



Annex C – Natural England and the Planning Inspectorate

Introduction

Part 1 of the Planning Inspectorate Advice Note 11: “Working with Public Bodies” covers many of the generic points of interaction relevant to the Planning Inspectorate and Natural England. The purpose of this Annex is to help applicants understand Natural England’s particular role in infrastructure planning. It explains what permissions, consents, licences and authorisations Natural England has power to issue (and might be required in relation to a nationally significant infrastructure project (NSIP)) and what arrangements Natural England has in place to assist applicants in obtaining these consents or, alternatively, how these may be granted as part of a development consent order (DCO).

This Annex has been updated to reflect the changes (where appropriate) made by the Localism Act 2011 to the Planning Act 2008 which mean that the Secretary of State is the decision-maker and a competent authority.¹ Reference is also made to “the Planning Inspectorate” which carries out certain functions related to national infrastructure planning on behalf of the Secretary of State.

This Annex will be kept under review so as to ensure that it remains relevant and up to date, for example because of future organisational or legislative changes affecting Natural England and/or the Planning Inspectorate. The Planning Inspectorate and Natural England welcome feedback on the content of this Annex.

General statutory roles, functions and powers

Natural England’s general purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Natural England has responsibility for ensuring that England’s unique natural environment including its flora and fauna, land and seascapes, geology and soils are protected and improved. Natural England champions the environmental elements of sustainable development and engages with the planning system under various Town and Country Planning Acts as a statutory consultee for development plans, environmental impact assessments, strategic environmental assessments and where development is likely to impact on nature conservation and countryside matters. Natural England also plays an important role as a regulatory authority in the issuing of licences and consents where there will be impacts on protected species and sites.

¹ For the purposes of statutory processes described in this Annex including the Infrastructure (Environmental Impact Assessment) Regulations 2009 and Conservation of Habitats and Species Regulations 2010



Natural England's role in relation to NSIPs derives from the Planning Act 2008 (the 2008 Act) and secondary legislation made under the 2008 Act. Natural England's wider and principal regulatory, licensing and advisory powers and duties derive (inter alia) from the following key Acts, Regulations and international law, including:

- The Environmental Protection Act 1990 (as amended by the Natural Environment and Rural Communities Act 2006) which sets out the general purpose of Natural England, including its nature conservation purpose.
- Conservation of Habitats and Species Regulations 2010 (Habitats Regulations) as amended, which includes European Protected Species (EPS), species and habitat protection through Special Areas of Conservation (SACs) and protection of birds through Special Protection Areas (SPAs). Together, these two types of protected areas, also known as European Sites, form a Europe-wide network which is called Natura 2000.
- The Wildlife and Countryside Act 1981, as amended, which includes powers to designate, manage and protect species and Sites of Special Scientific Interest (SSSI).²
- Protection of Badgers Act, 1992.
- Marine and Coastal Access Act 2009, which sets out Natural England's responsibilities in relation to Coastal Access and Marine Conservation Zones.
- Countryside & Rights of Way Act (2000) which sets out responsibility for access to the countryside and Natural England's role in securing and promoting access.
- Ramsar Convention covering wetlands of international significance, designated by the Department of Environment, Food and Rural Affairs under the Ramsar Convention 1971³. All Ramsar sites in England are also SSSI, which means that they have legal protection and guidelines for management and as a matter of government policy are subject to processes and policies as though they were sites of European importance.
- National Parks and Access to the Countryside Act 1949.

Natural England also has other statutory duties, responsibilities and powers. Table A below indicates the most relevant in respect of NSIPs. Please note, however, that there may be other consents and regulatory controls relevant to NSIPs not identified below which applicants may need to consult Natural England about.

Table A

² Note that the Habitats Regulations and Wildlife & Countryside Act 1981 both include licensing aspects.

³ See s.77 of the Countryside and Rights of Way Act 2000 for the definition of Ramsar site.



