



Habitat Regulations Assessment

Advice note ten: Habitat Regulations Assessment relevant to nationally significant infrastructure projects

Status of this advice note

This version of advice note 10 supersedes all previous versions and includes revisions made in response to emerging best practice on projects.

Summary of this advice note

The relevant Secretary of State is the competent authority for the purposes of the Habitats Directive¹ and the 2010 Habitats Regulations². The Habitats Regulations require competent authorities to carry out an appropriate assessment in circumstances where a plan or project is likely to significantly affect a European site or a European Marine site³. Habitats Regulations Assessment (HRA) refers to the whole process, including the appropriate assessment stage (where one is required).

When preparing an application for Nationally Significant Infrastructure Projects (NSIPs) under the Planning Act 2008, as amended by the Localism Act 2011 (the 2008 Act), applicants should consider the potential effects on protected habitats. If an NSIP is likely to affect a European site and/or a European marine site, the applicant must provide a report with the application showing the site(s) that may be affected together with sufficient information to enable the competent authority to make an appropriate assessment (AA), if required⁴.



All references and a definition of terms and abbreviations can be found at the end of this advice note.

Please refer to **Appendix 1** and **Appendix 2** in conjunction with this advice note.



This note provides advice for applicants in relation to the preparation of that report, and the 2008 Act processes relating to HRA. For the purposes of this note the Planning Inspectorate is using the term HRA to describe all the steps in the process required by Articles 6(3) and 6(4) of the Habitats Directive. HRA is an iterative process and the emphasis should be on avoiding likely significant effects (LSE). Where LSE remain, the work should be carried forward in a focussed and tightly scoped AA.

A set of matrices are appended to this advice note which the Planning Inspectorate recommends are completed by applicants and submitted with a Development Consent Order (DCO) application. These matrices will form an integral part of the information submitted with the application. This advice note explains how the matrices should be prepared by the applicant and how these matrices will be used to inform the decision making process.

This advice note seeks to:

- provide a brief description of the legal context and obligations placed on both the decision maker and the applicant under the Habitats Directive and the 2010 Habitats Regulations;
- explain how the 2008 Act process aligns with the HRA process;
- highlight the relevant bodies that should be consulted by the applicant throughout the development consent application process, and the suggested timing and level of engagement;
- clarify the information to be provided with a development consent application with respect to HRA; and
- explain the process that will be carried out by the Planning Inspectorate as part of their duties and the interface with HRA

which will be followed to seek compliance with the legal requirements.

Context

This advice note should be read in conjunction with the Habitats Directive, the Habitats Regulations, the 2008 Act, relevant Government Planning Policy⁵, Government Circulars⁶, and recognised European Commission guidance⁷. Some documents are mentioned in the footnotes of this advice note to assist applicants, but it is the applicant's responsibility to ensure that all relevant policy, legislation and guidance have been considered.

EC Directives

The UK is bound by the terms of the Habitats Directive, the Birds Directive⁸, and the Ramsar Convention⁹. This advice note concentrates on the Habitats Directive. The aim of the Habitats Directive is to conserve natural habitats and wild species across Europe by establishing a network of sites known as Natura 2000 sites.

Under Article 6(3) of the Habitats Directive, an AA is required where a plan or project (in this case an NSIP proposal) is likely to have a significant effect upon a European site, either individually or in combination with other plans or projects.

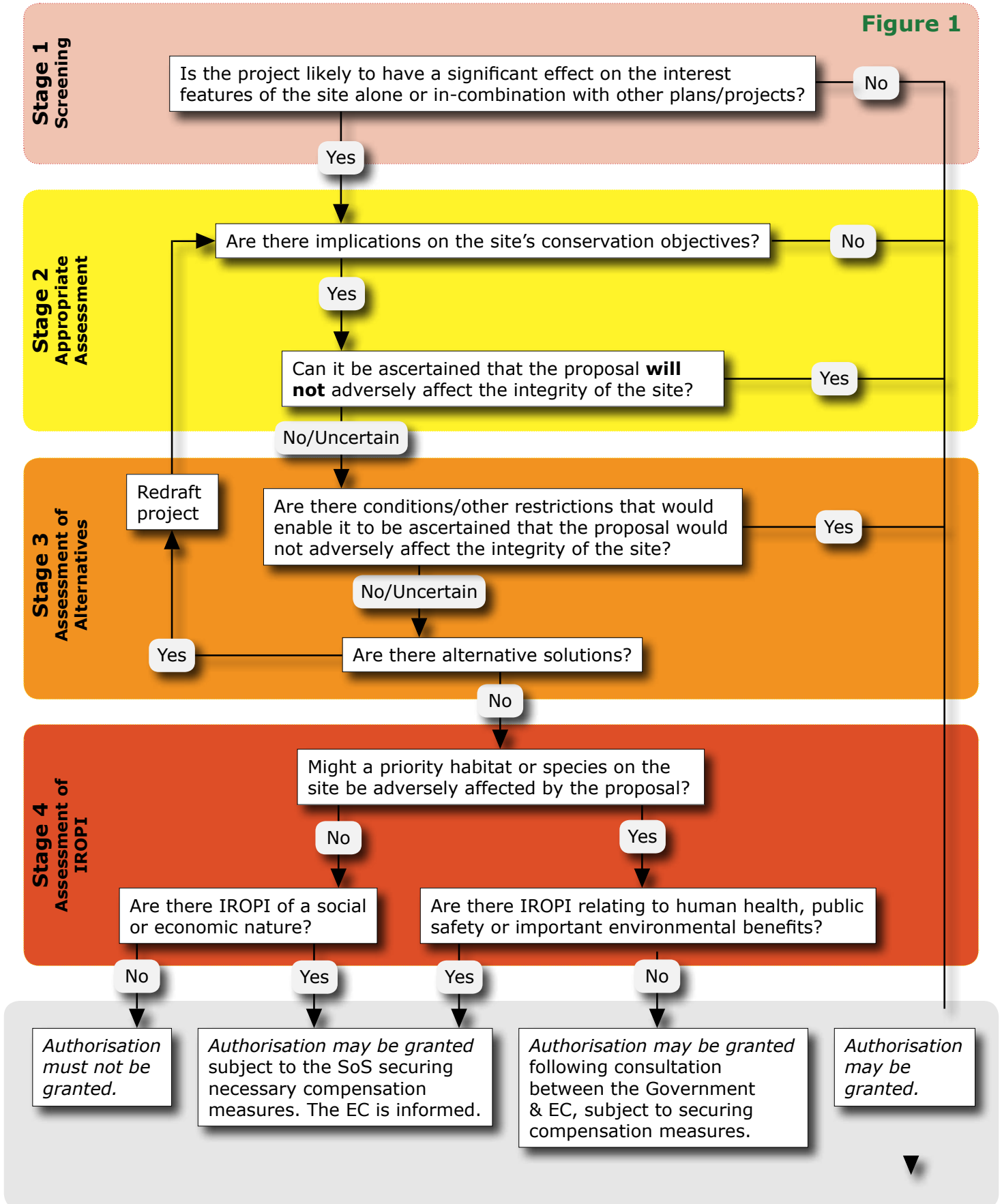
Further to this, Article 6(4) states that where an AA has been carried out and results in a negative assessment (in other words, the development will adversely affect the European site(s), despite any proposed avoidance or mitigation measures, or if uncertainty remains¹⁰), consent will only be granted if there are no alternative solutions, there are Imperative Reasons of Overriding Public Interest (IROPI) for the development¹¹ and compensatory measures have been secured.



