPIndex,protwreckIndex,backdropDIndex,backdropIndex,europeIndex,vmlBWIndex,25kBWIndex,50kBWIndex,250kBWIndex,miniscaleBWIndex,baseIndex&box=-1014560:0:1814560:1400000&useDefaultbackgroundMapping=false).

You can check if there's an impact risk zone (IRZ) around a protected site. This will help you assess if a proposal might affect a site. See the IRZ data on Magic map (https://magic.defra.gov.uk/MagicMap.aspx?chosenLayers=sssiirzIndex,backdropDIndex,backdropIndex,europeIndex,vmlBWIndex,25kBWIndex,50kBWIndex,250kBWIndex,miniscaleBWIndex,baseIndex&box=347640:370860:524460:458360&useDefaultbackgroundMapping=false).

Make decision making quicker

To make it quicker to decide if a proposal can go ahead, you can:

- help the proposer with the process, for example, keep delays to a minimum and tell them about timings for decisions
- tell the proposer as soon as possible if there are problems with their proposal, such as missing information
- keep duplication to a minimum, for example, you may be able to use information from the HRAs of previous similar decisions if they're still relevant and up to date
- agree that the proposer can provide information for the HRA alongside other assessments, such as an environmental impact assessment or strategic environmental assessment

Be strategic

Take a strategic approach by dealing with proposals that all have similar risks or impacts in the same way.

You and the proposer should consider working with:

- other competent authorities in the area
- the relevant Statutory Nature Conservation Body (SNCB)
- other specialist groups or organisations in the area

Coordinate with other competent authorities

When there's more than one competent authority carrying out an HRA for the same proposal, you should work together on the assessment. For example, a mineral extraction proposal may need the permission from the local authority and the Environment Agency or Natural Resources Wales.

Agree a lead competent authority where responsibilities overlap

Where a proposal overlaps with other competent authorities' areas of responsibility, you should agree who is the lead competent authority.

For each proposal, decide which authority should lead, based on who has the:

- best technical expertise - when a technical issue is the most important factor in assessing the impact of the proposal
- main interest in cross-boundary cases
- capacity to manage where there are many complex and cross-boundary issues

The lead competent authority will need to:

- act as the single point of contact for the HRA
- make sure each competent authority understands their role and responsibility
- agree a decision timetable
- make sure all SNCBs are consulted and appoint a lead body where there are split responsibilities
- share existing evidence and identify evidence gaps
- prepare the HRA on behalf of the other competent authorities
- coordinate consultations and any recommendations
- set up a memorandum of understanding between all parties - for complex cases

Use the HRA of another competent authority

You can use an HRA previously carried out by another competent authority for the same proposal if:

- there's no new information or evidence that may lead to a different conclusion
- the assessments already done are relevant, thorough and correct
- the conclusions are rigorous and robust
- there's no new case law that changes the way an HRA should be carried out or interpreted

If you decide to use a previous HRA's evidence and conclusions, you should still make sure your final decision will have no negative effect on the European site. The final decision is your responsibility.

You should not assess any part of a proposal that another competent authority has a role to assess. The relevant competent authority will do their own assessment.

When you make your decision on whether a proposal can go ahead or not, you should record that you've used all or part of an HRA carried out by another authority.

Who to consult when carrying out an HRA

You must consult the relevant SNCB at the appropriate assessment stage of the HRA process, but you can ask for advice at any stage in the process. You must consider the advice you get and include it in your HRA, if relevant. If you disagree with the advice, you should record it in your assessment and explain why.

Consult:

- Natural England (https://www.gov.uk/government/organisations/natural-england#org-contacts) in England or English inshore waters
- Natural Resources Wales (https://naturalresources.wales/about-us/contact-us?lang=en) in Wales or Welsh inshore waters

If a European site overlaps with other countries of the UK or with offshore waters, you must also consult:

- NatureScot (https://www.nature.scot/about-snh/contact-us) in Scotland or Scottish inshore waters
- Department of Agriculture, Environment and Rural Affairs (https://www.daera-ni.gov.uk/articles/assi-guidance-public-bodiescompetent-authorities) in Northern Ireland or Northern Irish inshore waters
- the Joint Nature Conservation Committee (https://jncc.gov.uk/about-jncc/corporate-information/contact-points-and-enquiries/) (JNCC) beyond 12 nautical miles from the shore

Follow HRA principles

If the proposal is a plan or project that could affect a European site, you will need to:

- understand the conservation objectives for the relevant European site affected - these describe the ecological reasons for its protection - you can find these on the designated sites databases for England (https://designatedsites.naturalengland.org.uk/SiteSearch.aspx) or Wales (https://naturalresources.wales/guidance-and-advice/environmental-topics/wildlife-and-biodiversity/protected-areas-of-land-and-seas/find-protected-areas-of-land-and-sea/?lang=en)
- use these databases to find out about existing threats or pressures on the site - this can include the effects of any unregulated activities or the effects of permissions given in the past
- consider all possible effects of the proposal, at every phase, on the designated features of the site - include impacts that are direct and indirect, temporary and permanent
- consider possible combined effects on the site with other plans and projects
- make judgements based on the facts of the individual situation and the ecological condition of the site's features
- use the best available objective and scientific information to make confident decisions
- work with the proposer to find a way to allow projects or adopt plans while still protecting sites, if possible
- ask for information from the proposer that's proportionate, for example only ask for the information or evidence you need to meet the regulations
- consider the advice you get from the relevant SNCB
- keep a detailed written record of the HRA and give clear reasons and evidence for your decisions
- make sure your assessment is thorough and complete with clear and precise conclusions

You should also:

- agree with the proposer, at the start, what evidence they need to provide, for example, agreeing evidence plans for nationally significant infrastructure projects (https://www.gov.uk/government/publications/habitats-and-wild-birds-directives-evidence-plans-for-nationally-significant-infrastructure-projects) (NSIPs)
- talk to relevant experts or specialists as early as possible
- decide whether you should consult the public on your assessment

How to carry out an HRA

The process can have up to 3 stages. You may not need to complete all stages, depending on what you decide at each stage. The stages are:

1. Screening - to check if the proposal is likely to have a significant effect on the site's conservation objectives. If not, you do not need to go through the appropriate assessment or derogation stages.

2. Appropriate assessment - to assess the likely significant effects of the proposal in more detail and identify ways to avoid or minimise any effects.

3. Derogation - to consider if proposals that would have an adverse effect on a European site qualify for an exemption.

Consult an ecologist or the relevant SNCB to help you make decisions, if you're unsure.

Take a precautionary approach to decisions

You must take a precautionary approach with your decisions at each stage of the HRA process.