Related primary and secondary legislation	Natural beauty / countryside purpose	Nature conservation purpose	Statutory duty
National Parks and Access to the Countryside Act 1949	Yes	Yes	
Countryside Act 1968	Yes		Duty to inform ministers and local planning authorities of the effect on natural beauty of developments of any class likely to be prejudicial thereto. Duty to have regard to the desirability of conserving the natural beauty and amenity of the countryside.
Local Government Act 1972 and 1974	Yes	Yes	Statutory consultee - required to respond to statutory consultations by a National Park Authority
Electricity Act 1989	Yes	Yes	Statutory consultee to license holders.
Water Industry Act 1991	Yes	Yes	Statutory consultee to ministers in relation to the appointment and regulation of any water undertaker whose area is wholly or mainly in England.
Water Resources Act 1991	Yes	Yes	Statutory consultee to the Environment Agency prior to their carrying out/authorising works which may affect areas of land in England of special interest.
Environment Act 1995	Yes	Yes	Statutory consultee in relation to environmental conservation. Under Section 8 (3-4). The Environment Agency must notify Natural



			England before carrying out/authorising any work/operations likely to destroy/damage/prejudice the natural heritage.
Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way Act 2000)	Yes		Natural England's advice should be sought by developers prior to them carrying out works on or affecting a SSSI and in the case of owners and occupiers there is a requirement to notify and gain consent, prior to them carrying out works on or affecting a SSSI (s.28e, s.28h and s.28i).

In addition, Natural England is required to take account of and act on European legislation by virtue of, amongst other matters, its status as the 'appropriate nature conservation body' for England. In the context of the 2008 Act regime, Natural England's main 'European' derived responsibilities relate to the Environmental Impact Assessment (EIA) Directive⁴ and the Habitats Directive⁵ as transposed into UK law. These statutory functions are detailed further in the sections on EIA and the Habitats Regulations below.

New Site designation

Natural England has a range of duties and powers to create or modify existing designated areas. In England, Natural England also advises government on other designations usually in consultation with the Joint Nature Conservation Committee (JNCC).

Other obligations

Natural England is also subject to the provisions of the Environmental Information Regulations 2004, the Freedom of Information Act 2000 and the Data Protection Act 1998.

⁴ Directive 85/337/EEC as amended.

⁵ Directive 92/43/EEC.



Geographical extent of Natural England's roles and responsibilities

The geographical extent of Natural England's remit and responsibilities is explained below.

Lead role:

- Terrestrial impacts within England, including cross-border nature conservation and landscape impacts (e.g. possible landscape and visual impacts in England from proposed infrastructure that would be sited in Wales or Scotland if built, or hydrological impacts from sources where upstream rivers are located in Wales or Scotland);
- Marine impacts within 12 nautical miles of the English coastline, where Natural England will lead, with advice provided by JNCC;
- Determination of wildlife licence applications landward of the mean low water mark. (The Marine Management Organisation (MMO) is responsible for determining applications seaward of the mean low water mark.) see [here](#)

Joint lead or supporting role:

- Beyond 12 nautical miles of the English coastline, Natural England will support JNCC in the exercise of its duties under the Habitats Regulations.
- There may also be cross border situations where, dependent on the nature and location of the proposal, Natural England will have a joint duty with the Countryside Council for Wales or Scottish Natural Heritage.

Roles of Natural England under the 2008 Act regime

The roles and responsibilities of Natural England under the 2008 Act regime fall into the following categories:

- statutory consultee - as a prescribed consultee by applicants under s.42 of the 2008 Act or by the Planning Inspectorate as a consultation body in relation to any EIA scoping consultation or as a nature conservation body under the Habitats Regulations in respect of the Habitat Regulations Assessment (HRA).
- consenting body/authority



Pre-application consultee

Natural England is a prescribed consultee⁶ under the 2008 Act and secondary legislation made under it. Natural England is also a statutory party⁷ in respect of the examination of applications.