The protection given by the Habitats Directive is transposed into UK legislation through the 2010 Habitats Regulations. Special Areas of Conservation (SACs), candidate Special Areas of Conservation (cSACs) and Special Protection Areas (SPAs) are protected under the Habitats Regulations¹². As a matter of policy¹³ the Government also applies the procedures described below to potential SPAs (pSPAs), Ramsar sites, and (in England) proposed Ramsar sites and sites identified, or required, as compensatory measures for adverse effects on any of the above sites. For the purposes of this advice note all these sites are referred to as European sites.

Planning Act process and HRA process

HRA is a stage by stage process which helps determine LSE and (where appropriate) assess adverse impacts on the integrity of a European site, examines alternative solutions, and provides justification for IROPI. European guidance describes a four stage process to HRA, summarised in Figure 1 below



Adapted from: DEFRA (2012) Report of the Wild Birds and Habitats Directives Implementation Review (Annex E). It is assumed for the purposes of this advice note that the project is not directly connected with or necessary to the management of the site.



HRA within the 2008 Act process

Pre-application (no prescribed timeframe)

The 2010 Habitats Regulations require the competent authority (in this case the relevant Secretary of State) before authorising a project likely to have a significant effect on a European site 'must make an appropriate assessment of the implications for that site in view of that site's conservation objectives'¹⁴. Anyone applying for development consent for a NSIP must provide the competent authority with such information as may reasonably be required 'for the purposes of the assessment' or 'to enable them to determine whether an appropriate assessment is required'¹⁵. This information normally takes the form of a **No Significant Effects Report (NSER)** or a **Habitats Regulations Assessment Report (HRA Report)**. The Planning Inspectorate also recommends that applicants complete the matrices included in Appendices 1 and 2 to this advice note, as applicable, and that these are appended either to the NSER or the HRA Report, as appropriate.

Applicants should be aware that if insufficient information is submitted with an application, then it may not be accepted for examination. Applicants are therefore strongly advised to use the pre-application consultation process to provide assurances from the statutory nature conservation bodies (SNCBs) and other bodies that all potential impacts have been addressed appropriately and in sufficient detail before an application is submitted.

The approach contained within this advice note forms a key component of the preparation of an application, and has been designed to aid applicants to submit a robust application with as few outstanding issues as possible taken into the examination process. Applicants' attention is also drawn to the evidence plan process promoted by the **Major Infrastructure and Environment Unit (MIEU)** in Defra. This process has been set up to assist applicants whilst complying with the Habitats Directive. Further information about MIEU is available through the GOV.UK website¹⁶ or by contacting MIEU (MIEU@defra.gsi.gov.uk).

Matrices

A set of matrices has been developed by the Planning Inspectorate to assist the relevant Secretary of State as the competent authority in fulfilling the requirements of the Habitats Directive and the 2010 Habitats Regulations in the context of the 2008 Act process. These matrices are developing best practice and may be revised in light of experience. The matrices comprise:

Screening Matrices (Stage 1 of the HRA process) - which summarise the LSE of the project on the European site (see **Appendix 1**), and

Integrity Matrices (Stage 2 of the HRA process) - which summarise the information required for the AA, if one is required (see **Appendix 2**).

The matrices are intended to clearly present the conclusions of the HRA in a visual tabular form for the benefit of all those involved in the application process. The matrices must include statements of evidence for the conclusions.

The matrices at Appendices 1 and 2 do not cover Stages 3 and 4. They deliberately deal with only the screening and integrity elements of the HRA process.