For example, if you cannot rule out:

- the risk of a proposal having a significant effect on the conservation objectives of a European site at stage 1: screening, you must carry out an appropriate assessment
- all reasonable scientific doubt of an adverse effect on a site's integrity at stage 2: appropriate assessment, you must refuse the proposal unless an exemption (stage 3: derogation) is justified

1. Screening

This step is a simple assessment to check or screen if a proposal:

- is directly connected with or necessary for the conservation management of a European site
- risks having a significant effect on a European site on its own or in combination with other proposals

You should consider the proposal's integral design features or characteristics, such as its layout, timing and location to inform your screening decision. These may mean that any risk to a European site is avoided and you do not need to do an appropriate assessment.

At this stage, you should not consider any mitigation measures included by the proposer for the purpose of avoiding or minimising risk to a European site. These mitigation measures need to be considered at the appropriate assessment stage.

Conservation management proposals

You must first check if the whole proposal is for the conservation management of the habitats or species for which the European site has been designated. If it is, you do not need to carry out an appropriate assessment.

You must continue screening the proposal if it contains:

- conservation management that could negatively affect a different feature or a different European site
- non-conservation management activities, such as development, commercial operations or recreational events

Assess the likely significant effect

You must check if the proposal could have a significant effect on a European site that could affect its conservation objectives.

You should check if there's a risk or possibility of a significant effect based on the evidence. You should only consider real, not hypothetical risk.

You can find the conservation objectives for European sites on land and inshore in:

- England on Natural England's designated sites database (https://designatedsites.naturalengland.org.uk/SiteSearch.aspx)
- Wales on Natural Resources Wales' designated sites database (https://naturalresources.wales/guidance-and-advice/environmental-topics/wildlife-and-biodiversity/protected-areas-of-land-and-seas/find-protected-areas-of-land-and-sea/?lang=en)

You should consider:

- the area over which the proposed activity would take place
- any overlaps or interaction with the protected features of a site in a direct or indirect way
- the effect of any essential parts of the proposal, such as its location, timing or design

If you cannot rule out the risk of the proposal having a significant effect, you will need to do an appropriate assessment.

Check for combined effects

Your proposal alone may have an effect on a European site that's not significant. You must check if this effect could combine with any other proposal planned or underway and affects the same site, that on its own also does not have a significant effect. If, in combination, your proposal could have a significant effect on the European site, you will need to do an appropriate assessment.

Check for proposals being dealt with by other competent authorities, such as:

- applications for a new permission
- applications to change an existing permission
- granted permissions that have not begun or been completed
- granted permissions that need renewing
- plans that have been drafted but not yet adopted

A proposal, alone or in combination with other proposals, could cause a significant effect on a European site if there's:

- a reduction in the amount or quality of designated habitats or the habitats that support designated species
- a limit to the potential for restoring designated habitats in the future
- a significant disturbance to the designated species
- disruption to the natural processes that support the site's designated features
- only reduction or offset measures in place

If there's no likely significant effect on the site, either alone or in combination, then you do not need to carry out an appropriate assessment.

You should record your screening decision and your reasons for it.

2. Appropriate assessment

You must carry out an appropriate assessment if you:

- decide there's a risk of a likely significant effect on a European site
- do not have enough evidence to rule out a risk

The assessment should be:

- more detailed and thorough than the screening check
- appropriate for the nature and complexity of the proposal and allow you to carry out the integrity test

Your appropriate assessment should:

- assess the likely significant effects of a proposal on the integrity of the site and its conservation objectives
- consider ways to avoid or reduce (mitigate) any potential for an 'adverse effect on the integrity of the site'

Test the integrity of the site

Your appropriate assessment must show whether an adverse effect on the integrity of the site from the proposal can be ruled out or not.

The integrity of the site will be adversely affected if a proposal could, for example:

- destroy, damage or significantly change all or part of a designated habitat
- significantly disturb the population of a designated species, for example, its breeding birds or hibernating bats
- harm the site's ecological connectivity with the wider landscape, for example, harm a woodland that helps to support the designated species from a nearby European site

- harm the site's ecological function, or its ability to survive damage, and reduce its ability to support a designated species
- change the site's physical environment, for example, by changing the chemical makeup of its soil, increasing the risk of pollution or changing the site's hydrology
- restrict access to resources outside the site that are important to a designated species, for example, food sources or breeding grounds
- prevent or disrupt restoration work, or the potential for future restoration, if it undermines the site's conservation objectives

You must be able to rule out all reasonable scientific doubt that the proposal would not have an adverse effect on the integrity of the site before you can allow the proposal to go ahead.

How to assess effects on site integrity

To carry out the assessment and apply the integrity test, you should consider:

- the ecological requirements, conservation objectives and the current conservation status (if known) of the site's designated features that might be affected by the proposal
- each potential effect on the European site, including the risk of combined effects with other proposals, and how they might impact on the site's conservation objectives
- the scale, extent, timing, duration, reversibility and likelihood of the potential effects
- how certain you are of the effects occurring
- mitigation measures that have been proposed or conditions you can attach to avoid or limit the effects
- how confident you can be that mitigation measures will be effective over the whole lifetime of the proposal - for example, the effects of construction, operation and decommissioning

You must consult the relevant SNCB and you should send them a copy of your draft appropriate assessment. You must consider the advice you get back. You should only disagree with the advice if you have a good reason.

You should keep a record of your final appropriate assessment, particularly if you're not following the SNCB's advice. You may need it as evidence if, for example, there's an appeal or freedom of information request.

If you're a local planning authority in England making a decision on planning applications, you should read the guide about appropriate assessments and legal implications on neighbourhood plans and permissions in principle (https://www.gov.uk/guidance/appropriate-assessment).

Consider mitigation measures

As part of your appropriate assessment, you should consider any mitigation measures that have been included as part of the proposal to remove or reduce potential adverse effects.

You or the proposer can get advice on mitigation measures from the relevant SNCB or an ecological adviser.

You should assess what difference the mitigation measures would make to the effects of the proposal on the site. You must be sure that the mitigation will be effective. To do this, your assessment will need to show:

- how the measures would be implemented and monitored, and how long for
- how you would enforce the measures if you had to
- how certain you are that the measures would work to avoid or reduce effects on the site
- how long it will take for the measures to take effect
- the level of success you expect, or what changes you'd make if monitoring shows the measures may fail

You must make sure that any necessary mitigation measures are put in place now and not wait for adverse effects to happen first.

Attach conditions

If mitigation measures are needed to avoid adverse effects, you should attach conditions or take other necessary steps to make sure the measures are carried out.