Natural England, like all prescribed consultees, will have significant input into the pre-application process as set out in Part 1 of the Advice Note and Natural England encourages applicants to begin pre-application consultations at the earliest possible time.

Early consultation with Natural England is very important because Natural England's advice (including on appropriate surveys and investigations) will enable applicants to give appropriate consideration to the environmental effects of an NSIP as the application is developing. The applicant has a duty to have regard to any consultation responses it receives⁸ under sections 42, 47 and 48 of the 2008 Act.

There is nothing in the 2008 Act or related secondary legislation that would prevent applicants from informally consulting Natural England outside of the s.42 consultation process at the pre-application stage. Indeed Natural England actively encourages this informal consultation.

Natural England advises prospective applicants to start these informal, pre application consultations with Natural England at the earliest opportunity. This early consultation may help to ensure that applicants build up the necessary environmental information in respect of the NSIP and allow them to develop a better understanding of the environmental issues involved. With Natural England's advice any required environmental surveys can be carried out from the outset and their findings used to assist applicants in considering any necessary changes in design or layout and identifying alternatives as the project details evolve.

Section 45 of the 2008 Act prescribes the minimum period which must be allowed for responses to s.42 consultation.⁹ It is for applicants to decide whether to carry out non statutory consultation and to establish reasonable deadlines for receiving responses from consultees. Natural England strongly encourages applicants when carrying out non statutory consultation to adopt the same minimum timescales as prescribed by s45 and to allow a minimum of 28 days for Natural England to comment, beginning with the day after consultation documents are received. This will ensure that Natural England has sufficient time to give an informed and helpful response.

⁶ Under s.42(a) Planning Act 2008 and Schedule 1 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended), at: http://infrastructure.planningportal.gov.uk/wp-content/uploads/2009/08/uksi_20092263_en.pdf.

⁷ Under s88(3) (c) and s.102(ca) Planning Act 2008 and the Infrastructure Planning (Interested Parties) Regulations 2010 (as amended), at: http://infrastructure.independent.gov.uk/wp-content/uploads/2009/08/uksi_20092264_en.pdf.

⁸ Section 49 of the Planning Act 2008.

⁹ The deadline 'must not be earlier than the end of the period of 28 days that begins with the day after the day on which the person receives the consultation documents'.



Whether consultation is carried out informally or under s42 (where there is a statutory minimum period) Natural England encourages applicants to discuss and agree reasonable timescales which will allow Natural England to allocate resources efficiently. Natural England considers that carrying out pre-application consultation in this way will mean that an applicant's s42 consultation can be more effective as it will be based on a more comprehensive understanding of the environmental implications.

To assist the applicant during the pre-application stage Natural England will endeavour to work closely with fellow Defra statutory environmental protection bodies (e.g. the Environment Agency or the MMO) when considering issues which cut across our various statutory responsibilities. This may include, for example,

providing joint responses to the applicant's pre-application consultation. By doing this Natural England hope to provide the best, most efficient, service to our customers and adhere to the principle of "One Voice" in providing a fully integrated view on projects we share in common.

Prior to an application being made to the Planning Inspectorate, Natural England would usually aim to conclude all the pre-application consultations with the applicant, with a summary letter to the applicant agreeing common ground on the full range of relevant, environmental issues. Natural England would also include in this letter any unresolved issues and provide comments on any unmitigated impacts that may require compensatory measures.

Please note that Natural England is undertaking a review of its discretionary services including pre-application advice and charging for such services. Please refer to Natural England's web site for further details.

EIA consultation body

The legal basis for the EIA process in the UK derives from the EIA Directive. The EIA Directive is transposed into UK legislation via a series of regulations which relate to specific consenting regimes.