The Applicant should use their NSER or HRA Report to populate the matrices. Revised matrices, using evidence gathered throughout the examination, will be prepared by the Planning Inspectorate. This is the **Report on the Implications for European Sites (RIES)**. The purpose of the RIES is to provide the competent authority with a complete factual account of the information and evidence available to them for the purposes of undertaking their HRA and is explained in further detail in the '**Examination**' section of this advice note.

The **screening matrices** must reflect the screening exercise undertaken in its entirety, showing the screening result for **all** European sites including **all** features for which the European site(s) are designated, even if the screening exercise has concluded no LSE on certain European sites or features. This may include European sites and features screened out at the very beginning of the process, for example, those not mentioned by the consulted SNCBs as having the potential to be affected.

Applicants are strongly advised to take advantage of pre-application consultation and use completed matrices to agree and negotiate issues with consultees, including the SNCBs, and to minimise the number of issues that might otherwise remain unresolved and may require exploration during the examination.

Templates for the matrices are provided at **Appendix 1 (Screening Matrices)** and **Appendix 2 (Integrity Matrices)**. As relevant, matrices should be appended to the applicant's NSER (screening matrices) or HRA Report (both matrices), but should not replace the applicant's NSER or HRA Report. Matrices must be submitted in Microsoft Word format.

If the relevant matrices are not submitted with the DCO application and in sufficient detail, the Examining Authority (ExA) will request these in their first round of examination questions (see later section entitled '**Examination**').

The submitted matrices will help to inform RIES produced by the Planning Inspectorate. Please refer to the section below on **Examination** for more information on the nature and purpose of the RIES.

The applicant's HRA should include the following:

HRA Stage 1

screening for LSE (alone or in combination with other projects): if there are no LSE, then the report will take the form of a NSER (see below) and HRA stages 2-4 will not be required

HRA Stage 2

if Stage 1 identifies LSE: an assessment of the implications of the project on the site(s)'s conservation objectives, this will take the form of a HRA Report

HRA Stages 3 and 4

if Stage 2 concludes that the project will adversely affect the integrity of the site(s), or is inconclusive: consideration of alternatives, compensatory measures and whether the project is justified by IROPI, this will take the form of a HRA Report.



The applicant's NSER or HRA Report should provide the reasoning behind its conclusions. This is likely to be supported by the information presented in the Environmental Statement (ES) for the DCO application. The applicant's NSER or HRA Report must show how the information gathered has been applied to the HRA and the tests of the Habitats Directive. Further advice can be found in the '**Relationship with environmental impact assessment (EIA)**' section towards the end of this advice note.

Applicants are encouraged to submit draft NSER or HRA Report and any supporting documents, to the Planning Inspectorate, prior to submission of the DCO application, for comment. Where time allows, the Planning Inspectorate will comment on the draft NSER or HRA Report.

HRA Stage 1: Screening

When considering whether a proposal has the potential to significantly affect European sites it is advised that the applicant commences consultation with the relevant non-statutory and statutory nature conservation bodies at the earliest point in the pre-application process. Whilst this is the applicant's responsibility during the pre-application stage of the process, in due course the competent authority will need to be satisfied that it agrees with the applicant's conclusions, having regard to the views of the SNCBs.

Issues for the applicant to consider and include within their HRA screening assessment may include:

- a detailed description of the development, processes, timings, and method of work proposed as part of the NSIP;
- details of the methodology used to determine which European sites should be included within the assessment;
- a plan and description of the European site(s) and all of the associated interest features potentially affected;
- an appraisal of the project's likely impacts on the European site(s);
- an outline and interpretation of baseline data;
- an appraisal of any other plans or projects likely to have a significant effect in combination with the proposed development;
- an evaluation of the potential for the scheme to require two or more appropriate assessments by different competent authorities;
- a statement which specifies where the site boundaries of the scheme overlap into devolved assemblies or other European member states; and
- evidence (such as copies of correspondence or Statements of Common Ground) of agreement between the applicant and SNCBs on the appraisal, interpretation, and conclusions of the assessment.



The general approach taken to HRA throughout preparation of the DCO application should be iterative to ensure that a robust assessment of the LSE is carried out. As the likely outcomes of the HRA process emerge, consultation on significant impacts should evolve throughout the pre-application stage.

At Stage 1, in relation to **each** European site, the applicant will need to conclude from baseline information and consultation responses received that either:

- a. There are no LSE on the European site(s), either alone or in combination with other plans or projects and therefore no further assessment is required (see later section entitled '**NSER**'), OR
- b. LSE on the European site(s) exist, either alone or in combination with other plans or projects, therefore requiring an AA by the competent authority (see later section entitled '**HRA Stage 2: Appropriate Assessment**').

Applicants will need to give careful consideration to the avoidance and reduction of impacts by the use of mitigation e.g. through specific timing of particular construction activities, amending the application boundaries, or modifying aspects of the project design. The applicant's HRA Report should provide details of the mitigation measures¹⁷ and demonstrate how these have fed into the assessment to reach the conclusion on whether any residual effects exist, either alone or in combination with other schemes.

As a general guide, if a large amount of information gathering and data collection is required in order to identify the likely significant effects of the project, these probably exist and an AA is likely to be required (meaning a NSER cannot be produced).