You can make conditions flexible. For example, you could remove conditions if it's clear from monitoring that the risk of negative effects is lower than first thought. You should consult the relevant SNCB to make sure the new conditions are still effective.

You should be sure you can enforce the conditions if you need to, and that the proposer is capable of fulfilling them.

Design or method conditions

You can attach conditions to the design features or methods of a proposal to avoid damaging sensitive habitats.

For example, for construction work near a watercourse, you could include the condition of creating a bund to stop sediment or pollution getting into the watercourse.

Timing conditions

You can attach timing conditions to avoid work taking place during sensitive times of year or day.

For example, to avoid disturbing:

- birds, seals and bats during their breeding season
- birds on land or at sea when they’re resting or feeding during the winter months

Monitoring conditions

You can attach monitoring conditions to check whether the mitigation measures are working as expected. You can use monitoring as an early warning to identify the risk of any new potential impacts.

Monitoring conditions should clearly state what action the proposer will need to take to make sure adverse effects do not occur if either the:

- impacts are likely to be greater than expected
- mitigation might not be working as expected

Example of appropriate mitigation and conditions

An appropriate assessment of a proposed industrial development shows that lights and traffic from construction work could disturb a significant number of birds on a nearby European site designated for breeding birds.

You can attach conditions to the proposal so that it passes the integrity test. For example, to make sure that a proposer:

- installs temporary visual and acoustic screens around the construction work
- times the work to start and finish outside the birds’ breeding season
- monitors the site to confirm whether the mitigation is successful
- adds extra measures if the original measures do not work as expected

Decide if the proposal passes or fails the integrity test

A proposal will pass the integrity test if your appropriate assessment can show that there is no reasonable scientific doubt that the proposal will not have an adverse effect on the integrity of the site.

This means you can carry out, allow or adopt the proposal - after assessing any other factors that you need to consider - such as noise pollution, landscape damage or flood risk.

If the proposal fails the integrity test because you cannot rule out an adverse effect on site integrity, you must reject the proposal in its current form. This means permission is not granted. The work cannot go ahead or the plan cannot be adopted unless it can pass 3 legal tests and be granted an exception, known as a ‘derogation’.

3. Derogations: allow exceptions

In certain circumstances, you can allow a proposal that's failed the integrity test to go ahead. This is known as a derogation.

You should tell the proposer as soon as possible if you'll consider a derogation on a proposal that's failed the integrity test. It must pass all 3 legal tests for a derogation to be granted.

Derogations: 3 legal tests

To decide if the proposal qualifies for a derogation, you must apply the 3 legal tests in the following order:

1. There are no feasible alternative solutions that would be less damaging or avoid damage to the site.
2. The proposal needs to be carried out for imperative reasons of overriding public interest.
3. The necessary compensatory measures can be secured.

You should make sure that you record all your findings, including a failed test.

Test 1: Consider alternative solutions

To allow a derogation you must decide that there's no alternative solution that would be less damaging to the site.

You should work with the proposer and consider whether any alternative solutions are available. This might include considering whether the proposal could:

- happen at a different location
- use different routes across a site
- change its scale, size, design, method or timing

Alternatives must be suitable

Alternatives need to meet the original objectives of the proposal.

An alternative solution is acceptable if it:

- achieves the same overall objective as the original proposal
- is financially, legally and technically feasible
- is less damaging to the European site and does not have an adverse effect on the integrity of this or any other European site

Examples of alternatives that may not meet the original objective include a proposal that:

- offers nuclear instead of offshore wind energy
- provides rail instead of road transportation
- protects fewer homes from flooding or needs people to relocate

- imports freight in a different way instead of increasing port capacity

The proposer should provide you with information about alternatives, or the lack of them. You will need to judge if there are any acceptable alternatives.

If there are, or appear to be, one or more alternative solutions, you cannot grant the original proposal a derogation and you must reject it. There's no need to do test 2 or test 3.

If there are no alternative solutions, the proposal passes test 1 and you can move to test 2.

Test 2: Consider imperative reasons of overriding public interest

If there are no feasible alternative solutions, you must next be able to show that there are imperative reasons of overriding public interest why the proposal must go ahead. These must justify the proposal, despite the damage it will or could cause to the European site.

You must decide if the proposal is:

- imperative - it's essential that it proceeds for public interest reasons
- in the public interest - it has benefits for the public, not just benefits for private interests
- overriding - the public interest outweighs the harm, or risk of harm, to the integrity of the European site that's predicted by the appropriate assessment

National strategic plans, policy statements and major projects are more likely to have a high level of public interest and be able to show they are imperative and overriding. Plans or projects that only provide short-term or very localised benefits are less likely to be able to show imperative reasons of overriding public interest.

Consider SACs with priority habitats or species and when you must get an opinion

Some of the designated habitats and species of SACs are considered to be a special priority for conservation. Examples of SAC priority habitats and species in England or Wales include:

- limestone pavements
- active blanket and raised bogs
- some coastal dunes
- yew woodland
- western rustwort - a rare liverwort

If priority features are present at a site, they will be listed on the site's conservation objectives. You can find these on the designated sites databases for England (https://designatedsites.naturalengland.org.uk/SiteSearch.aspx) or Wales (https://naturalresources.wales/guidance-and-advice/environmental-topics/wildlife-and-

biodiversity/protected-areas-of-land-and-seas/find-protected-areas-of-land-and-sea/?lang=en).

If your appropriate assessment has shown that the proposal has failed the integrity test on a SAC and a priority habitat or species would be affected, you can only normally consider the following reasons of public interest:

- human health
- public safety
- important environmental benefits

However, If you're considering other reasons of overriding public interest, such as social or economic benefits, you must get the opinion of the relevant national government in England or Wales.

Competent authorities in England should first consult the Department for Environment, Food and Rural Affairs (https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs#org-contacts). Add 'FAO Secretary of State: IROPI opinion request: protected European sites policy' to the subject field if you use email.

Competent authorities in Wales should contact the Welsh Government:

> Biodiversity Policy Team
> Land Nature and Forestry Division
> Welsh Government
> Rhodfa Padarn
> Aberystwyth
> SY23 3UR

Email: bio.diversity@gov.wales add 'FAO Welsh Ministers: IROPI opinion request' to the subject field of your email.

If the proposal has imperative reasons of overriding public interest, it passes test 2 and you can move to test 3.

If the proposal does not have imperative reasons of overriding public interest, you cannot grant a derogation and there's no need to do test 3. You must refuse the proposal.

Test 3: Secure compensatory measures

If there are no feasible alternative solutions and you have shown that there are imperative reasons of overriding public interest, you need to make sure that compensatory measures will be taken. These measures will need to fully offset the damage which will or could be caused to the site.