Natural England has a statutory role as a consultation body under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009. Where an applicant has requested a scoping opinion from the Planning Inspectorate in relation to a proposed EIA development, Natural England will have the opportunity to make representations to the Planning Inspectorate in relation to the information they consider should be included in the environmental statement.¹⁰

Part 1 of Advice Note 11, and Planning Inspectorate Advice Notes 3, 7 and 9, set out detailed advice on the implications of environmental impact assessment under the 2008 Act regime and emphasise the importance of early consultation with Natural England.

¹⁰ Regulation 8 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended).
Annex C of advice note 11: Working with public bodies in the infrastructure planning process



Nature conservation body under the Habitats Regulations

Under the Habitats Regulations, Natural England is a nature conservation body¹¹ and may (where it is a decision-maker) be a competent authority¹², with powers to exercise functions under a number of enactments relating to nature conservation in England. The Habitats Regulations place a responsibility on competent authorities (including the relevant Secretary of State where they are a 'decision maker') to consult the appropriate nature conservation bodies in the assessment of the implications of an application for European sites and require Natural England to provide advice and assistance or make representations, to any competent authority on any matter in England.

The Planning Inspectorate strongly encourages the earliest possible liaison between applicants and Natural England, particularly where a European and/or Ramsar site or EPS may be affected by a proposed development. This will allow any relevant issues to be identified and if possible resolved at the pre-application stage. It will also assist the developer in assembling sufficient information to accompany their application for a DCO in order for the competent authority to determine whether there is a likely significant effect on European sites alone or in-combination and for the competent authority to undertake an appropriate assessment of the implications for the site if required under the Habitats Regulations after an application has been accepted for examination. Planning Inspectorate Advice Note 10 provides further information. [Here](#)

SSSI notification under the Wildlife and Countryside Act 1981 (as amended)

In relation to applications where there may be potential impacts on SSSIs both the Secretary of State and Natural England have duties under the Wildlife and Countryside Act 1981 (as amended).

Under s.28I, the Secretary of State or minister must notify Natural England before authorising the carrying out of operations likely to damage the special interest features of a SSSI. Under these circumstances 28 days must elapse before deciding whether to grant consent and the Secretary of State must take into account any advice received from Natural England, including advice on attaching conditions to the consent. Natural England will be notified by the Planning Inspectorate during the examination period of any application which may involve activities which are likely to affect the flora, fauna or geological or physiographical features by reason of which a site is a SSSI.

Natural England will give specific advice to applicants on the effects of the proposal on the special interest of any affected SSSIs when all the information is provided by applicants. It can also provide generic guidance and help on survey requirements. Applicants should seek to agree DCO requirements with Natural England, which may include measures for the protection of the SSSI, before the application is submitted to

¹¹ Regulation 5 of the Habitats Regulations.

¹² Regulation 7 of the Habitats Regulations.



the Planning Inspectorate. Natural England can provide advice to the decision-maker on any effects on the special interest of SSSIs.

Consenting/licensing authority

Natural England has power to grant authorisations, licences and consents under a number of enactments relating to nature conservation in England.

Table B below sets out the main consents which may be included within a DCO in those circumstances in which Natural England has consented to the inclusion of these provisions within the DCO (under s.150 of the 2008 Act).¹³ These are consents that would normally be granted by Natural England, Please note however that there may be other regulatory matters which applicants may need to consult Natural England about.

Table B

Paragraph reference ¹⁴	Relevant consent, licence or authorisation	Other information
18	<u>An authorisation pursuant to byelaws made under section 20 of the National Parks and Access to the Countryside Act 1949 (byelaws for protection of nature reserves)(d).</u>	Exceptions for licensed persons
19	<u>A licence under section 8 of the Deer Act 1991</u>	Power to grant licences
20	<u>A licence under section 10 of the Protection of Badgers Act 1992 (licences)(f).</u>	Power to grant licences
21	<u>A licence under section 16 of the Wildlife and Countryside Act 1981 (power to grant licences)(g).</u> <u>(for areas above mean low water mark)</u>	Power to grant licences
23	<u>An order under section 53 of the Wildlife and Countryside Act 1981 (duty to keep definitive map and statement under</u>	

¹³ These consents are listed in the Schedule to the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010. Part 1 of this Schedule lists those consents that are relevant to both England and Wales, whilst Part 2 lists those that only relate to Wales.