In combination effect(s) on European site(s)

Applicants must conclude whether the proposal, either alone or in combination with other plans or projects, is likely to have a significant effect on a European site. Some projects may be unlikely to have significant effects on their own but effects in combination with other projects may be significant. The protective measures of the Directive could be seriously undermined if these combinations of projects escaped assessment. Whilst there is no legal definition of what constitutes a plan or project for the purposes of the Habitats Regulations, the Planning Inspectorate advises that the following should be considered (please note this list is not exhaustive)¹⁸:

- projects that are under construction;
- permitted application(s) not yet implemented;
- submitted application(s) not yet determined;
- all refusals subject to appeal procedures not yet determined;
- projects on the National Infrastructure's programme of projects¹⁹; and
- projects identified in the relevant development plan (and emerging development plans - with appropriate weight being given as they move closer to adoption) recognising that much information on any relevant proposals will be limited.



No significant effects report (NSER)

The European Court of Justice in the *Waddenzee case*²⁰ considered that the effects of the project should be '*identified in the light of the best scientific knowledge in the field*'²¹. There should be a continuous evaluation of the assessment findings against thresholds of LSE. If at any time the HRA determines 'no significant effect (alone or in-combination)' and no reasonable scientific doubt remains²², then the assessment can be concluded. The applicant should then provide the results of their assessment with the DCO application in the form of a NSER to meet the requirements of Regulation 5(2)(g) of the APFP Regulations (any European sites potentially affected by the proposed development must be identified). It would be helpful if the NSER was also cross referenced at Box 15 of the application form provided with the DCO application.

Whilst there is no prescribed format for the NSER or for the reporting of the outcomes of the screening stage, applicants should complete the screening matrices set out in **Appendix 1**. However, the NSER must be clear, be supported by sufficient information and provide convincing reasons why the applicant has reached the view that there are no LSE and that an AA will not be required.

In considering the NSER's conclusion that there are no LSE requiring AA, the ExA will have regard to the European Court of Justice's decision in the *Waddenzee case*, in which the ECJ took the view that '*the competent national authorities, taking account of the conclusions of the appropriate assessment.....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*'²³.

Applicants are advised to consult the relevant SNCBs, and should confirm in their applications, where appropriate, that the SNCB supports the conclusions of the screening stage. Evidence of this consultation should be provided appended to the NSER or the HRA Report, as appropriate.

If the applicant has concluded that the proposal is likely to have a significantly effect on any European sites, alone or in combination with other projects, the applicant's HRA needs to move to Stage 2 (AA) of the process. The report on the outcomes of the screening assessment should clearly show which European site(s) and interest features are being taken forward to Stage 2 and which European site(s) and interest features have been screened out of further assessment.



HRA Stage 2: Appropriate Assessment

Where LSE on a European site, either from the project alone or in combination with other plans or projects, cannot be discounted, the applicant needs to consider whether those effects will adversely affect the integrity of the site in view of its conservation objectives²⁴. The integrity matrices should be completed in order to summarise this part of the assessment (see **Appendix 2**).

In addition to the issues for an applicant to consider as set out under '**HRA Stage 1: Screening**' above, the submitted applicant's HRA Report should include:

- evidence about the project's impacts on the integrity of protected sites;
- a description of any mitigation measures proposed which avoid or reduce each impact, and any residual effect;
- a schedule indicating the timing of mitigation measures in relation to the progress of the development;
- cross references to the relevant DCO requirements and development consent obligations that secure these mitigation measures, and identification of any factors that might affect the certainty of their implementation;
- a statement as to which (if any) residual effects constitute an adverse impact on the integrity of European sites either alone or in combination with other plans or projects and therefore need to be included within the AA; and
- evidence to demonstrate that the applicant has fully consulted and had regard to comments received by the relevant SNCBs during pre-application consultation.

Negative Appropriate Assessment

Unless the applicant's AA concludes, that no reasonable scientific doubt remains²⁵ '*identified in the light of the best scientific knowledge in the field*'²⁶, that the project will not adversely affect the integrity of any European site, the applicant's assessment will need to move to Stage 3 and 4 of the HRA process.

Stage 3: Assessment of alternatives

The applicant's assessment should identify and assess alternatives that have been considered.

Alternative solutions can include a proposal of a different scale, a different location, and an option of not having the scheme at all – the 'do nothing' approach.



Stage 4: Consideration of IROPI

Where it can be demonstrated that there are no alternative solutions to the proposal that would have a lesser effect or avoid an adverse effect on the integrity of the European site(s), the project may still be carried out if the competent authority is satisfied that the scheme must be carried out for IROPI. In cases where there are priority natural habitats or species affected by the development, the IROPI justification must relate to either:

- human health, public safety or beneficial consequences of primary importance to the environment; or
- any other imperative reasons of overriding public interest.

Compensatory measures

In the event of the applicant producing a negative AA, an assessment of compensatory measures must also be included in the HRA Report which forms part of the DCO application documents. Consultation must have been undertaken with the relevant SNCBs and landowners, and applicants are strongly encouraged to undertake this consultation as early as possible within the pre-application stage.

Statement(s) of Common Ground (SoCG)

The applicant is strongly urged to seek to agree SoCG with relevant organisations, in particular the SNCBs, and submit these with the DCO application. The SoCG should clearly identify the extent to which relevant matters are **agreed**, and areas where **disputes remain**. This will assist the ExA in focussing on the principal issues to be considered in the examination, and reduce the potential areas of contention.

Relevant matters addressed by the SoCG may include the scope of the assessment (including the in combination assessment), the baseline used, methodologies used to collect and analyse data, the interpretation of information, and the conclusions presented. The SoCG could also address whether the proposed mitigation and/or compensation measures and related DCO requirements have been agreed.