You should work with the proposer and the relevant SNCB to identify, design and secure suitable compensatory measures. The proposer will be expected to pay for

the compensatory measures.

The compensatory measures themselves must not have a negative effect on the national network of European sites as a whole, despite the negative effects of the proposal on an individual European site.

Compensatory measures can include creating or restoring the same or very similar habitat on areas of little or no conservation value:

- within the same site - if it exists
- at a suitable location outside the site

If the area providing compensatory measures is not within the European site, it should become designated as part of the European site. Until that happens, it's protected by government planning policy (https://www.gov.uk/guidance/national-planning-policy-framework/15-conserving-and-enhancing-the-natural-environment).

How to decide on compensatory measures

You must be confident that the measures will fully compensate for the negative effects of the proposal. You do not need to consider more compensation than is needed.

You should consider:

- how technically feasible and effective the measures will be - based on scientific evidence and previous examples
- how financially viable the measures are - the proposer must have enough funds to cover costs
- how the compensation would be carried out, including how it'll be managed and monitored over the time that's needed, and how it's been secured
- distance from the affected site - compensation closer to the site is generally preferred, unless measures further away will benefit the network of European sites as a whole
- how long the compensatory measures will take to reach the required quality and amount of habitat

Check compensatory measures are done

You should make sure the compensatory measures will go ahead as agreed and will remain in place all the time they're needed, which in most cases will be indefinitely. You should include these measures in the conditions attached to your permission. You must put in place all the necessary legal, technical, financial and monitoring arrangements.

Compensatory measures should usually be in place and effective before the negative effect on a site is allowed to occur.

Example of appropriate compensation measures

An application to expand a port will destroy a portion of mudflat. The mudflat is part of a European site designated for feeding birds. You grant permission because you decide there are:

- no alternatives that are less damaging
- imperative reasons of overriding public interest for the proposal to go ahead

To compensate, the proposer must create replacement feeding habitat for the displaced birds before:

- the expansion can go ahead
- any existing habitat is damaged

Give permission under a derogation

If the proposal passes all 3 tests, you can allow it to go ahead under an HRA derogation.

Before you give your permission for a project, carry out a project yourself or adopt a plan, you must notify the Secretary of State for the relevant UK government department or Welsh Government. You should send them:

- a summary of the proposal
- details about the European sites affected
- your HRA that shows how you reached your decision that the proposal will or could have an adverse effect on the integrity of the sites
- evidence to show that there are no alternative solutions
- evidence to show that there are imperative reasons of overriding public interest for the proposal to go ahead
- details of the compensatory measures and evidence to show that they will work
- advice you received from the SNCB and other stakeholders, and how you considered it

You should use the HRA derogation notice form (https://www.gov.uk/government/publications/habitats-regulations-assessment-derogation-notice) to submit this information.

What you get back

You should get a response within 21 calendar days. If you do not get a response within 21 days you can carry out, approve or adopt the proposal.

If the government is not satisfied that the proposal has met one or more of the 3 tests, it may tell you to reject or delay approval. This may be because it’s not clear how the proposer will carry out compensatory measures.

Review existing plans and projects if European sites change

Sometimes an existing plan or project that you've previously approved or adopted could affect land, or an area of the sea, that:

- becomes a new European site
- is included in an extension to an existing European site
- supports additional habitat types or species that have been added to an existing European site

The Secretary of State for the Department for Environment, Food and Rural Affairs or Welsh Ministers designate or amend European sites.

The relevant SNCB will publish proposals for consultation before a decision is made to create or change a European site.

Any change means you'll need to review the decisions you made about proposals at the European site. You'll need to carry out a new HRA to see if there are any new negative effects on the site's integrity.

Work that has already taken place is not affected.

This review is important where you've previously approved a proposal, but work has either not started or has not finished, such as a large scale mineral extraction scheme.

You can contact the relevant SNCB on reviewing existing proposals.

Published 24 February 2021

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Conservation objectives for land-based protected sites in England: how to use the site advice (/guidance/conservation-objectives-for-land-based-protected-sites-in-england-how-to-use-the-site-advice)

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Guidance

Habitats regulations assessments: protecting a European site

How a competent authority must decide if a plan or project proposal that affects a European site can go ahead.

From: Department for Environment, Food & Rural Affairs (/government/organisations/department-for-environment-food-rural-affairs), Natural England (/government/organisations/natural-england), Welsh Government (/government/organisations/welsh-government), and Natural Resources Wales (/government/organisations/natural-resources-wales)

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Applies to England and Wales

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- — Review existing plans and projects if European sites change

This guide applies to European sites in England and Wales and their inshore waters (within 12 nautical miles of the coast).

A European site is protected by the Conservation of Habitats and Species Regulations 2017 as amended (known as the Habitats Regulations).

Related content

Conservation objectives for land-based protected sites in England: how to use the site advice (/guidance/conservation-objectives-for-land-based-protected-sites-in-england-how-to-use-the-site-advice)

Duty to protect, conserve and restore European sites (/guidance/duty-to-protect-conserve-and-restore-european-sites)

Habitats regulations assessment: derogation notice (/government/publications/habitats-regulations-assessment-derogation-notice)

Sites of special scientific interest: public body responsibilities (/guidance/sites-of-special-scientific-interest-public-body-responsibilities)

Detailed guidance

Developers: get environmental advice on your planning proposals (/guidance/developers-

As a competent authority, you must carry out an assessment under the Habitats Regulations, known as a habitats regulations assessment (HRA), to test if a plan or project proposal could significantly harm the designated features of a European site.

From the assessment's outcome, you can decide whether to approve a project or adopt a plan ('a proposal'). This includes a proposal you will carry out yourself.

Use this guide to follow the HRA process.

A competent authority is:

- a public body (https://www.gov.uk/government/organisations) that decides to give a licence, permit, consent or other permission for work to happen, adopt a plan or carry out work for itself, such as a local planning authority
- a statutory undertaker carrying out its work, like a water company or an energy provider
- a minister or department of government, for example that makes national policy or decides an appeal against another competent authority's decision
- anyone holding public office, such as a planning inspector, ombudsman or commissioner

If you're a developer or a proposer planning an activity that might affect a European site, you can read this guide to understand what a competent authority should do to assess your proposal.