¹⁴ Reference is to paragraph number of Part 1 of the Schedule to the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010.



	<i>continuous review)(i).</i>	
24	<i>A consent or authorisation required under byelaws made by an access authority as respects access land in their area pursuant to section 17 of the Countryside and Rights of Way Act 2000 (byelaws)(j).</i>	

Requests to Natural England for consent to include in a DCO any authorisations and licences should be made directly to Natural England’s responsible casework officer and copied to the Natural England nationally significant infrastructure project Co-ordinator (see Natural England contact details below).

It is expected that Natural England will retain responsibility for licensing of EPS under the Habitats Regulations¹⁵.

Licensing of EPS under the Habitats Regulations

For NSIPs which may affect EPS and where a licence is required, Natural England’s regulation team will be able to provide early advice and opinion on the applicant’s protected species proposals in relation to **all 3 licensing tests¹⁶ before development consent is granted**. This is done so that the decision-maker under the 2008 Act can have confidence that Natural England, as the relevant licensing authority, has considered the appropriate issues relating to protected species. In order to do this, Natural England needs to conduct an assessment, based on a **full draft mitigation licence application, in advance of** the formal submission of the NSIP application to the Planning Inspectorate. The steps to be followed when submitting the appropriate information to Natural England, in respect of an NSIP project which has the potential to affect EPS, are set out in the following link.

http://www.naturalengland.org.uk/Images/WML-G36_tcm6-28566.pdf

¹⁵ See paragraph 16 of Part 1 of the Schedule to the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010

¹⁶ These tests are that there is “no satisfactory alternative” (Regulation 53 (9) (a) of the Habitats Regulations), that the activity authorised will not be “detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range” (Regulation 53 (9) (b) and that the licence is for a purpose specified in Regulation 53(1) which includes for “imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment.”



Relevant reports advice and guidance

<http://www.naturalengland.org.uk>

<http://infrastructure.planningportal.gov.uk/wp-content/uploads/2011/04/Advice-note-10-HRA-web.pdf>

<http://www.marinemanagement.org.uk/licensing/index.htm>

<http://naturalengland.etraderstores.com/NaturalEnglandShop/NE54>.

<http://www.naturalengland.org.uk/ourwork/regulation/wildlife/default.aspx>

http://www.naturalengland.org.uk/Images/WML-G36_tcm6-28566.pdf

Contact Points

Natural England Contact Details

Natural England will provide a dedicated case officer for every NSIP project. The casework officer will be the point of contact for the applicants throughout the project although the casework officer will call in specialist staff as needed and applicants may have direct contact with these specialist staff from time to time. This will include staff in Natural England's licensing function if needed. (see guidance on licensing above)

All NSIP consultations for Natural England should be addressed to Natural England's casework hubs at consultations@naturalengland.org.uk. If for any reason it is not possible to consult electronically, consultations should be sent to the postal address below:

Natural England
Consultation Service
Hornbeam House
Electra Way
Crewe Business Park
Crewe
Cheshire
CW1 6GJ

If proposals are at an early stage or applicants wish to talk to someone please contact one of the following.

eric.steer@naturalengland.org.uk 0300 060 0660. The nationally significant infrastructure project coordinator.

Planning Inspectorate Contact Details



The Planning Inspectorate

Director of National Infrastructure	Ian Gambles ian.gambles@infrastructure.gsi.gov.uk	0303 444 5080
Head of Case Management	Janet Wilson janet.wilson@infrastructure.gsi.gov.uk	0303 444 5058
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