Acceptance of the application (28 days)

Submitting the DCO application

When an application containing the applicant's NSER or HRA Report is submitted, this will be reviewed against the Acceptance checklist (see [Advice Note 6 - Preparation and Submission](#)

[of Application Documents](#)²⁷), in order to decide whether the applicant has complied with procedural requirements to submit 'sufficient' information to enable an AA to be carried out if necessary, or to enable the competent authority to determine that one is not required²⁸.



In determining whether 'sufficient' information has been provided, the Planning Inspectorate on behalf of the Secretary of State will have regard to the information provided in:

- the applicant's NSER or HRA Report;
- other relevant application documents, for example the Consultation Report;
- any correspondence received from the SNCBs prior to the submission of the DCO application; and
- any evidence provided in the applicant's NSER or HRA Report that the applicant's conclusion is agreed by the relevant SNCBs.

The Planning Inspectorate is not able to request further information to supplement the DCO application at the Acceptance stage.

Applicants should be aware that there is a risk that the application for development consent may not be accepted for examination, if it is concluded that insufficient information to undertake an AA, if required, has been provided.

Pre-examination (approximately three months)

Pre-examination provides the opportunity for the ExA to carry out a more detailed assessment of the applicant's findings as provided in their NSER or HRA Report and to determine whether additional information is needed.

A preliminary meeting will be held to hear views about how the application is to be examined. Anyone who has made a relevant representation²⁹ will be invited to make representations to the ExA about the examination procedure prior to the preliminary meeting. They will also be invited to attend the preliminary meeting, as will SNCBs and other statutory consultees.

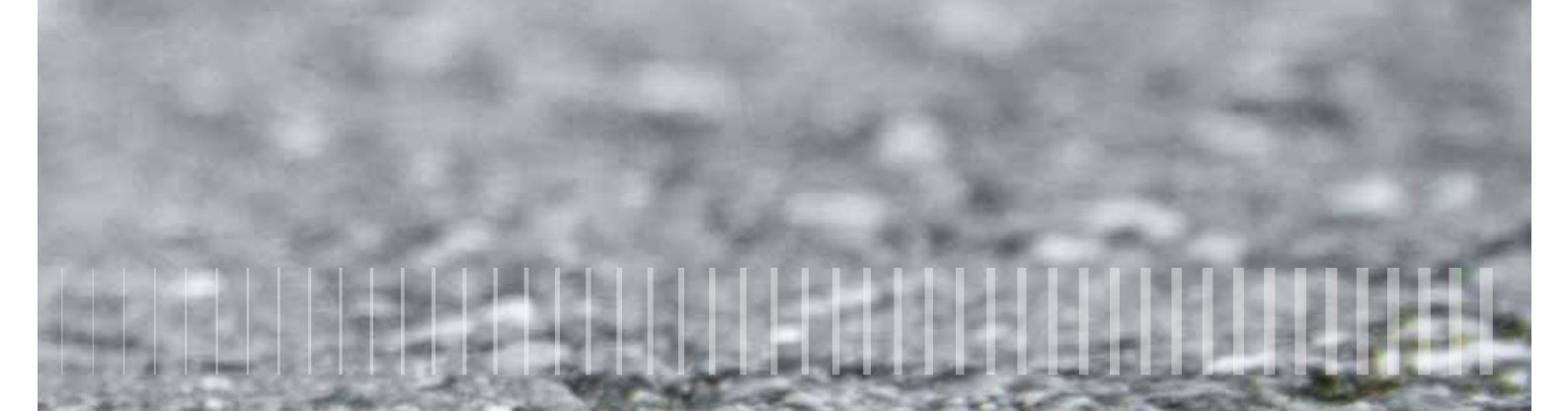
Any persons attending the preliminary meeting are recommended to make any representations about how HRA issues should be examined to the ExA, through relevant representations or at the preliminary meeting, so that the ExA can decide how to structure the examination and consider whether any further written information may be required during the examination.

The ExA will use the information provided in the screening and integrity matrices submitted with the application to inform their initial assessment of the principal issues, i.e. whether there are significant effects leading to an adverse affect on the integrity of European sites, and if so what these may be. Submitted SoCG can also play an important role in the initial assessment of the principal issues. The initial assessment will take place before the preliminary meeting and will help to inform the structure of the examination.

The procedural decision (which will be made by the ExA at or after the preliminary meeting) will set out the ExA's initial questions and a timetable for receipt of any further written information, including any information required to supplement the applicant's HRA. If the relevant matrices have not already been provided, they will be requested from the applicant by the ExA at this stage.

Examination (up to 6 months)

The examination provides an opportunity to formally consult the SNCBs in order to inform the Secretary of State's HRA. The ExA will set the timeframe for seeking further representations from them if required in the procedural decision, and have regard to their representations in making a recommendation to the Secretary of State on the DCO application³⁰. The timetabling and conduct of the examination is under the control of the ExA³¹. The procedure ExAs normally expect to follow is set out in this section of the advice note.



The ExA will seek opinions specifically on matters relating to the competent authority's duty under the 2010 Habitats Regulations as part of the examination, if considered appropriate. The way in which views will be collected as part of the examination will be set out in the ExA's procedural decision and may take the form of requesting written representations or holding a hearing, if considered necessary. The ExA may, where necessary, ask the Secretary of State³² to appoint an assessor to provide technical expertise in assessing the evidence.

Requiring further information

At any time during the examination the ExA may require the applicant to provide further information. The information may relate to additional environmental information, or further clarification about the proposal, including:

- new information from surveys that have been, or need to be, carried out; or
- interpretation or analysis of existing data.