European sites

get-environmental-advice-on-your-planning-proposals)

Conservation objectives for land-based protected sites in England: how to use the site advice (/guidance/conservation-objectives-for-land-based-protected-sites-in-england-how-to-use-the-site-advice)

Duty to protect, conserve and restore European sites (/guidance/duty-to-protect-conserve-and-restore-european-sites)

Special Nature Conservation Orders and stop notices (/guidance/special-nature-conservation-orders-consent-and-stop-notices)

The following European sites are protected by the Habitats Regulations and any proposals that could affect them will require an HRA:

- Special Areas of Conservation (http://jncc.defra.gov.uk/protectedsites/sacselection/SAC_list.asp?Country=E) (SACs)
- Special Protection Areas (https://jncc.gov.uk/our-work/list-of-spas/) (SPAs)

Any proposals affecting the following sites would also require an HRA because these are protected by government policy:

- proposed SACs
- potential SPAs
- Ramsar sites (http://jncc.defra.gov.uk/page-1390) - wetlands of international importance (both listed and proposed)
- areas secured as sites compensating for damage to a European site

Before you start an HRA

Before you start an HRA, there are several factors you should consider.

Decide if the proposal is a plan or project

You should decide whether the proposal is a plan, a project or neither. Any proposal that might have an impact on a European site is likely to be a plan or project.

If you're sure that the proposal is not a plan or a project, you do not need to carry out an HRA. You must still consider your general duty to protect, conserve and restore European sites (https://www.gov.uk/guidance/duty-to-

protect-conserve-and-restore-european-sites) before you make a decision or carry out your own work.

You should give the terms ‘plan’ and ‘project’ a very broad meaning to cover a wide range of activities.

When a proposal is a plan

A plan sets out where future activities or developments should take place within a certain area. This can include any changes that are proposed to an existing plan.

Examples of plans include:

- local plans and local development plans
- neighbourhood plans
- national policy statements
- marine spatial plans
- funding plans
- flood and coastal erosion risk management plans
- river basin management plans

When a proposal is a project

A project can be any activity or a number of activities that either needs a new or renewed permission from a competent authority before it goes ahead, or that a competent authority proposes to carry out itself. It can also include proposals to change an existing project.

Examples of projects include:

- building or installing transport schemes, housing, retail and industrial developments, wind farms, tidal energy schemes, and extraction of minerals, water or timber
- licensing, permitting or regulating an activity, for example, applications for planning permission, licences, consents or permits issued under byelaws and other legislation, and activities under permitted development rights
- your own statutory activities, such as maintaining highways and flood defences, repairing underground cables or keeping powerlines clear

Check if a proposal might affect a European site

You only need to carry out an HRA if the proposal might affect a European site. The effect of your proposal may depend on its location. It could be:

- on the site
- near the site
- some distance away, for example by causing air, water or noise pollution or affecting a feeding area used by one of the site's designated species

You can locate a European site using Magic map (https://magic.defra.gov.uk/MagicMap.aspx?chosenLayers=bwatersIndex,mnrIndex,mczIndex,marinesac,marinespa,protwreckPIndex,protwreckIndex,backdropDIndex,backdropIndex,europeIndex,vmlBWIndex,25kBWIndex,50kBWIndex,250kBWIndex,miniscaleBWIndex,baseIndex&box=-1014560:0:1814560:1400000&useDefaultbackgroundMapping=false).

You can check if there's an impact risk zone (IRZ) around a protected site. This will help you assess if a proposal might affect a site. See the IRZ data on Magic map (https://magic.defra.gov.uk/MagicMap.aspx?chosenLayers=sssiirzIndex,backdropDIndex,backdropIndex,europeIndex,vmlBWIndex,25kBWIndex,50kBWIndex,250kBWIndex,miniscaleBWIndex,baseIndex&box=347640:370860:524460:458360&useDefaultbackgroundMapping=false).

Make decision making quicker

To make it quicker to decide if a proposal can go ahead, you can:

- help the proposer with the process, for example, keep delays to a minimum and tell them about timings for decisions
- tell the proposer as soon as possible if there are problems with their proposal, such as missing information
- keep duplication to a minimum, for example, you may be able to use information from the HRAs of previous similar decisions if they're still relevant and up to date
- agree that the proposer can provide information for the HRA alongside other assessments, such as an environmental impact assessment or strategic environmental assessment

Be strategic

Take a strategic approach by dealing with proposals that all have similar risks or impacts in the same way.

You and the proposer should consider working with:

- other competent authorities in the area
- the relevant Statutory Nature Conservation Body (SNCB)
- other specialist groups or organisations in the area

Coordinate with other competent authorities

When there's more than one competent authority carrying out an HRA for the same proposal, you should work together on the assessment. For

example, a mineral extraction proposal may need the permission from the local authority and the Environment Agency or Natural Resources Wales.

Agree a lead competent authority where responsibilities overlap

Where a proposal overlaps with other competent authorities' areas of responsibility, you should agree who is the lead competent authority.

For each proposal, decide which authority should lead, based on who has the:

- best technical expertise - when a technical issue is the most important factor in assessing the impact of the proposal
- main interest in cross-boundary cases
- capacity to manage where there are many complex and cross-boundary issues

The lead competent authority will need to:

- act as the single point of contact for the HRA
- make sure each competent authority understands their role and responsibility
- agree a decision timetable
- make sure all SNCBs are consulted and appoint a lead body where there are split responsibilities
- share existing evidence and identify evidence gaps
- prepare the HRA on behalf of the other competent authorities
- coordinate consultations and any recommendations
- set up a memorandum of understanding between all parties - for complex cases

Use the HRA of another competent authority

You can use an HRA previously carried out by another competent authority for the same proposal if:

- there's no new information or evidence that may lead to a different conclusion
- the assessments already done are relevant, thorough and correct
- the conclusions are rigorous and robust
- there's no new case law that changes the way an HRA should be carried out or interpreted

If you decide to use a previous HRA's evidence and conclusions, you should still make sure your final decision will have no negative effect on the European site. The final decision is your responsibility.

You should not assess any part of a proposal that another competent authority has a role to assess. The relevant competent authority will do their own assessment.

When you make your decision on whether a proposal can go ahead or not, you should record that you've used all or part of an HRA carried out by another authority.

Who to consult when carrying out an HRA

You must consult the relevant SNCB at the appropriate assessment stage of the HRA process, but you can ask for advice at any stage in the process. You must consider the advice you get and include it in your HRA, if relevant. If you disagree with the advice, you should record it in your assessment and explain why.

Consult:

- Natural England (https://www.gov.uk/government/organisations/natural-england#org-contacts) in England or English inshore waters
- Natural Resources Wales (https://naturalresources.wales/about-us/contact-us?lang=en) in Wales or Welsh inshore waters

If a European site overlaps with other countries of the UK or with offshore waters, you must also consult:

- NatureScot (https://www.nature.scot/about-snh/contact-us) in Scotland or Scottish inshore waters
- Department of Agriculture, Environment and Rural Affairs (https://www.daera-ni.gov.uk/articles/assi-guidance-public-bodiescompetent-authorities) in Northern Ireland or Northern Irish inshore waters
- the Joint Nature Conservation Committee (https://jncc.gov.uk/about-jncc/corporate-information/contact-points-and-enquiries/) (JNCC) beyond 12 nautical miles from the shore

Follow HRA principles

If the proposal is a plan or project that could affect a European site, you will need to:

- understand the conservation objectives for the relevant European site affected - these describe the ecological reasons for its protection - you can find these on the designated sites databases for England (https://designatedsites.naturalengland.org.uk/SiteSearch.aspx) or Wales (https://naturalresources.wales/guidance-and-advice/environmental-topics/wildlife-and-biodiversity/protected-areas-of-land-and-seas/find-protected-areas-of-land-and-sea/?lang=en)

- use these databases to find out about existing threats or pressures on the site - this can include the effects of any unregulated activities or the effects of permissions given in the past
- consider all possible effects of the proposal, at every phase, on the designated features of the site - include impacts that are direct and indirect, temporary and permanent
- consider possible combined effects on the site with other plans and projects
- make judgements based on the facts of the individual situation and the ecological condition of the site's features
- use the best available objective and scientific information to make confident decisions
- work with the proposer to find a way to allow projects or adopt plans while still protecting sites, if possible
- ask for information from the proposer that's proportionate, for example only ask for the information or evidence you need to meet the regulations
- consider the advice you get from the relevant SNCB
- keep a detailed written record of the HRA and give clear reasons and evidence for your decisions
- make sure your assessment is thorough and complete with clear and precise conclusions

You should also:

- agree with the proposer, at the start, what evidence they need to provide, for example, agreeing evidence plans for nationally significant infrastructure projects (https://www.gov.uk/government/publications/habitats-and-wild-birds-directives-evidence-plans-for-nationally-significant-infrastructure-projects) (NSIPs)
- talk to relevant experts or specialists as early as possible

- decide whether you should consult the public on your assessment

How to carry out an HRA

The process can have up to 3 stages. You may not need to complete all stages, depending on what you decide at each stage. The stages are:

1. Screening - to check if the proposal is likely to have a significant effect on the site's conservation objectives. If not, you do not need to go through the appropriate assessment or derogation stages.

2. Appropriate assessment - to assess the likely significant effects of the proposal in more detail and identify ways to avoid or minimise any effects.

3. Derogation - to consider if proposals that would have an adverse effect on a European site qualify for an exemption.

Consult an ecologist or the relevant SNCB to help you make decisions, if you're unsure.

Take a precautionary approach to decisions

You must take a precautionary approach with your decisions at each stage of the HRA process.

For example, if you cannot rule out:

- the risk of a proposal having a significant effect on the conservation objectives of a European site at stage 1: screening, you must carry out an appropriate assessment

- all reasonable scientific doubt of an adverse effect on a site's integrity at stage 2: appropriate assessment, you must refuse the proposal unless an exemption (stage 3: derogation) is justified

1. Screening

This step is a simple assessment to check or screen if a proposal:

- is directly connected with or necessary for the conservation management of a European site
- risks having a significant effect on a European site on its own or in combination with other proposals

You should consider the proposal's integral design features or characteristics, such as its layout, timing and location to inform your screening decision. These may mean that any risk to a European site is avoided and you do not need to do an appropriate assessment.

At this stage, you should not consider any mitigation measures included by the proposer for the purpose of avoiding or minimising risk to a European site. These mitigation measures need to be considered at the appropriate assessment stage.

Conservation management proposals

You must first check if the whole proposal is for the conservation management of the habitats or species for which the European site has been designated. If it is, you do not need to carry out an appropriate assessment.

You must continue screening the proposal if it contains:

- conservation management that could negatively affect a different feature or a different European site
- non-conservation management activities, such as development, commercial operations or recreational events

Assess the likely significant effect

You must check if the proposal could have a significant effect on a European site that could affect its conservation objectives.

You should check if there's a risk or possibility of a significant effect based on the evidence. You should only consider real, not hypothetical risk.

You can find the conservation objectives for European sites on land and inshore in:

- England on Natural England's designated sites database (https://designatedsites.naturalengland.org.uk/SiteSearch.aspx)
- Wales on Natural Resources Wales' designated sites database (https://naturalresources.wales/guidance-and-advice/environmental-topics/wildlife-and-biodiversity/protected-areas-of-land-and-seas/find-protected-areas-of-land-and-sea/?lang=en)

You should consider:

- the area over which the proposed activity would take place
- any overlaps or interaction with the protected features of a site in a direct or indirect way
- the effect of any essential parts of the proposal, such as its location, timing or design

If you cannot rule out the risk of the proposal having a significant effect, you will need to do an appropriate assessment.

Check for combined effects

Your proposal alone may have an effect on a European site that's not significant. You must check if this effect could combine with any other proposal planned or underway and affects the same site, that on its own also does not have a significant effect. If, in combination, your proposal could have a significant effect on the European site, you will need to do an appropriate assessment.

Check for proposals being dealt with by other competent authorities, such as:

- applications for a new permission
- applications to change an existing permission
- granted permissions that have not begun or been completed
- granted permissions that need renewing
- plans that have been drafted but not yet adopted

A proposal, alone or in combination with other proposals, could cause a significant effect on a European site if there's:

- a reduction in the amount or quality of designated habitats or the habitats that support designated species
- a limit to the potential for restoring designated habitats in the future
- a significant disturbance to the designated species
- disruption to the natural processes that support the site's designated features
- only reduction or offset measures in place

If there's no likely significant effect on the site, either alone or in combination, then you do not need to carry out an appropriate assessment.

You should record your screening decision and your reasons for it.

2. Appropriate assessment

You must carry out an appropriate assessment if you:

- decide there's a risk of a likely significant effect on a European site
- do not have enough evidence to rule out a risk

The assessment should be:

- more detailed and thorough than the screening check
- appropriate for the nature and complexity of the proposal and allow you to carry out the integrity test

Your appropriate assessment should:

- assess the likely significant effects of a proposal on the integrity of the site and its conservation objectives
- consider ways to avoid or reduce (mitigate) any potential for an 'adverse effect on the integrity of the site'

Test the integrity of the site

Your appropriate assessment must show whether an adverse effect on the integrity of the site from the proposal can be ruled out or not.