If information, which the ExA considers is reasonably required in order for the competent authority to carry out the HRA, cannot be produced and consulted on within the examination period, the ExA will have to consider either recommending that the Secretary of State may need to consider refusing consent, or consider seeking an extension to the timetable.

If the further information sought is also information which the ExA thinks should have been included in the ES, the ExA must suspend consideration of the application until the information is provided³³. However, applicants should note that the suspension of the examination does not affect the overall maximum timetable of six months

within which the ExA must complete the examination of the application³⁴. Therefore, this emphasises the importance of seeking and reaching agreement at the pre-application stage between all parties that sufficient information has been provided in the application documents, to reduce the risk that further information is requested by the ExA, which the applicant cannot provide within the six months examination timetable.

Hearings

Unless the ExA considers that a hearing is considered necessary to allow oral representations about HRA issues, the examination of HRA matters will normally take the form of consideration of written evidence. For further information about the examination process, see [Advice Note 8.5 \(Participating in the Examination\)](#).

Updating of Matrices and preparation of the RIES

The Planning Inspectorate, on behalf of the ExA, will revise and update the initial matrices provided with the DCO application documents by the applicant, using and incorporating the evidence gathered throughout examination. This evidence will include SoCG, evidence plans devised with the involvement of MIEU, written representations, responses to ExA questions, examination responses and hearings (where held). There will be a clear audit trail to explain the basis for any revisions, and to identify where agreement has been reached between parties as part of the examination process. All of the evidence incorporated into the revised matrices will be publicly available.

The revised matrices and evidence gathered throughout the examination will be presented as a RIES by the Planning Inspectorate.



The purpose of the RIES is to provide the competent authority with a complete factual account of the information and evidence available to them for the purposes of undertaking their HRA.

Comments on the RIES will be invited as part of ExA questions to the SNCBs, the applicant and interested parties towards the close of the examination period. A minimum of 21 days will be allowed within the examination timetable to enable parties to review the RIES and to respond to this consultation. The ExA will inform all parties about the timetable for consultation at the earliest practicable opportunity. Any comments received will be taken into account in the **Recommendation** (see below) but the RIES will not be revised or amended following consultation.

Recommendation (three months)

The RIES (as issued during the examination), the responses to its consultation and responses to ExA questions, and all matters relating to HRA issues will form part of the evidence base for the ExA report and recommendation to the relevant Secretary of State (the competent authority). The documents and supporting information related to the evidence base including the RIES and consultation responses will be made available to the relevant Secretary of State.

The ExA's report will address the LSE of the project on any European site(s) and, if appropriate, also consider whether the project will have an adverse effect on integrity. The ExA's report will have regard to the RIES, and the comments received from the SNCBs and interested parties. Where necessary, the ExA's report will assess evidence from the examination relating to the case for no alternatives, IROPI and compensation.

Competent Authority's Decision (three months)

The competent authority will consider all the examination evidence prior to making a determination on the DCO application. Table 1, below, summarises the interface between the NSIP process and the HRA process (as shown in Figure 1).

Table 1: Summary of the relationship between DCO applications NSIPs and the HRA process

Planning Act stages	HRA stages	Activity	Responsible parties
Pre-application (no prescribed timeframe)	Stage 1: Screening Stages 2-4 Provision of information to support	Evidence plans consultation and work with MIEU. Preparation of SoCG. Applicant undertakes HRA and concludes on LSE of project on any European site(s), and consults with statutory consultees. If negative AA anticipated, applicant to prepare 'no alternatives' assessment, statement of IROPI, and details of compensatory measures in consultation with SNCBs and landowners. Applicant prepares and consults on Screening Matrices and, if applicable, Integrity Matrices. Applicant prepares draft NSER or HRA Report and submits to Planning Inspectorate and SNCBs for comment.	Applicant Consultees including SNCBs MIEU Planning Inspectorate
Application/Acceptance (28 days)		The Secretary of State determines whether sufficient information has been provided by the applicant and whether or not the application meets the standards required to be formally accepted for examination.	Planning Inspectorate on behalf of the Secretary of State
Pre-examination (approximately three months)	Stage 1 and 2: Consideration of screening information and need for AA	Initial assessment by ExA of the principal issues from the DCO application information, including matrices. Applicant advertises accepted application and invites interested parties, SNCBs, and others to submit representations by a set deadline.	ExA Applicant Consultees including SNCBs
Examination (up to 6 months)	Stage 1 and 2: Consideration of evidence for screening and AA (if applicable)	Procedural decision sets out how the HRA issues will be examined. ExA will request relevant matrices if not provided. ExA examines the LSE, and whether adverse effects on the integrity of the European site can/cannot be excluded. ExA may request further information from any interested parties and others. The Planning Inspectorate on behalf of the ExA will update the HRA matrices on the basis of information gathered during the examination and will release these within a RIES for consultation as part of questions to the SNCBs and interested parties.	ExA Applicant Consultees including SNCBs
Stages 3 and 4 only apply in light of a negative appropriate assessment			
Examination	Stage 3: Assessment of alternatives	ExA examines evidence (including submitted 'no alternatives' assessment) to identify if alternative solution(s) exists and would avoid adverse effects on the integrity of the European site(s).	ExA Applicant Consultees including SNCBs
	Stage 4: IROPI Compensatory measures	ExA examines any case for IROPI that has been put forward. ExA examines any compensatory measures and the consultations undertaken with the SNCBs to determine if these are appropriate and sufficient.	ExA Applicant Consultees including SNCBs
Recommendation (three months)	All	The ExA makes a report and recommendation to the Secretary of State as the competent authority.	ExA
Decision (three months)	All	The Secretary of State will undertake any necessary AA, consider alternatives, compensation measures and IROPI and come to a decision.	Secretary of State



Relationship with environmental impact assessment (EIA)

The majority of NSIP proposals are likely to require a HRA and EIA. Although the HRA and EIA are separate and distinct elements of the DCO application process, both are integral to the decision making process. The EIA will assess impacts on European sites and will include an assessment of effects on flora and fauna (as defined in the EIA Regulations 2009³⁵). This is information which is likely to inform the applicant's HRA.