The integrity of the site will be adversely affected if a proposal could, for example:

- destroy, damage or significantly change all or part of a designated habitat
- significantly disturb the population of a designated species, for example, its breeding birds or hibernating bats
- harm the site's ecological connectivity with the wider landscape, for example, harm a woodland that helps to support the designated species from a nearby European site
- harm the site's ecological function, or its ability to survive damage, and reduce its ability to support a designated species
- change the site's physical environment, for example, by changing the chemical makeup of its soil, increasing the risk of pollution or changing the site's hydrology
- restrict access to resources outside the site that are important to a designated species, for example, food sources or breeding grounds
- prevent or disrupt restoration work, or the potential for future restoration, if it undermines the site's conservation objectives

You must be able to rule out all reasonable scientific doubt that the proposal would not have an adverse effect on the integrity of the site before you can allow the proposal to go ahead.

How to assess effects on site integrity

To carry out the assessment and apply the integrity test, you should consider:

- the ecological requirements, conservation objectives and the current conservation status (if known) of the site's designated features that might be affected by the proposal

- each potential effect on the European site, including the risk of combined effects with other proposals, and how they might impact on the site's conservation objectives
- the scale, extent, timing, duration, reversibility and likelihood of the potential effects
- how certain you are of the effects occurring
- mitigation measures that have been proposed or conditions you can attach to avoid or limit the effects
- how confident you can be that mitigation measures will be effective over the whole lifetime of the proposal - for example, the effects of construction, operation and decommissioning

You must consult the relevant SNCB and you should send them a copy of your draft appropriate assessment. You must consider the advice you get back. You should only disagree with the advice if you have a good reason.

You should keep a record of your final appropriate assessment, particularly if you're not following the SNCB's advice. You may need it as evidence if, for example, there's an appeal or freedom of information request.

If you're a local planning authority in England making a decision on planning applications, you should read the guide about appropriate assessments and legal implications on neighbourhood plans and permissions in principle (https://www.gov.uk/guidance/appropriate-assessment).

Consider mitigation measures

As part of your appropriate assessment, you should consider any mitigation measures that have been included as part of the proposal to remove or reduce potential adverse effects.

You or the proposer can get advice on mitigation measures from the relevant SNCB or an ecological adviser.

You should assess what difference the mitigation measures would make to the effects of the proposal on the site. You must be sure that the mitigation will be effective. To do this, your assessment will need to show:

- how the measures would be implemented and monitored, and how long for
- how you would enforce the measures if you had to
- how certain you are that the measures would work to avoid or reduce effects on the site
- how long it will take for the measures to take effect
- the level of success you expect, or what changes you'd make if monitoring shows the measures may fail

You must make sure that any necessary mitigation measures are put in place now and not wait for adverse effects to happen first.

Attach conditions

If mitigation measures are needed to avoid adverse effects, you should attach conditions or take other necessary steps to make sure the measures are carried out.

You can make conditions flexible. For example, you could remove conditions if it's clear from monitoring that the risk of negative effects is lower than first thought. You should consult the relevant SNCB to make sure the new conditions are still effective.

You should be sure you can enforce the conditions if you need to, and that the proposer is capable of fulfilling them.

Design or method conditions

You can attach conditions to the design features or methods of a proposal to avoid damaging sensitive habitats.

For example, for construction work near a watercourse, you could include the condition of creating a bund to stop sediment or pollution getting into the watercourse.

Timing conditions

You can attach timing conditions to avoid work taking place during sensitive times of year or day.

For example, to avoid disturbing:

- birds, seals and bats during their breeding season
- birds on land or at sea when they’re resting or feeding during the winter months

Monitoring conditions

You can attach monitoring conditions to check whether the mitigation measures are working as expected. You can use monitoring as an early warning to identify the risk of any new potential impacts.

Monitoring conditions should clearly state what action the proposer will need to take to make sure adverse effects do not occur if either the:

- impacts are likely to be greater than expected
- mitigation might not be working as expected

Example of appropriate mitigation and conditions

An appropriate assessment of a proposed industrial development shows that lights and traffic from construction work could disturb a significant number of birds on a nearby European site designated for breeding birds.

You can attach conditions to the proposal so that it passes the integrity test. For example, to make sure that a proposer:

- installs temporary visual and acoustic screens around the construction work
- times the work to start and finish outside the birds' breeding season
- monitors the site to confirm whether the mitigation is successful
- adds extra measures if the original measures do not work as expected

Decide if the proposal passes or fails the integrity test

A proposal will pass the integrity test if your appropriate assessment can show that there is no reasonable scientific doubt that the proposal will not have an adverse effect on the integrity of the site.

This means you can carry out, allow or adopt the proposal - after assessing any other factors that you need to consider - such as noise pollution, landscape damage or flood risk.

If the proposal fails the integrity test because you cannot rule out an adverse effect on site integrity, you must reject the proposal in its current form. This means permission is not granted. The work cannot go ahead or the plan cannot be adopted unless it can pass 3 legal tests and be granted an exception, known as a 'derogation'.

3. Derogations: allow exceptions

In certain circumstances, you can allow a proposal that's failed the integrity test to go ahead. This is known as a derogation.

You should tell the proposer as soon as possible if you'll consider a derogation on a proposal that's failed the integrity test. It must pass all 3 legal tests for a derogation to be granted.

Derogations: 3 legal tests

To decide if the proposal qualifies for a derogation, you must apply the 3 legal tests in the following order:

1. There are no feasible alternative solutions that would be less damaging or avoid damage to the site.
2. The proposal needs to be carried out for imperative reasons of overriding public interest.
3. The necessary compensatory measures can be secured.

You should make sure that you record all your findings, including a failed test.

Test 1: Consider alternative solutions

To allow a derogation you must decide that there's no alternative solution that would be less damaging to the site.

You should work with the proposer and consider whether any alternative solutions are available. This might include considering whether the proposal could:

- happen at a different location

- use different routes across a site
- change its scale, size, design, method or timing

Alternatives must be suitable

Alternatives need to meet the original objectives of the proposal.

An alternative solution is acceptable if it:

- achieves the same overall objective as the original proposal
- is financially, legally and technically feasible
- is less damaging to the European site and does not have an adverse effect on the integrity of this or any other European site

Examples of alternatives that may not meet the original objective include a proposal that:

- offers nuclear instead of offshore wind energy
- provides rail instead of road transportation
- protects fewer homes from flooding or needs people to relocate
- imports freight in a different way instead of increasing port capacity

The proposer should provide you with information about alternatives, or the lack of them. You will need to judge if there are any acceptable alternatives.

If there are, or appear to be, one or more alternative solutions, you cannot grant the original proposal a derogation and you must reject it. There’s no need to do test 2 or test 3.

If there are no alternative solutions, the proposal passes test 1 and you can move to test 2.