However, the EIA and HRA apply differently to decision-making:

- the ES informs the decision (its findings must be taken 'into consideration'³⁶); whereas
- the DCO can only be made if the decision maker has followed the stages prescribed by the 2010 Habitats Regulations (see Figure 1).

European Protected Species (EPS)

In addition to satisfying the requirements under the 2010 Habitats Regulations in respect of the HRA, applicants are also required to determine whether a licence is required for EPS³⁷.

Assistance with EPS licences in England or English waters may be obtained from the **Consents Services Unit**. This Unit works with applicants on a number of key non-planning consents associated with NSIPs. The service is free of charge and entirely voluntary. Further information, including Frequently Asked Questions and a 'Prospectus for Applicants', is available on the National Infrastructure section of the Planning Portal³⁸.

Co-ordinating parallel consents and other AA

NSIPs, by virtue of their scale and complexity, are likely to require separate licences or permits under other regulatory regimes³⁹. Activities requiring consent not included, nor capable of being included in an application for development consent under the 2008 Act, may also have a significant effect on a European site and may also require AA by a different decision maker (competent authority) under other regulatory regimes before it can be authorised.

Applicants are encouraged to consult other competent authorities about the level of information those competent authorities will require in order to undertake their AA, if required. Applicants should confirm with those competent authorities whether they are likely to wish to adopt the reasoning or conclusions of the AA carried out by the competent authority (the relevant Secretary of State) under the 2008 Act process.

The applicant's HRA Report should make clear that any likely significant effects of the proposed development, which may be regulated by other competent authorities, have been properly taken into account in the applicant's HRA for the DCO application⁴⁰.

If the applicant decides or needs to apply for consents under other regulatory regimes which themselves require an AA, consideration should be given to the likelihood of the other licence consent being authorised. The applicant should also consider the timing of the relevant competent authority's decision, and the impact this may have on the examination of the DCO application and the preparation of its AA. It is recommended that applicants submit with the application, if possible, relevant comments/views of other competent authorities obtained during pre-application consultation.



Terms and abbreviations used in this advice note

AA	Appropriate assessment
Applicant	The party applying for development consent. Responsible for carrying out the necessary preparatory work in support of the application to enable the competent authority to carry out its duties
APFP	The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
Birds Directive	Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds
Competent Authority	In the case of NSIPs the competent authority, the decision-maker, is the relevant Secretary of State
cSAC	candidate Special Area of Conservation
DCO	Development Consent Order
EIA	Environmental Impact Assessment
ES	Environmental Statement
European site/ European marine site	Natura 2000 sites (SACs, cSACs SPAs) and; In England: <ul style="list-style-type: none"> • pSPAs and possible Special Areas of Conservation; and • listed or proposed Ramsar sites; and • sites identified, or required, as compensatory measures for adverse effects on Natura 2000 sites, pSPAs, possible SACs, and listed or proposed Ramsar sites In Wales: <ul style="list-style-type: none"> • pSPAs, and • listed Ramsar sites.
ExA	Examining Authority Information provided within the development consent application and gathered during examination will enable the ExA to make a report for the Secretary of State to consider when undertaking their AA. The ExA will ensure sufficient information is provided to enable the Secretary of State to meet their statutory duties as the competent authority under the 2010 Habitats Regulations (as amended)
Habitats Directive	Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.
Habitats Regulations	Conservation of Habitats and Species Regulations 2010 (as amended)
HRA	Habitats Regulations Assessment
Integrity Matrices	Method for summarising the AA stage (HRA Stage 2) within the application information. A separate matrix should be produced for each European site considered within the AA
IROPI	Imperative Reasons of Overriding Public Interest
LSE	Likely Significant Effect
NPPF	National Planning Policy Framework



Terms and abbreviations used in this advice note (continued)

NSER	No Significant Effects Report
NSIP	Nationally Significant Infrastructure Project
pSPA	potential Special Protection Area
Ramsar Convention	The Convention on Wetlands of International Importance especially as Waterfowl Habitat, as amended in 1982 and 1987
RIES	Report on the Implications for European Sites
SAC	Special Area for Conservation
Screening Matrices	Method for summarising the screening stage (HRA Stage 1) within the application information. A separate matrix should be produced for each European site considered at the screening stage
SoCC	Statement of Community Consultation The applicant may wish to take the SNCBs' and local planning authorities' advice about how to incorporate HRA consultation into the published SoCC ⁴¹
SoCG	Statement of Common Ground Applicants may wish to make use of a SoCG to identify matters which have been agreed with the nature conservation bodies and to flag areas which remain in dispute. The Screening and Integrity Matrices can also be used for this purpose. If the application is accepted the matrices will help the ExA to assess the issues and to decide how to carry out the examination
Secretary of State	Secretary of State The role of the Secretary of State as competent authority (under Provision 61(1) of the Habitat Regulations) is to determine if there are LSE and carry out the AA, if required, before a decision is made. They are also required to consult with the relevant SNCBs (and the public, if considered appropriate) before deciding to authorise the NSIP, and where adverse effects remain they must undertake further assessments on alternatives and prepare a justification statement for IROPI
SNCB	Statutory Nature Conservation Body SNCBs include Natural England (schemes solely within England), Natural Resources Wales (schemes solely within Wales), and the Joint Nature Conservation Committee (JNCC) (schemes beyond 12 nautical miles)
SPA	Special Protection Area
TAN	Technical Advice Note



List of references

- 1 Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as codified) (the 'Habitats Directive')
- 2 The Conservation of Habitats and Species Regulations 2010 (as amended) (the 2010 Habitats Regulations). The Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007 (as amended) (Offshore Marine Regulations) will apply beyond UK territorial waters (12 nautical miles). These regulations are relevant when an application is submitted for an energy project in a renewable energy zone (except any part in relation to which the Scottish Ministers have functions)
- 3 For all the sites included under this term, refer to the table of terms and abbreviations at the end of this advice note
- 4 Regulation 5(2)(g) of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended) (the APFP Regulations)
- 5 For example: The relevant National Policy Statements (England and Wales); National Planning Policy Framework (NPPF) (England); Planning Policy Wales and Technical Advice Note 5 (TAN 5): Nature Conservation and Planning (2009) (Wales)
- 6 For example: ODPM Circular 06/2005: Biodiversity and Geological Conservation – statutory obligations and their impact within the planning system
- 7 For example: European Commission (2001), Assessment of plans and projects significantly affecting Natura 2000 sites - Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC; European Commission (2000) Managing Natura 2000 Sites - the Provisions of Article 6 of the 'Habitats' Directive 92/43/EEC; Opinion of the Commission (2007) 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; European Commission (2011) Guidance Document on Wind Energy Developments and Natura 2000; and European Commission (2011) Guidance Document – The Implementation of Birds and Habitats Directives in Estuaries and Coastal Zones: with particular attention to port development and dredging
- 8 Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (as codified) (the 'Birds Directive')
- 9 The Convention on Wetlands of International Importance especially as Waterfowl Habitat, as amended in 1982 and 1987 (the 'Ramsar Convention')
- 10 Decision of the ECJ in Waddenzee (C-127/02) – In the light of the precautionary principle, a risk of significant effects exists if it cannot be excluded on the basis of objective information that the plan or project will have significant effects on the conservation objectives of the site concerned; in case of doubt as to the absence of significant effects an appropriate assessment must be carried out. 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 (paragraph 54 of Waddenzee)
- 11 If the site hosts a priority natural habitat type or a priority species further conditions apply in relation to the reasons as explained in this advice note
- 12 Regulation 8 of the 2010 Habitats Regulations
- 13 In England, the NPPF paragraph 118. In Wales, TAN5 paragraphs 5.2.2 and 5.2.3.
- 14 Regulation 61(1) of the 2010 Habitats Regulations and Regulation 25(1) of the Offshore Marine Regulations
- 15 Regulation 61(2) of the 2010 Habitats Regulations, Regulation 25(2) of the Offshore Marine Regulations, and the APFP Regulations paragraph 5(2)(g)



- 16 <https://www.gov.uk/government/policy-advisory-groups/major-infrastructure-and-environment-unit>
- 17 Regulation 61(6) of the 2010 Habitats Regulations and Regulation 25(5) of the Offshore Marine Regulations
- 18 Applicants may also wish to review the categories of projects suggested in paragraph 16 of ODPM Circular 06/2005: Biodiversity and Geological Conservation - Statutory Obligations and their impact within the Planning System
- 19 <http://infrastructure.planningportal.gov.uk/projects/>
- 20 Decision of the ECJ in Waddenzee (see footnote 10 for details)
- 21 Paragraph 54 of Waddenzee (see footnote 10 for details)
- 22 Decision of the ECJ in Waddenzee (see footnote 10 for details)
- 23 Paragraph 59 of the ECJ judgment in Waddenzee (see footnote 10 for details)
- 24 Regulation 61(5) of the 2010 Habitats Regulations and Regulation 25(4) of the Offshore Marine Regulations
- 25 Decision of the ECJ in Waddenzee (see footnote 10 for details)
- 26 Paragraph 54 of Waddenzee (see footnote 10 for details)
- 27 Appendix 2 of Advice Note 6 – Section 55 Acceptance of Applications Checklist
- 28 Section 55 of the 2008 Act and Regulation 5(2)(g) of the APFP Regulations
- 29 As defined in section 102 (4) of the 2008 Act
- 30 Regulation 61(3) of the 2010 Habitats Regulations
- 31 The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended)
- 32 Under Section 100(2) of the 2008 Act
- 33 Regulation 17(1)(c) of the Infrastructure Planning (EIA) Regulations 2009 (as amended)
- 34 Section 98(1) of the 2008 Act
- 35 The Infrastructure Planning (EIA) Regulations 2009 (as amended), Schedule 4, Part 1, paragraph 19
- 36 Regulation 3(2) of the Infrastructure Planning (EIA) Regulations 2009 (as amended)
- 37 For example, Regulation 53 of the 2010 Habitats Regulations
- 38 <http://infrastructure.planningportal.gov.uk/legislation-and-advice/consents-service-unit/>
- 39 Refer to Guidance: Defra (2012) Habitats Directive - Guidance on competent authority coordination under the Habitats Regulations (available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69580/pb13809-habitats-guidance.pdf)
- 40 Regulation 65 of the 2010 Habitats Regulations
- 41 Required to be prepared by the applicant by Section 47 of the 2008 Act

Review of this advice note

The Planning Inspectorate will keep this advice note under review and will update as appropriate.

Further information

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