Test 2: Consider imperative reasons of overriding public interest

If there are no feasible alternative solutions, you must next be able to show that there are imperative reasons of overriding public interest why the proposal must go ahead. These must justify the proposal, despite the damage it will or could cause to the European site.

You must decide if the proposal is:

- imperative - it's essential that it proceeds for public interest reasons
- in the public interest - it has benefits for the public, not just benefits for private interests
- overriding - the public interest outweighs the harm, or risk of harm, to the integrity of the European site that's predicted by the appropriate assessment

National strategic plans, policy statements and major projects are more likely to have a high level of public interest and be able to show they are imperative and overriding. Plans or projects that only provide short-term or very localised benefits are less likely to be able to show imperative reasons of overriding public interest.

Consider SACs with priority habitats or species and when you must get an opinion

Some of the designated habitats and species of SACs are considered to be a special priority for conservation. Examples of SAC priority habitats and species in England or Wales include:

- limestone pavements
- active blanket and raised bogs
- some coastal dunes

- yew woodland
- western rustwort - a rare liverwort

If priority features are present at a site, they will be listed on the site's conservation objectives. You can find these on the designated sites databases for England (https://designatedsites.naturalengland.org.uk/SiteSearch.aspx) or Wales (https://naturalresources.wales/guidance-and-advice/environmental-topics/wildlife-and-biodiversity/protected-areas-of-land-and-seas/find-protected-areas-of-land-and-sea/?lang=en).

If your appropriate assessment has shown that the proposal has failed the integrity test on a SAC and a priority habitat or species would be affected, you can only normally consider the following reasons of public interest:

- human health
- public safety
- important environmental benefits

However, If you're considering other reasons of overriding public interest, such as social or economic benefits, you must get the opinion of the relevant national government in England or Wales.

Competent authorities in England should first consult the Department for Environment, Food and Rural Affairs (https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs#org-contacts). Add 'FAO Secretary of State: IROPI opinion request: protected European sites policy' to the subject field if you use email.

Competent authorities in Wales should contact the Welsh Government:

> Biodiversity Policy Team
> Land Nature and Forestry Division
> Welsh Government
> Rhodfa Padarn
> Aberystwyth
> SY23 3UR

Email: bio.diversity@gov.wales add ‘FAO Welsh Ministers: IROPI opinion request’ to the subject field of your email.

If the proposal has imperative reasons of overriding public interest, it passes test 2 and you can move to test 3.

If the proposal does not have imperative reasons of overriding public interest, you cannot grant a derogation and there’s no need to do test 3. You must refuse the proposal.

Test 3: Secure compensatory measures

If there are no feasible alternative solutions and you have shown that there are imperative reasons of overriding public interest, you need to make sure that compensatory measures will be taken. These measures will need to fully offset the damage which will or could be caused to the site.

You should work with the proposer and the relevant SNCB to identify, design and secure suitable compensatory measures. The proposer will be expected to pay for the compensatory measures.

The compensatory measures themselves must not have a negative effect on the national network of European sites as a whole, despite the negative effects of the proposal on an individual European site.

Compensatory measures can include creating or restoring the same or very similar habitat on areas of little or no conservation value:

- within the same site - if it exists
- at a suitable location outside the site

If the area providing compensatory measures is not within the European site, it should become designated as part of the European site. Until that happens, it's protected by government planning policy (https://www.gov.uk/guidance/national-planning-policy-framework/15-conserving-and-enhancing-the-natural-environment).

How to decide on compensatory measures

You must be confident that the measures will fully compensate for the negative effects of the proposal. You do not need to consider more compensation than is needed.

You should consider:

- how technically feasible and effective the measures will be - based on scientific evidence and previous examples
- how financially viable the measures are - the proposer must have enough funds to cover costs
- how the compensation would be carried out, including how it'll be managed and monitored over the time that's needed, and how it's been secured
- distance from the affected site - compensation closer to the site is generally preferred, unless measures further away will benefit the network of European sites as a whole
- how long the compensatory measures will take to reach the required quality and amount of habitat

Check compensatory measures are done

You should make sure the compensatory measures will go ahead as agreed and will remain in place all the time they're needed, which in most cases will be indefinitely. You should include these measures in the conditions attached to your permission. You must put in place all the necessary legal, technical, financial and monitoring arrangements.

Compensatory measures should usually be in place and effective before the negative effect on a site is allowed to occur.

Example of appropriate compensation measures

An application to expand a port will destroy a portion of mudflat. The mudflat is part of a European site designated for feeding birds. You grant permission because you decide there are:

- no alternatives that are less damaging
- imperative reasons of overriding public interest for the proposal to go ahead

To compensate, the proposer must create replacement feeding habitat for the displaced birds before:

- the expansion can go ahead
- any existing habitat is damaged

Give permission under a derogation

If the proposal passes all 3 tests, you can allow it to go ahead under an HRA derogation.

Before you give your permission for a project, carry out a project yourself or adopt a plan, you must notify the Secretary of State for the relevant UK government department or Welsh Government. You should send them:

- a summary of the proposal
- details about the European sites affected
- your HRA that shows how you reached your decision that the proposal will or could have an adverse effect on the integrity of the sites
- evidence to show that there are no alternative solutions
- evidence to show that there are imperative reasons of overriding public interest for the proposal to go ahead
- details of the compensatory measures and evidence to show that they will work
- advice you received from the SNCB and other stakeholders, and how you considered it

You should use the HRA derogation notice form (https://www.gov.uk/government/publications/habitats-regulations-assessment-derogation-notice) to submit this information.

What you get back

You should get a response within 21 calendar days. If you do not get a response within 21 days you can carry out, approve or adopt the proposal.

If the government is not satisfied that the proposal has met one or more of the 3 tests, it may tell you to reject or delay approval. This may be because it's not clear how the proposer will carry out compensatory measures.

Review existing plans and projects if European sites change

Sometimes an existing plan or project that you've previously approved or adopted could affect land, or an area of the sea, that:

- becomes a new European site
- is included in an extension to an existing European site
- supports additional habitat types or species that have been added to an existing European site

The Secretary of State for the Department for Environment, Food and Rural Affairs or Welsh Ministers designate or amend European sites.

The relevant SNCB will publish proposals for consultation before a decision is made to create or change a European site.

Any change means you'll need to review the decisions you made about proposals at the European site. You'll need to carry out a new HRA to see if there are any new negative effects on the site's integrity.

Work that has already taken place is not affected.

This review is important where you've previously approved a proposal, but work has either not started or has not finished, such as a large scale mineral extraction scheme.

You can contact the relevant SNCB on reviewing existing proposals.

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